

Additional Reading Materials

1. Justice-Centered Child and Family Well-being Systems to Address Neglect

Authors: Priscilla A. Day, Angelique Day, Mary McCarthy, Corey Best, Katharine Briar-Lawson, and Jessica Pryce

Link to article:

<https://publications.pubknow.com/view/1055841541/52/#t=NTIsbGVmdCw1Mi44Nyw0Ny4yOSw0NjkuNTYsNzlyLj11LHJpZ2h0LGJvdHRvbQ==>

2. A Better Way NEEDED: A Different Path for Child Welfare

Authors: Judge William Thorne and Karan D. Kolb

Link: to article:

<https://publications.pubknow.com/view/1055841541/144/#t=MTQ0LGxlZnQsNDkuNTAsMTg3LjQ5LDI4My43Niw3MDguNzUscmlnaHQsYm90dG9t>

3. Return to the Circle:

Structural poverty and child welfare neglect in American Indian and Alaska Native communities



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4. COLUMBIA JOURNAL OF RACE AND LAW VOL. 11 JULY 2021 NO. 3 ARTICLE ABOLITION, SETTLER COLONIALISM, AND THE PERSISTENT THREAT OF INDIAN CHILD WELFARE

Authors: Theresa Rocha Beardall, J.D., Ph.D. & Frank Edwards, Ph.D.



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5. REPORT | September 2021

Tribal Child Welfare Systems' Experiences With Prenatal Exposure to Alcohol and Other Drugs: A Case Study

Authors: Priscilla Day, University of Minnesota Duluth, Erin Geary, Erin Ingoldsby, and Pirkko Ahonen, James Bell Associates,



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Return to the Circle:
Structural poverty and child welfare neglect
in American Indian and Alaska Native communities

Child welfare policy makers, directors, and practitioners know surprisingly little about the Indigenous people in the United States (US), even though tribal families and nations exclusively populated the North American continent prior to colonization. In order to be successful in serving Indigenous families, one must understand the genocidal history of policies, practices, and actions that lay the foundation for the ongoing structural poverty and disruption of Indigenous children and families. When critical knowledge about this history is absent, child welfare policy and practice continues to engage in colonizing genocidal decisions that perpetuate and threaten the future of American Indians/Alaska Native (AI/AN) children and families. In this chapter, we provide a historical overview of policies and practices that led to the intentional breakdown of AI/AN families. This history includes how structural poverty, racial bias, and over surveillance of child neglect in AI/AN communities were embedded and continue to exist and result in disparate outcomes for families and children. We provide four examples of tribally initiated programs that are designed to successfully address basic needs and support efforts to alleviate poverty for AI/ANs and reduce reports of neglect through family stabilization and community building and finally how ICWA active efforts strengthen these efforts.

Historical Family Disruption Through Colonization

Indigenous peoples in the US occupied this geographical land base for millennia prior to the first European contact and had well-established ways of living in harmony with nature and with one another. While conditions could be challenging, the interconnectedness between the people and the land served to sustain many generations (Cajete, 2015). Upon arrival, Europeans

brought with them a very different way of living that merited independence, as opposed to the collective way of life that was the custom of the Indigenous occupants. This quickly resulted in a clash of cultures and the start of the destruction of Indigenous ways of life (Brave Heart & Deschenie, 2006; Day, 2016). To reduce costly conflicts, the formulation of treaties and federal policies were presented as a means to rectify relations between independent sovereigns (i.e. the emerging US government and the already existing Indigenous governments). Treaties are deemed in the US Constitution as “the supreme Law of the Land” and have been upheld in numerous Supreme Court cases (Why Treaties Matter, n.d.). However, over the last 500 years, past and contemporary outcomes show that promises made in treaties have not been realized. As colonization spread, it brought perpetual struggle for the original Indigenous residents. AI/AN populations have been exposed to and survived a series of genocidal, traumatic events through the encroachment of settlers. These included wars, forced marches and removal from traditional homelands; germ warfare through the deliberate spreading of smallpox and other diseases; destruction of traditional food sources such as buffalo; family separations; mass hangings; ongoing military use of force; unwarranted arrests, compulsory internment camps referred to as reservations; withholding needed resources, and mandatory inferior education in boarding schools for assimilation (Brave Heart & Deschenie, 2006; Day, 2016). Each of these acts of overt and covert violence resulted in disrupting AI/AN families and their Tribal Nations, leaving a profound mark on the most vulnerable members - the children.

Boarding Schools

While all forms of colonization caused trauma, perhaps the most critical to children and their families involved the break-up of AI/AN families, which was initiated with the founding of the first residential boarding school located away from Native communities. Established in 1879,

under the Department of Interior, using the “Civilization Fund” Carlisle Institute was designed to use residential placement and a highly regimented, militaristic schedule as a means to “kill the Indian and save the man.” According to the National Native AI/AN Boarding School Healing Coalition (NABSC, n.d.), Indian boarding schools were the “first Indian child welfare policy” in the US (NABSC, n.d.). For many children, mere physical survival was the utmost goal, however, nothing prepared them for the consequences that boarding schools and systemic forced assimilation would have on the future of all AI/ANs.

AI/AN boarding schools impacted the traditional indigenous family structure in a myriad of ways. For instance, when a child was removed to boarding school, far from their family and community, natural support systems were replaced by westernized ways designed to assimilate children. An article entitled, “*If we get the girls, we get race,*” focused on the experiences of AI/AN girls who were sent to boarding schools in an effort to reeducate them to be mothers who raised assimilated children (Devens, 1992). This tactic was in conflict with Indigenous child rearing where children are at the center of the circle; cared for by family, extended family, cultural kin and community, all of whom provided natural wrap-around systems of care (Bigfoot Subia & Schmidt, 2010). Boarding schools were structures that objectified the child as a target for civilization transformation by dismantling embedded cultural protections that family and tribal cultural connections provided. This resulted in the loss of, or a significant distortion of, traditional parenting and cultural knowledge needed to promote Indigenous identity and wellness. Instead, what children learned were rigid, harsh rituals and abusive behaviors (Brave Heart & Deschenie, 2006). To exemplify, a pair of baby handcuffs were found in an attic in a Pennsylvania house that was once owned by a former staff member from the Carlisle Indian School. Their descendants donated the handcuffs to a museum to publicly share this little known

history (NABSC, n.d.). This begs the question as to what other untold shocking and heinous behaviors occurred at the hands of adults who were assigned to assimilate and “civilize” Indigenous children? Numerous parents, extended family and Tribal communities experienced the trauma of generations of children who were stolen for assimilation purposes. The chilling impact of trauma continues to resonate in Indigenous families and communities (NABSC, n.d.).

Trauma

The cultural social net had been deeply damaged through mandated child removals to boarding schools leaving families and communities with broken pieces of what was once considered uniform and whole. The children who were removed from their homes and communities, sometimes as young as two to three years old, were left to grapple with the trauma associated with removal (Brave Heart, M.Y.H. & Deschenie, T. 2006; Gameon, et al., 2020; Yehuda & Lehrner, 2018). Brutal abuses were not uncommon and every boarding school had a child cemetery, many of which are landmarked with hundreds of graves. Recently, the discovery of multiple gravesites at boarding schools across the United States and Canada has once again resurfaced trauma that which was known, but not openly spoken about, but now is being named both in and outside of Indigenous communities (NABSC, n.d.). The children who survived boarding schools were forever changed and there was no recognition or assistance for them or their families to deal with what happened (Center on the Developing Child, 2010; Pember, 2016; Yehuda & Lehrner, 2018). If they returned home, the survivors came back different and if they went out into mainstream society, they were often marginalized and ill equipped to find meaningful work or raise healthy families. As adults, they had little awareness about how to parent their own children, creating a gap in the transmission of intergenerational knowledge while passing on historic trauma to future generations (Day, 2014; Gameon, et al., 2020; Pember,

2016). It goes without saying that unfathomable traumas endured by Indigenous people have resulted in long-term historic trauma that still resonates today (Brave Heart & Deschenie, 2006; Day, 2014; Pember, 2016; Weaver & Brave Heart, 1999).

Federal Policies and Structural Poverty

Simultaneous to the early boarding school era, a series of Federal policies set about to further eradicate traditional pathways, communal land sharing, and tribal governments (e.g. Indian Relocation Acts of 1830 and 1956; General Allotment Act of 1887; and the Curtis Act of 1898). These policies dismantled cohesive and interdependent AI/AN communities, as well as economic, social, and cultural systems. When Indigenous peoples were forced onto reservations, this further exacerbated the already economically, politically and socially decimated groups. In addition, the loss of important roles, such as hunters, gatherers and medicine people who helped to sustain the health of the community lead to malnourishment, sickness, and death. Traditional healing and ceremonies were outlawed. This left Natives exposed and vulnerable to negative social determinants of well being such as chronic depression from unhealed and ongoing traumas, marginalized social status caused by racism and structural inequities, lack of economic opportunities, and isolated geographic locations on designated reservations or forced relocation to inner cities (Pember, 2016). Reservation life and later urban life, deepened poverty and created a dependence on foods and supplies that were substandard and unfamiliar to families (Brave Heart & Deschenie, 2006; Day, 2014; Weaver & Brave Heart, 1999). In short, each of the above-named factors continued to disrupt families and communities and contribute to and/or lead to poverty (Warne & Wescott, 2019). When these social determinant factors are not considered in child welfare decision-making, risk of child welfare involvement is increased, especially in terms of neglect (Feely & Bosk, 2021). This, coupled with systemic racism, bias,

and disrespect for tribal sovereignty, creates multi-tiered risks for AI/AN families and Nations.

Systemic Racism

Understanding disproportionality can be challenging and only recently have researchers begun to use an anti-racist lens in looking at data on disparities. Through this view, poverty plays a significant role in the high levels of disproportionate need by Black, Indigenous, people of color (BIPOC). Systemic racist policies are reflected in the child welfare system's policing and surveillance role through over regulation in the lives of impoverished families of color resulting in disparate child neglect reports (Child Welfare Information Gateway, 2021; Dettlaff, et al., 2020; Fluke et al., 2010; Roberts, 2020). Furthermore, this type of macro level system oppression, particularly as related to neglect and child removal, must be framed within the context of the history of colonization and historical trauma (Jones, et al., 2020; Evans-Campbell, 2008). We may never know the full extent of the ongoing, generational trauma on individuals, families and tribal communities. However, considering the multiple pervasive and extensive challenges associated with persistent poverty, we can speculate about its impact (Brave Heart & Deschenie, 2006; Day, 2014; Mignon, 2016; Pember, 2016; Weaver & Brave Heart, 1999).

Current Impact

Neglect and Poverty

Data from the U.S. Department of Health and Human Services (DHHS, 2021) indicates that neglect alone accounts for 61% of all abuse reported to child welfare programs; for AI/AN it is much higher, up to 80% or more. In 2019, the overall rate of child abuse was 8.9 victims per 1000 children while for AI/ANs the victimization rate was 14.8 per 1000 children, the highest ever reported. Neglect is the most common type of reported maltreatment, and it is most often identified in families with children between one to five years of age (Child Welfare Information

Gateway, 2021). Poverty can affect a parent's capacity to care for their children through the lack of access to basic needs, such as housing, food, transportation, and health care. While living in poverty adds stress that may affect one's ability to adequately respond to a child's needs, especially younger children, the answer is not child removal but family support (Akee & Simeonova, 2017; Annie E. Casey Foundation, 2020; Dettlaff & Boyd, 2021). Poverty coupled with a parent's untreated behavioral health issues (e.g. trauma) or substance use can lead to the inability to prevent or address potential safety risks such as using inappropriate caregivers for the children (Duva & Metzger, 2011; Fong, 2020). These are public health issues that are not remedied through child removal and family destruction. Senator Walter Mondale, who sponsored the original Child Abuse Prevention and Treatment Act in the Senate, expressed in 1977, his deep concern about adding *neglect reporting* to proposed legislation. He wrote, "It has come to my attention that the proposed model statute would mandate reporting of suspected cases of child neglect...these judgments could result in an unwarranted intrusion of the government into family life...we must do all we can to safeguard families-particularly those who are poor and from minority groups-from being enveloped in a system which may label them permanently as criminals or deviants...". He goes on to say that if they persist in adding this neglect language he would "...personally write to all of the State legislatures and recommend it not be adopted" (Juvenile Rights Project, American Civil Liberties Union Foundation, 1977). Here we are, 45 years later, documenting the disparate outcomes of adding neglect to child abuse statutes that Senator Mondale predicted and feared.

The link between poverty and neglect is clear. Studies also indicate that simply being from a minority status in the United States is linked to higher poverty (Annie E. Casey Foundation, 2020; Williams, et al., 2016). AI/AN populations remain the poorest of all racial

populations. Although scarcity of data for this population is common, the AI/AN poverty rate for children living with families ranges from 27%-31% (United States Census Bureau, 2020) and varies by geography. Using a national representative survey of health, Akee and Simeonova (2017) found that family poverty and social disparities experienced by AI/AN children put them at a much higher risk for chronic mental health and other associated issues, often linked to neglect. Poverty is also associated with families of marginalized racial and ethnic backgrounds who need to access social services (e.g. financial or housing assistance), which can easily bring them to the attention of mandated reporters, something known as surveillance bias (Child Welfare Information Gateway, 2021). Once these families come to the attention of the child welfare system, they become increasingly scrutinized, often continuing the cycle of child welfare involvement across generations (Fong, 2020; Huff Stevens, n.d.).

Surveillance Bias

As with policies, child welfare practice tends to ebb and flow. However, a constant is that public child welfare workers and related systems (e.g. courts, private foster care and adoption) continue to remove AI/AN children from their homes and communities to “save” the child by substituting families, particularly non-native families, rather than helping to stabilize the existing family through active family preservation efforts. The majority of these removals are primarily related to poverty and/or a mainstream misunderstanding of Indigenous life. Currently, child welfare reporting, including educational neglect reports, continue to be used as inroad for deep surveillance of families and often result in a justification for child removal (Edwards, 2019). Instead of finding supportive concrete resources, developing cultural understanding, and exploring alternative options, the rush to remove AI/AN children still exists in public child welfare (Berman, 2018) which is in violation of ICWA (National Congress of AI/ANs, 2021).

A study sponsored by Casey Family Programs found that in some states, more than 50% of AI/AN children are investigated by child protection before age 18. The study found that in Minnesota, Alaska, South Dakota, North Dakota and Oklahoma, all states with high AI/AN populations, being investigated by child protection is a common part of growing up (Edwards & Beardall, 2020). These and other compounding factors lead to a cycle of structural poverty initiated through the intentional, genocidal, policy-driven break-down of families and communities, increasing the risk of being reported for child neglect as families struggle to meet the basic needs of their children (Pember, 2020). Poverty does not cause abuse and neglect, but as stated previously, it can make families vulnerable to child welfare removal due to fragility, over-surveillance, and bias when assessing BIPOC families (Dettlaff, et al. 2020; Roberts, 2020).

Practice Implications

Policy makers, child welfare administrators and workers in public systems may question why it is important to understand the history of colonization on Indigenous communities. However, the need for child welfare workers to incorporate knowledge, values, and skills into child welfare practice to effectively work with this population cannot be underestimated. To illustrate, we include four points of reference: Firstly, the lack of foundational knowledge, particularly when working with BIPOC populations, results in biased decision-making in child welfare case management (Feely & Bosk, 2021). Secondly, the acknowledgment of and respect for Indigenous peoples (e.g. tribal sovereignty, cultural diversity, social policy) is situated in social work practice standards and ethics (Council on Social Work Education, 2015) and the National Association of Social Workers (NASW) Code of Ethics (NASW, n.d.) and should be standard practice. Thirdly, while the overall Indigenous population is relatively low due to genocidal practices, as a group, AI/ANs are a fast-growing and young population. The National

Congress of AI/ANs (n.d.) recently released a report about the changes in AI/AN population from 2010 to 2020 finding a significant population increase of 27.6% in the latest Census Bureau data. And finally, our fourth point is that all public child welfare agencies are expected to comply with the Indian Child Welfare Act (ICWA) of 1978, a federal law whose purpose is to rectify past destructive practices by keeping children with their families and in tribal communities. ICWA is primarily a family preservation law and is now considered by many as the gold standard for child welfare practice (National Indian Child Welfare Association, 2015). Even though tribes, grandparents, and parents fought to pass the ICWA in response to high removal rates of children, in many states and jurisdictions, child removal rates remain as high as or higher than before its passage (Day, Bussey, Erickson, 2021; National Indian Child Welfare Association, 2015). This is especially pertinent when considering the data for AI/ANs and the link between poverty and child neglect.

The ability of individual child welfare workers, often with little training or experience, to make significant decisions about BIPOC families almost ensures subjectivity and bias will enter into case decision-making (Beniwal, 2017; Dettlaff, et al. 2020). Most public child welfare workers are not from communities of color or tribes and lack foundational knowledge about family and/or community strengths or resources to use as alternatives to removal (Beniwal, 2017). Agency level policies and practices that are imbued with institutional racism, the lack of resources, and detachment from BIPOC communities impacts service provision (Beniwal, 2017; Child Welfare Information Gateway, 2021; Dettlaff, et al. 2020). This is why we see disparate and negative outcomes for BIPOC families and children. To exemplify a destructive child welfare policy, the Adoption and Safe Families Act (AFSA) actually resulted in higher removal rates for these most vulnerable children (Dettlaff & Boyd, 2021). AFSA provides financial

incentives for states to focus child welfare practice on child removal and adoption, negating other early intervention efforts such as providing essential safety nets for families in need.

BIPOC families living in poverty were the most impacted by the initiation and aftermath of AFSA (Administration for Children and Families, 2020; Dettlaff & Boyd, 2021; Minoff, 2018).

Finally, an ongoing barrier for effective engagement with tribal families is that most workers do not understand tribal sovereignty (i.e. self-governance) or federal policies that address AIANs, such as the Indian Child Welfare Act (ICWA), which, was specifically designed to improve ICWA compliance and outcomes for AI/AN children. The reason ICWA exists is due to the unique political status of tribal nations as sovereign governments with rights and privileges of self-determination to address and lead to positive outcomes for their tribal citizens (Bureau of Indian Affairs, n.d.). ICWA requires that tribal families and children be provided active efforts and culturally relevant services by tribal or non-tribal staff familiar with and able to provide services to tribal community members (Korthase, Gatowski, & Erickson, 2021; Martin & Connelly, 2015). Active efforts as described in ICWA are, “affirmative, thorough, and timely efforts” intended primarily to maintain or reunite a child with his or her family consistent with the tribe’s prevailing social and cultural standards and life ways (Bureau of Indian Affairs, n.d.). ICWA’s intent is to reinforce and reinstate Indigenous practices that are best met by their family, extended family, and tribal community. ICWA is a federal law that recognizes Indigenous intergenerational family inclusiveness as opposed to mainstream practices that have perpetually been disastrous for AI/AN children and families.

Returning to the Circle

A pronounced difference between colonized and non-colonized approaches is the Indigenous belief that we are all related, and we should afford the same level of respect to all our

relatives, even those who are not related by blood (Day, 2014; Red Horse, 1997; Sanigup Ullrich, 2019). Respect for life is also extended to all of creation and this value is reflected in the practices of Indigenous based programs across a variety of disciplines (Evans Campbell, 2008; Sanigup Ullrich, 2019). These cultural beliefs can be found in services for housing (Amon, n.d.; Native American Connections, n.d.); behavioral health (Bigfoot, & Schmidt, 2010); family court methods (van Schilfgaarde & Shelton, 2021) child welfare (Day, Bussey & Erickson, 2021), and in policies, such as the aforementioned ICWA (Indian Child Welfare Act, 1978).

Tribal nations have much to teach others about policies and programs that consciously place children in the center of the decision-making process while considering the short-term and long-term outcomes for the next seven generations (Day, 2014). To provide insight, in the next section, we highlight contemporary, innovative programs that serve as best-practices models for AI/AN families and children in regards to housing, behavioral health, and court systems.

Tribally Initiated Programs

Housing: Native American Connections (NAC) and Sche'lang'en Village

As with most tribal programming, housing innovations provide not just shelter, but structures and supports that are community integrated and intergenerationally centered. Two tribal housing programs, one urban and the other on a reservation, serve as prime examples. The first program, Native American Connections (NAC) is located in Phoenix, Arizona. Established in 1972, NAC provides a range of services to assist those in need of stable housing. In this vein, families are assisted in finding affordable permanent housing through the creation of safe and accessible neighborhood spaces that are designed to build community connections. In addition to housing, the program empowers participants by offering social services, employment, education and intergenerational support to promote long-term stability and wellness for its

residents across the lifespan. NAC has demonstrated many years of success for thousands of AI/AN people (Native American Connections, n.d.).

The second housing program, the Lummi Tribe's Sche'lang'en Village, is found in Washington state. The Lummi housing complex was designed specifically for Lummi Tribal families who are seeking to be reunited with their children. It provides a safe and supportive reservation environment to actively assist families in transition. The program offers a range of services, which include behavioral health, medically assisted treatment, and elders in residence who are available to assist with cultural and spiritual needs. In addition, parenting and educational support are provided within the residential neighborhood. Sche'lang'en Village also provides cross system partnerships with Indian child welfare, courts and probation, restorative justice methods, and chemical/medical health services. Financial assistance is provided as essential support for vulnerable families to ensure successful and continued reunification (Amon, n.d.; United for Youth, n.d.).

Behavioral Health: Healing Intergenerational Roots (HIR) Wellness Program

Using Indigenous based ways of healing are not new, but using these methods as an organizational philosophy and approach has not been well established outside of tribal communities. Providing behavioral health services and structuring an organization around the intergenerational, relational approach is consistent with Indigenous ways of being and healing and has been shown to have positive, long lasting results (Brave Heart, 1999; Day, 2014; Drywater-Whitekiller, 2014). One example that incorporates these factors is found in the Healing Intergenerational Roots (HIR) Wellness program, which practices what the director, Lea Denny, calls "community activated medicine" - CAM (Healing Intergenerational Roots Wellness, n.d.). CAM is based upon the belief that intergenerational healing is possible when it

moves beyond western models of individual healing by engaging the community to acknowledge and transform collective pain into collective healing. Based in Milwaukee, Wisconsin, this behavioral health organization seeks to change the way in which healing happens and creates access to anyone who might need support. Importantly, all of these services are offered at no cost to participants. Funded, in part, by Victims of Crime grants, it is described as a “survivor and women-led” organization. It provides a wide array of community wellness activities such as one-to-one counseling; group work; community engagement activities; podcasts; daily meditation over Facebook; training events, and elder book clubs. The program also employs a process called the Children’s Sacred Fire that is used to make important decisions (Children’s Sacred Fire, n.d.). The method, a combination of Indigenous knowledge and adaptations, centers children in its decision making by considering the past, present, and future when making any choice that may negatively impact them (Healing Intergenerational Roots Wellness, n.d.). This culturally diverse method has a wide following of environmentalists and other disciplines, but has always been used by Indigenous people.

Family Court: Chickasaw Peacekeeping Court

The Indigenous practice of peacekeeping has been around since time immemorial and involves a process that brings families together to assist in decision making in child welfare matters (National Judicial College, 2016). Family members, with child welfare concerns, are invited to meet with a judge who oversees the proceedings that are opened by prayer, take as long as needed, and ensure that everyone has an equal voice in a non-adversarial setting. The overall goal for peacekeeping courts is family success and well being through consensus building. The use of these courts is expanding in child welfare, not only situated in tribal courts, but also in public courts because of its positive outcomes (National Judicial College, 2016).

One program example can be found with the Chickasaw Tribal Nation's Peacemaking Court in Oklahoma. The court's motto includes a quote by Indigenous author, Vine Deloria, Jr. found on their website, "The circle eliminates the feeling of instructional coercion and enables people who have been injured to heal themselves and also places the offender in a position where, to keep any sense of personal integrity, he or she has to live up to community standards. Everyone learns from the experience" (Chickasaw Nation-Peacemaking Court, n.d.). The ultimate purpose of the Peacemaking Court is not punishment, but family restoration.

Conclusion

Colonization turned the world upside down for the Indigenous peoples of North America. As a result, destruction, violence, trauma, and the eradication of historical cultural pathways came about through centuries of Federal policy-making. These political maneuvers structurally impoverished AI/AN families, dismantled parenting methods, and served to perpetuate ongoing challenges for survival. It should be no surprise that this population continues to have the highest poverty rate of all populations in the United States. Furthermore, AI/ANs also have the highest involvement in the public child welfare system, beginning with the residential placement of children in boarding schools as a means to erase their Indigenous identity and assimilate them into majority society followed by public child welfare child removals. Generations of AI/AN families have suffered due to out of home child placements, often permanent, that structural poverty and lack of meaningful remedies associated with neglect exacerbated.

However, AI/AN continue to increase in population and persist to "circle back" to the ancient methods that have served our ancestors prior to European arrival. Some of these practices are instituted within Federal policies, such as the Indian Child Welfare Act, which was created as a means to remediate and restore AI/AN families, culture, and communities. Other tribally

specific programs provide culturally supportive services that address basic needs such as safe housing and/or behavioral health services to support vulnerable families to stabilize and heal. The programs that were included in this chapter, and many others which were not named, came into existence through resilience, sheer determination and Federal policies that acknowledge and support tribal sovereignty for present and future generations of AI/AN families.

Poverty should not result in child welfare workers' giving up on AI/AN families and removing children, but instead should be the basis to support families with needed resources. This must begin with resources to meet the essential needs of families to remain intact and support for family restoration designed for those already impacted by child removal. The landmark law, ICWA, introduced the formal precedent that AI/AN children have better outcomes when maintained with their families and in their communities. Chief Tribal Judge Paul Day, an enrolled member of the Leech Lake Band of Ojibwe in Minnesota and Tribal Court Judge, referred to the spirit of ICWA as listening to and believing in families. He stated, "It is important to know that most parents want to be with their kids and to ask why they are in the situation with a goal of assisting in reunification. This respect, and the goal of reunification, is at the center of the spirit of ICWA" (Korthase, Gatowski, & Erickson, p. 16, 2021). And this same spirit is the foundation of returning to the circle to promote tribal family and cultural preservation.

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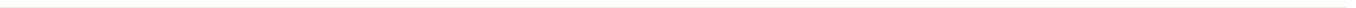
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ABOLITION, SETTLER COLONIALISM, AND THE PERSISTENT THREAT OF INDIAN CHILD WELFARE

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Family separation is a defining feature of the U.S. government's policy to forcibly assimilate and dismantle American Indian and Alaska Native (AIAN) tribal nations. The historical record catalogues the violence of this separation in several ways, including the mass displacement of Native children into boarding schools throughout the 19th century and the widespread adoption of Native children into non-Native homes in the 20th century. This legacy eventually prompted the passage of landmark legislation known as the Indian Child Welfare Act of 1978 (ICWA). ICWA introduced federal protections against the unnecessary removal of Native children and affirmed the role of the tribe as an important

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† Frank Edwards is an Assistant Professor of Criminal Justice at Rutgers University – Newark. He uses statistical methods to explore the causes and consequences of the social distribution of state violence. The authors thank Brian Clapier, Anita Fineday, Jack Trope, and Sheri Freemont for their generous read of this article and discussions on how we might all serve tribes and families as they reunify and heal from a concerted legacy of family separation. The authors are solely responsible for all content.

partner in child welfare proceedings. To what extent has the federal government honored the commitments of ICWA and reversed the trajectory of Native family separation since 1978? What can be done to reduce the threat of the current child welfare system on the well-being of Native families?

In this Article, we use administrative and historical data to statistically evaluate the magnitude of change in AIAN family separation since the passage of ICWA and locate the institutional pathways that funnel AIAN families into the child welfare system. We find that, despite long-standing treaty responsibilities to support the health and well-being of tribal nations, AIAN children remain at incredibly high risk of family separation. In particular, we find that the frequency of AIAN children's placement into foster care has remained relatively stable since the passage of ICWA and that the post-investigation removal decision by child welfare agencies is a key mechanism of inequality in family separation. We situate these findings within theories about settler colonialism and Indigenous dispossession to illustrate that the continuous removal of Native children from their homes is not an anomaly. Instead, we argue that the very intent of a white supremacist settler-state is to dismantle Native communities. Based upon these findings, we argue that the child welfare system in its entirety must be abolished in order to stop the routine surveillance and separation of Native and non-White children from their families by the state. We suggest that ICWA has provided, and will continue to provide, a necessary intervention to protect Native families so long as this intrusive system remains. We conclude by envisioning an abolitionist approach that immediately redirects social and financial resources into the hands of Native families and works cooperatively with tribal nations to promote Indigenous communities of care.

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I. INTRODUCTION

The enduring effects of the settler-state's targeted control of non-white families cannot be understated. Recent data indicate that about 15% of American Indian and Alaska Native (AIAN) children and 11% of Black children can expect to enter foster care at some point before their 18th birthday, rates that are remarkably higher than white children (5%).¹ Indeed, the family has long functioned as a site of state regulation. In the case of Native Peoples, two intertwining conduits of settler colonial violence facilitate this regulation: Indigenous land dispossession and the destabilization of Native families and tribes. The historical record catalogues this violence in several ways, including the mass displacement of Native children into boarding schools throughout the 19th century and the widespread adoption of Native children into non-Native homes in the 20th century. As a result, the child welfare system represents an early yet potent mechanism to reproduce the intentions of a white supremacist settler-state, namely the desire to displace and erase Native and non-white families that resist the settler project.

Throughout this Article, we argue that family separation constitutes a *defining* and continuing feature of the relationship between the U.S. government and American Indian tribal nations. We also underscore how separation reveals the state's long-standing carceral commitments to surveillance, containment, and the coercive control of Native lands, families, and resources. This conclusion is evident in the high and long-standing rates of AIAN family separation that persist despite treaty responsibilities to support the health and well-being of tribal nations. In 1978, the federal government began addressing this separation crisis by passing the Indian Child Welfare Act (ICWA)² and acknowledging tribal jurisdiction over the welfare of Native children. These actions, however, did not stop the routine separation of Native children from their families because the law was left to operate within a much larger child protection system that prioritizes surveillance and separation over welfare

¹ Christopher Wildeman & Natalia Emanuel, *Cumulative Risks of Foster Care Placement by Age 18 for U.S. Children, 2000–2011*, 9 PLOS ONE 1, 5 (2014), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0092785> [<https://perma.cc/3GM2-LWNY>].

² Indian Child Welfare Act, Pub. L. No. 95-608, 92 Stat. 3069 (1978) (codified at 25 U.S.C. §§ 1901–1963).

and support. The state also failed to implement a systematic way to track when and where Native families are pushed into the child welfare system. This lack of transparency created an inability to estimate the prevalence and frequency of family separation over time. It also made it more difficult for tribes and advocates to determine which stages of child welfare case processing are most precarious for AIAN children, which limits opportunities for increased tribal intervention.

In this Article, we step into this troubling federal gap and provide new empirical evidence about the enduring legacy of Native family separation. We do so within an important national moment of reckoning about the efficacy of the child welfare system, its harmful treatment of minority families, and its undeniable origins in federal policy to assimilate and eradicate Native Peoples. In Part I, we begin by introducing theories about settler colonialism and Indigenous dispossession to situate the social and historical context of Native family separation. We also catalogue key legal moments that illustrate that the continuous removal of Native children from their homes is not an anomaly. Instead, we argue that the very intent of a white supremacist settler-state is to dismantle Native families and tribal nations and that child removal is key to this goal. In Part II, we use administrative and historical data to isolate and illustrate the institutional pathways that lead AIAN families into the child welfare system and evaluate the magnitude of change in AIAN family separation since the passage of the ICWA. In Part III, we provide an overview of our empirical findings, examine their social and legal implications for contemporary Native family separation, and delineate their connection to the settler colonial context we examine in Part I. In Part IV, we suggest an abolitionist approach to address the state's ongoing efforts to dispossess Native communities of their children and homelands. In this section, we look to the AIAN family experience and consider why and how the child welfare system (not ICWA) must be *reimagined* and ultimately *abolished* to cultivate care and responsibility rather than discipline and punishment. An abolitionist approach requires a clear acknowledgment of the harms committed against a community. In the case of Native Peoples, this requires a moral reckoning of the state's allegiance to white supremacy and subsequent attempts to assimilate away the livelihood, values, and kin networks of Indigenous Peoples. From here, this approach would redirect social and financial

resources into the hands of Native families and work cooperatively with tribal nations to promote Indigenous communities of care, as defined by tribal nations. To this end, we urge lawmakers to transfer federal funds, made available through Title IV-E of the Social Security Act, directly to Native families who can provide for children in ways that align with their cultural practices and vision for intergenerational healing.

II. SETTLER COLONIALISM DRIVES FAMILY SEPARATION

Native family separation is an outcome of U.S. colonialism and settlement, made possible by the state's long-standing carceral commitments to surveillance, containment, and the coercive control of Native lands, families, and resources. Three key Congressional measures illustrate these commitments via forced assimilation and Indigenous land dispossession: the Civilization Fund Act of 1819,³ the Indian Removal Act of 1830,⁴ and the General Allotment Act of 1887.⁵ Taken together, these laws demonstrate governmental efforts to break up Native lands and families and fundamentally limit tribal sovereignty. This Congressional legacy provides critical context to current data on Native child removal, linking early histories of settler violence with later assimilationist programs including boarding schools and the adoption of Native children into non-Native homes. We suggest that this history constitutes the origins of the child welfare system generally and specifically led to Native resistance against family separation, most significantly through the Indian Child Welfare Act of 1978 which sought to end generations of abuse, mistreatment, and the forcible removal of Native children from their homes.

A. Colonialism, Settler Colonialism, and Indigenous Dispossession

Historically, colonialism is generally understood as an invasion by European powers onto foreign lands in an effort to exploit local resources to the detriment of the First Peoples living

³ Civilization Fund Act of 1819, Pub. L. No. 15–85, 3 Stat. 516b.

⁴ Indian Removal Act of 1830, Pub. L. No. 21–148, 4 Stat. 411.

⁵ Dawes Act, ch. 119, § 5, 24 Stat. 389 (1887) (current version at 25 U.S.C. § 348).

and caring for these homelands.⁶ To this end, colonialism encompasses an intentional set of political actions and policies designed to control, develop, and extract resources for the gain of the colonial nation-state located elsewhere. Settler colonialism is differentiated from colonialism. This social process involves settlers not only occupying and seizing resources for profit, but permanently settling in the territory, thereby displacing inhabitants in order to secure land to build their own homes and communities.⁷ Settler colonialism is also differentiated from colonialism by its guiding philosophy, namely the logic of elimination, which seeks to physically and culturally eradicate local inhabitants⁸ through violence, coercion, and the implementation of laws, policies, and organizations that fulfill its predatory objectives.

The U.S. is a settler-colonial state and early Americans eagerly removed Native Peoples from their homelands, often with the use of force and violence, to establish settlements, commerce, and statehood. Settler colonialism embodies a series of social processes, expectations, and organizing principles, all of which affect the lives of both settlers and Indigenous Peoples. One key outcome for settlers is the creation and manifestation of white supremacy, which is both a narrative of dominance and superiority⁹ and a structuring process that affects race, space, and place—all of which inform how settlers rationalize their presumptions about entitlements to Indigenous lands and bodies.¹⁰ Whiteness and white supremacy are inherent

⁶ Saskia Sassen, *A Savage Sorting of Winners and Losers: Contemporary Versions of Primitive Accumulation*, 7 *GLOBALIZATIONS*, 23 (2010).

⁷ Evelyn Nakano Glenn, *Settler Colonialism as Structure: A Framework for Comparative Studies of U.S. Race and Gender Formation*, 1 *SOCIO. RACE & ETHNICITY* 52, 55 (2015); Alyosha Goldstein, *The Jurisprudence of Domestic Dependence: Colonial Possession and Adoptive Couple v. Baby Girl*, DARKMATTER, (May 16, 2016), <http://www.darkmatter101.org/site/2016/05/16/the-jurisprudence-of-domestic-dependence/> [<https://perma.cc/E84L-KWA3>]; Margaret D. Jacobs, *Seeing Like a Settler Colonial State*, 1 *MOD. AM. HIST.* 257, 259 (2018).

⁸ Glenn, *supra* note 7, at 57; Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 *J. GENOCIDE RSCH.* 387, 388 (2006).

⁹ Dwanna L. McKay et. al., *Theorizing Race and Settler Colonialism Within U.S. Sociology*, 14 *SOCIO. COMPASS* 1, 3 (2020).

¹⁰ Anne Bonds & Joshua Inwood, *Beyond White Privilege: Geographies of White Supremacy and Settler Colonialism*, 40 *PROGRESS HUM. GEOGRAPHY* 715, 724 (2016).

components of settler colonial structures; in the eyes of settlers, the social inclusion and exclusion of Native Peoples is incumbent upon their assimilation to the standards of the newly established white society.¹¹

B. The Legacy of American Indian Family Separation

Here, we turn to a historical review of three key Congressional interventions that undergird the legacy of family separation and continue to threaten tribal sovereignty. The settler drive towards cultural dominance and land ownership has forcibly displaced tribes, separated them from vital resources including food and water, and prohibited the teaching of Native languages and worldviews. In recent decades, some settler tactics of cultural domination shifted in response to changing institutional reforms such as ICWA, but as the legislation below shows, the ideological origins are longstanding. Despite old and new efforts of erasure by the settler state, the continued, unassimilated existence of Native Peoples and cultures remains vibrant, innovative, and deeply rooted in Indigenous ways of knowing.

1. The Civilization Fund Act of 1819

In 1819, Congress passed the Civilization Fund Act for the “purpose of providing against the further decline and final extinction of the Indian tribes.”¹² The Act allocated federal funds “to employ capable persons, of good moral character, to instruct [Native Peoples] in the mode of agriculture suited to their situation; and for teaching their children in reading, writing and arithmetic.”¹³ The Act also formalized Congressional support of Christian missionaries who were already working and proselytizing among the tribes.¹⁴ Together, linking church and state explicitly, Congress and the Christian missionaries sought to assimilate tribal members into European culture by removing

¹¹ See generally MAILE ARVIN, *POSSESSING POLYNESIANS: THE SCIENCE OF SETTLER COLONIAL WHITENESS IN HAWAII AND OCEANIA* (2019); AILEEN MORETON-ROBINSON, *THE WHITE POSSESSIVE: PROPERTY, POWER, AND INDIGENOUS SOVEREIGNTY* (2015).

¹² Civilization Fund Act of 1819, Pub. L. No. 15–85, 3 Stat. 516b.

¹³ See *id.*

¹⁴ Kathleen Sands, *Territory, Wilderness, Property, and Reservation: Land and Religion in Native American Supreme Court Cases*, 36 AM. INDIAN L. REV. 253, 280 (2012).

their tribal identities and worldviews.¹⁵ Assimilation efforts came in many forms and the imposition of agricultural education was believed to be one way of pacifying tribal members and instilling a patriarchal social order.¹⁶ For example, the missionary schools commonly taught boys husbandry, plowing, and planting, while girls learned housekeeping, spinning, and weaving.¹⁷ This gendered educational schema, designed around manual labor, demonstrates how the Act was used to create a subordinate service class of persons for white families, composed primarily of Native children. Colonial paternalism of this kind eventually promoted the construction of off-reservation Indian boarding schools, where children could be further alienated from their social and cultural teachings.¹⁸ While in boarding schools, children were rarely allowed contact with their family. Instead, Native children were subject to the demands of Christian missionaries who attempted to assimilate them into white culture, often using violence and manipulation.¹⁹ The Indian Boarding Schools carried out the U.S. mission of assimilating Native children until the last school closed in 1973.

2. The Indian Removal Act of 1830

Roughly a decade later, and with a strong push from southern supporters, Congress signed the Indian Removal Act of 1830. The Act provided President Andrew Jackson with unrestrained authority to seize Native lands and relocate tribal nations west of the Mississippi River.²⁰ The intent and effect of the Act allowed white settlers to acquire desirable Native territory with the direct assistance of their government. Indeed,

¹⁵ Alia Wong, *The Schools that Tried—But Failed—to Make Native Americans Obsolete*, ATLANTIC (Mar. 5, 2019), <https://www.theatlantic.com/education/archive/2019/03/failed-assimilation-native-american-boarding-schools/584017/> [https://perma.cc/N95E-FNGH].

¹⁶ Alyosha Goldstein, *The Ground Not Given: Colonial Dispositions of Land, Race, and Hunger*, 36 SOC. TEXT 83, 87 (2018) [hereinafter Goldstein, *Ground Not Given*].

¹⁷ *Id.* at 88.

¹⁸ Carlisle Indian School was the first off-reservation boarding school founded by Captain Richard Henry Pratt in 1879. Richard H. Pratt, *The Advantages of Mingling Indians with Whites*, 19 SOC. WELFARE F. 1, 45 (1892).

¹⁹ Theresa Rocha Beardall, *Adoptive Couple v. Baby Girl: Policing Authenticity, Implicit Racial Bias, and Continued Harm to American Indian Families*, 40 AM. INDIAN CULTURE & RSCH. J. 119, 126 (2016).

²⁰ Indian Removal Act of 1830, Pub. L. No. 21–148, 4 Stat. 411.

“buttressed by the twin pillars of greed and racism,”²¹ the Act’s settler-colonial design secured Native lands and resources to establish homes and communities for white people. While Congress and the President were intent on forced removal, Chief Justice John Marshall’s majority opinion in *Worcester v. Georgia*²² suggested a different relationship with tribal nations was possible, one in which tribes were afforded territorial rights, Congressional representation, and nation-to-nation negotiations under the U.S. Constitution.²³ Under Marshall, the Supreme Court concluded that tribes were “distinct political communities, having territorial boundaries, within which their authority is exclusive.” Despite Justice Marshall’s understanding that tribes were being encroached upon by southern states,²⁴ the U.S. began forcing tribes to sign treaties and move west. Most famous to many Americans is the Trail of Tears (1831–1877) that removed many southeastern tribes, such as the Cherokee, from their homelands to what is now Oklahoma. Separating Native Peoples from their lands through the Indian Removal Act mirrors the eventual removal of Native Peoples from their tribes and families.²⁵

3. The General Allotment Act of 1887

The General Allotment Act of 1887, a federal assimilationist tool commonly referred to as The Dawes Act, was designed to transform tribal lands into private property. The Act granted 160 acres of tribal land to each Native head of household and deemed all the remaining tribal lands as surplus.²⁶ The federal government allocated surplus lands to non-Native homesteaders, ultimately reducing the already limited acreage of Native land by two-thirds.²⁷ Unsurprisingly, white settlers were

²¹ N. BRUCE DUTHU, *AMERICAN INDIANS AND THE LAW* 8 (2008).

²² 31 U.S. 515 (1832).

²³ TIM ALAN GARRISON, *THE LEGAL IDEOLOGY OF REMOVAL: THE SOUTHERN JUDICIARY AND THE SOVEREIGNTY OF NATIVE AMERICAN NATIONS* 181 (2009).

²⁴ GARRISON, *supra* note 23, at 190; Philip P. Frickey, *Marshalling Past and Present: Colonialism, Constitutionalism, and Interpretation in Federal Indian Law*, 107 HARV. L. REV. 381 (1993).

²⁵ John P. Bowes, *American Indian Removal Beyond the Removal Act*, 1 NATIVE AM. & INDIGENOUS STUD. 65 (2014).

²⁶ Dawes Act, ch. 119, § 5, 24 Stat. 389 (1887) (current version at 25 U.S.C. § 348).

²⁷ *Cobell v. Babbitt*, 91 F. Supp. 2d 1, 8 (D.D.C. 1999), *aff’d*, 240 F.3d 1081 (D.C. Cir. 2001).

granted the best allotments and Native Peoples were often forced onto land that was unsuitable to sustain farming or livestock.²⁸ Despite the disparate quality of land, Native land was held in a trust by the U.S. government; Native Peoples were stereotyped as incompetent, and thus vulnerable to unscrupulous whites who wished to buy or lease the land for cheap.²⁹

In addition to a desire for land and resources, legal scholars note that The Dawes Act also sought to assimilate Native Americans into the Western practice of private land ownership and nuclear family households.³⁰ In effect, The Dawes Act forced Native Peoples to cease communal living, with each family being given an allotment of land only to be used by the individual to which it was allotted.³¹ The dual desire for wealth and assimilation explicitly targeted the dissolution of the cultural bonds and kinship networks that are commonly used in child rearing, limiting the intergenerational transfer of language, traditions, cultural practices, histories, and worldviews to Native children. One way to frame the implications of this Act is that it constituted a critical phase of cultural and physical separation and set the stage for tribal members to be continuously disconnected from their Indigenous worldviews.

C. Adoption and the Indian Child Welfare Act of 1978

Native Peoples endured, and continue to endure, a systematic genocide at the hands of the federal government. From boarding schools to kidnapping and forced sterilization this violence included physical, sexual, and emotional abuse. Particular to the issue of family separation is the concerted use of non-Native adoption.³² In 1958, the Bureau of Indian Affairs launched the Indian Adoption Project (IAP), a program designed to “rescue” Native American children from impoverished Native parents and tribes and place them in adoptive homes with white

²⁸ Armen H. Merjian, *An Unbroken Chain of Injustice: The Dawes Act, Native American Trusts, and Cobell v. Salazar*, 46 GONZ. L. REV. 609 (2011).

²⁹ Lauren L. Fuller, *Alaska Native Claims Settlement Act: Analysis of the Protective Clauses of the Act Through a Comparison with the Dawes Act of 1887*, 4 AM. INDIAN L. REV. 269 (1976).

³⁰ *Id.*

³¹ See 25 U.S.C. § 348.

³² Brianna Theobald, “The Simplest Rules of Motherhood”: Settler Colonialism and the Regulation of American Indian Reproduction, 1910–1976 (May 2015) (Ph.D. dissertation, Arizona State University) [<https://perma.cc/YJS9-ZNF8>].

families.³³ The IAP was considered to be a cost-effective and permanent solution to “the Indian problem,” a term that describes the U.S. government’s frustration with the presence of Native Americans on the land they desired.³⁴ In effect, the IAP sought to sever cultural ties between Native children and their tribes and families in order to fully assimilate them into white society. In contrast to the Indian Boarding Schools, the IAP cost very little to the taxpayers, as the financial burden of assimilation was placed solely on the children’s adoptive families.³⁵

In 1968, the IAP was incorporated into the Adoption Resource Exchange of North America (ARENA) in order to place even more children outside of their homes.³⁶ These adoptive efforts were disastrously successful. A 1976 report from the Association on American Indian Affairs (AAIA) provided grim findings: upwards of 25 to 35% of all Native children were being placed in out-of-home care and 85% of those children were placed in non-Native homes.³⁷ During the Indian child welfare crisis of the 1960s and 1970s, the Bureau of Indian Affairs often portrayed Native women as impoverished, unwed mothers who lacked the resources to support their families in order to justify placing their children into foster and adoptive homes.³⁸ For this reason, among others, these shocking AAIA data may be a serious undercount of the widespread reality of child removal.

The Indian Child Welfare Act (ICWA) was enacted in 1978 to address the AAIA’s findings and end generations of abuse, mistreatment, and forcible removal of Native children from their homes. The Act clearly states its commitment to protect Native families and tribes by preventing the unnecessary removal and displacement of American Indian children.³⁹ This

³³ MARGARET D. JACOBS, A GENERATION REMOVED: THE FOSTERING AND ADOPTION OF INDIGENOUS CHILDREN IN THE POSTWAR WORLD 18 (2014) [hereinafter, JACOBS, GENERATION REMOVED].

³⁴ *Id.* at 19.

³⁵ *Id.*

³⁶ *Id.* at 20.

³⁷ Cheyaña L. Jaffke, *Judicial Indifference: Why Does the “Existing Indian Family” Exception to the Indian Child Welfare Act Continue to Endure?*, 38 WASH. ST. U. L. REV. 127, 130 (2011); Rocha Beardall, *supra* note 19, at 126.

³⁸ JACOBS, GENERATION REMOVED, *supra* note 33, at 52.

³⁹ Jaffke, *supra* note 37, at 131; Jason R. Williams et al., *Measuring Compliance with the Indian Child Welfare Act*, CASEY FAMILY PROGRAMS 4 (Mar. 2015), <https://theacademy.sdsu.edu/wp-content/uploads/2015/06>

comprehensive legislation was designed to promote the best interests of Native Peoples and children by creating minimum federal standards for removal. Further, ICWA stipulated that when possible, American Indian children should be placed with extended family or “foster or adoptive homes that reflect the unique values of Indian culture” in the event that child removal was unavoidable.⁴⁰ Unfortunately, some social actors may circumvent protective laws such as ICWA by exploiting loopholes that can diminish positive intent.⁴¹ State and federal courts, for example, were inconsistent in their interpretation and compliance with the law,⁴² and in some cases courts drew on the “existing Indian family” exception in order to avoid applying ICWA altogether.⁴³ The “existing Indian family” exception provided state courts the ability to circumvent ICWA if the child or parents cannot demonstrate the maintenance of a significant political, social, or cultural relationship with their tribe.⁴⁴ The federal government responded with new regulations in 2016 to address these profound compliance problems. Notably, these new regulations include more explicit requirements around active efforts to engage tribes, limitations on good cause to refuse transfer to tribal courts, limitations to deviations from placement preferences, and make clear that the “existing Indian family” is not a requirement.⁴⁵

/measuring-compliance-icwa-brief.pdf [https://perma.cc/W3LL-V2SB]; Rocha Beardall, *supra* note 19; Lydia Killos et al., *Strategies for Successfully Recruiting and Retaining Preferred-Placement Foster Homes for American Indian Children: Maintaining Culture and Compliance with the Indian Child Welfare Act*, CASEY FAMILY PROGRAMS 4 (Mar. 2017), <https://www.casey.org/media/icwa-recruitment-retention.pdf> [https://perma.cc/9SFF-T5E7].

⁴⁰ Indian Child Welfare Act, Pub. L. No. 95-608, 92 Stat. 3069 (1978) (codified at 25 U.S.C. §§ 1901–1963); GENERATION REMOVED, *supra* note 33, at 3; Williams et al., *supra* note 39.

⁴¹ Mathew L. M. Fletcher & Wenona T. Singel, *Indian Children and the Federal-Tribal Trust Relationship*, 95 NEB. L. REV. 885, 888 (2016).

⁴² Williams et al., *supra* note 39, at 6; Killos et al., *supra* note 39, at 4.

⁴³ Jaffke, *supra* note 37, at 129.

⁴⁴ *Id.* at 136.

⁴⁵ Indian Child Welfare Act Proceedings, 81 Fed. Reg. 38,779, 38,801 (June 14, 2016).

III. AN EMPIRICAL STUDY OF INDIAN CHILD WELFARE

Despite substantial efforts to address the ongoing crisis of Native family separation,⁴⁶ American Indian and Alaska Native (AIAN) children in the U.S. are still more likely to be separated from their parents and placed into foster care than children from any other racial or ethnic group.⁴⁷ With a sense of the social and historical context, and the settler-state's long-standing carceral commitments to surveillance, containment, and the coercive control of Native lands, families, and resources, we turn to our empirical study of Native family separation. We use administrative and historical data to isolate and illustrate the institutional pathways that lead AIAN families into the child welfare system, evaluate the magnitude of change in AIAN family separation since the passage of the Indian Child Welfare Act (1978), and situate the child welfare system in the context of ongoing white-settler colonization. We estimate age-specific and lifetime risks of experiencing a child welfare system event for Native and non-Native children, drawing attention to the timing and geographic distribution of these risks.

Our research is motivated by a persistent concern that ICWA's expressed intentions, and desperately needed protections, may in fact be stymied by larger social forces. Namely, in contexts of structural inequality and institutional racism,⁴⁸ we are concerned that white supremacist desires to displace and erase Native Peoples persist in bureaucratic structures such as the national child welfare system. Given the size and influence of this system, and its predatory history among non-white families, the jurisdictional powers and placement preferences of ICWA alone are unlikely to eliminate the inequalities that drive Native family separation.

⁴⁶ Thomas L. Crofoot & Marian S. Harris, *An Indian Child Welfare Perspective on Disproportionality in Child Welfare*, 34 CHILD. & YOUTH SERV. R. 1667 (2012).

⁴⁷ Youngmin Yi et al., *Cumulative Prevalence of Confirmed Maltreatment and Foster Care Placement for US Children by Race/Ethnicity, 2011–2016*, 110 AM. J. PUB. HEALTH 704 (2020).

⁴⁸ Alan J. Dettlaff & Reiko Boyd, *Racial Disproportionality and Disparities in the Child Welfare System: Why Do They Exist, and What Can Be Done to Address Them?*, 692 ANNALS AM. ACAD. POL. & SOC. SCI. 253 (2020).

A. Quantifying Rates of Family Separation and System Contact

We estimate age-specific and lifetime risks of experiencing a series of child welfare system events for Native and non-Native children, then evaluate how likely cases are to move “up” the chain of more serious outcomes, conditional on experiencing a lower-level outcome. In doing so, we provide evidence that inequalities in child welfare system outcomes for AIAN children emerge at distinct stages of life and distinct phases of child welfare system case processing. We evaluate the following child welfare system outcomes: (1) investigations, (2) confirmed maltreatment cases, (3) foster care removals, (4) placement with non-kin and non-AIAN foster caretakers, and (5) termination of parental rights.

B. Data and Methods

We use three primary forms of data to chart AIAN family contact with child welfare systems. First, we rely on data compiled by the Association on American Indian Affairs (AAIA) to document the breadth and depth of American Indian family separation through a series of surveys in the 1970s.⁴⁹ These data formed a critical portion of the evidence presented by AAIA in support of the passage of ICWA and have become the most widely cited set of statistics on the crisis of Indian family separation in the years preceding the passage of ICWA. Second, we use data from the National Child Abuse and Neglect Data System⁵⁰ (NCANDS) child file for 2014–2018. NCANDS is collected by the U.S. Administration for Children and Families and documents all children who were the subject of a screened-in child welfare investigation. Lastly, we use the Adoption and Foster Care Analysis and Reporting System⁵¹ (AFCARS), a federal data

⁴⁹ *Hearing to Establish Standards for the Placement of Indian Children in Foster or Adoptive Homes, to Prevent the Breakup of Indian Families, and for other Purposes: Hearing on S. 1214 Before the S. Select Comm. on Indian Affs.*, 95th Cong. 537–597 (1977) [hereinafter *Hearing to Establish Standards*].

⁵⁰ Children’s Bureau, Administration On Children, Youth And Families, Administration For Children And Families, U. S. Department Of Health And Human Services. *National Child Abuse and Neglect Data System (NCANDS)*, *child file* [dataset] National Data Archive on Child Abuse and Neglect (2019), <https://www.ndacan.acf.hhs.gov/datasets/datasets-list-ncands-child-file.cfm>.

⁵¹ NATIONAL DATA ARCHIVE ON CHILD ABUSE AND NEGLECT, U.S. DEPT HEALTH & HUM. SERV., ADMIN. FOR CHILD. & FAM., ADOPTION AND FOSTER

system that tracks all children in foster care or placed in state-sponsored adoption in the U.S., to chart the scale of Native family separation between 2014–2019.

Throughout the 1960s and 1970s, the AAIA collected data on the number of Native children that had been separated from their families through a variety of state and non-state institutions. In Table 1, we provide a summary of the AAIA data on the scale of child removal in the foster care and adoption systems in 13 states (in the early to mid 1970s),⁵² as well as data on contemporary caseloads in those same states (from the 2019 AFCARS). To compare the scope of AIAN family separation in the 1970s and today, we compare point-in-time caseloads for the 13 states with complete data and proportional changes in these caseloads. A point-in-time caseload counts all children in a given system on a single date of the year. AAIA collected point-in-time caseloads for foster care and adoption for each of the surveyed states in the 1970s. Using AFCARS foster care files, we can identify the numbers of Native and non-Native children in foster care for each state and year on the final day of the annual reporting period. AFCARS adoption files only include *new* adoptions in each year's submission. To obtain a point-in-time estimate that is comparable to AAIA's count of children in adoptive households 21 years of age or younger, we aggregate data from 2010–2019, count all AIAN children adopted during this time period, then remove from the count those children who would be over 21 years of age in 2019.

Typically, we would prefer to compare the incidence of foster care through a comparison of per capita rates. However, changes in the composition of the AIAN population between 1976 and 2019 make such comparisons impractical. The magnitude of

CARE ANALYSIS AND REPORTING SYSTEM (AFCARS), FOSTER CARE FILE [dataset] (2019), <https://www.ndacan.acf.hhs.gov/datasets/datasets-list-afcars-foster-care.cfm> [<https://perma.cc/LYU5-MECM>].

⁵² The AAIA focused survey efforts on states with large AIAN populations. These 13 states with complete data on adoption and foster care are Alaska, Arizona, California, Michigan, Minnesota, Montana, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wisconsin. 6 states did not report complete data on adoption, but did report complete data on foster care. These states were Idaho, Maine, Nevada, New Mexico, New York, and Wyoming. The timing of responses to AAIA's agency surveys varied between 1972 and 1976 in these data, but consistently report foster care caseloads as point-in-time estimates of children in out-of-home foster care. They are comparable to contemporary point-in-time caseload counts from AFCARS.

change in the AIAN child population between 1976 and 2019 (243% growth) cannot be explained by population processes alone. Shifting practices of self-identification and Census data collection dramatically changed the scope of the AIAN population enumerated in the Census in decades following the 1960s.⁵³ In 1980, for example, the Census began asking respondents to self-identify their race, rather than relying on Census enumerator classifications. Coupled with an increase in American Indians and Alaska Native Peoples self-identifying as Native, there were dramatic increases in the enumerated Native population in the United States between 1970 and today. Because the population identified as AIAN in the 1970 census is qualitatively different from the population identified in later censuses,⁵⁴ direct population-based comparisons are inappropriate. We summarize the counts of cases and population figures from 1976 and 2019 in Table 1.

Population data are used to compute rates of exposure across groups for the contemporary child welfare system data (2014–2018). We rely on data from the U.S. Census Population Estimates Program (PEP). We use state-level estimates of all individuals identified as AIAN alone or AIAN in combination with any other group by age to measure the size of the AIAN population.⁵⁵

Using AFCARS, NCANDS and Census population data, we compute 2014–2018 period life tables to estimate age-specific and lifetime risks (by age 18) of experiencing a range of child welfare system outcomes for AIAN children.⁵⁶ This period life table approach simulates a cohort life table by making two key assumptions: (1) the age-specific population distribution observed between 2014–2018 will remain constant, and (2) the age specific rates of first event incidence observed between 2014–2018 will remain constant. While these assumptions are likely

⁵³ Joane Nagel, *American Indian Ethnic Renewal: Politics and the Resurgence of Identity*, 60 AM. SOC. REV. 947, 950–53 (1995).

⁵⁴ Jeffrey S. Passel, *The Growing American Indian Population, 1960-1990: Beyond Demography*, 16 POP. RSCH. & POL. REV. 11 (1997).

⁵⁵ U.S. CENSUS BUREAU, ANNUAL COUNTY RESIDENT POPULATION ESTIMATES BY AGE, SEX, RACE, AND HISPANIC ORIGIN: APRIL 1, 2010 TO JULY 1, 2019 (2019), <https://www2.census.gov/programs-surveys/popest/datasets/2010-2019/counties/asrh/cc-est2019-alldata.csv>.

⁵⁶ SAMEL H. PRESTON, PATRICK HEUVELINE, & MICHEL GUILLOT, *DEMOGRAPHY: MEASURING AND MODELING POPULATION PROCESSES* (2001).

not realistic—since demographic, policy, and social changes are likely to change both population distributions and event incidence rates—we proceed in this manner in order to simulate lifetime risk of experiencing key child welfare system outcomes. While they provide valuable insight into contemporary rates of contact, caution should be used in interpreting these results to project future rates of contact.

C. The Historical and Contemporary Scale of Native Family Separation

ICWA initiated a dramatic series of changes in the jurisdiction and administration of U.S. child welfare systems. As discussed, the law was intended to address and ameliorate the crisis of family separation in Indian Country. Despite these efforts, however, Native children and families remain at higher risk of separation than any other group in the United States.⁵⁷ Table 1 displays the change in the counts of Native children in foster care or adoption as documented by AAIA's mid-1970s surveys and by AFCARS in 2019. These caseload numbers are point-in-time counts of the number of children in either foster care or adoption.

In 1976, AAIA found that about 5,687 AIAN children were in foster care in the 13 states for which they collected or estimated complete data (6,665 in the 19 states where some data were missing). In 2019, there were 17,241 AIAN children in foster care in these 13 states,⁵⁸ more than three times higher than the number in foster care in 1976. For comparison, there were about 53,364 non-Native children in foster care in these states, compared to about 109,374 in 2019, about double the total number of children. The foster care system has expanded dramatically for all children in the forty years since the passage of ICWA, but far more so for Native children than for non-Native children.

In the mid-1970s, AAIA estimated that 11,157 Native children were in state-involved adoptions, compared to 172,684 non-Native children in the 13 states for which they were able to compile complete data. In 2019, we estimate that there were

⁵⁷ Yi et al., *supra* note 47, at 704.

⁵⁸ These are point-in-time caseloads. AFCARS estimates count children in foster care at the end of the annual reporting period, though more children may have entered and/or exited care than these point-in-time estimates describe.

19,221 Native children in state-involved adoptions (an increase of 72%) compared to 161,318 non-Native children in state-involved adoptions (a decline of 7%). While rates of non-Native adoption have slightly declined in these states since the 1970s, rates of Native adoption have increased substantially.⁵⁹

Additionally, Native family separation has a distinctive geography. During advocacy for ICWA, AAIA researchers identified Maine, Minnesota, and South Dakota as having among the most inequitable foster care systems in the country.⁶⁰ Inequalities in these state systems persist to this day. To evaluate the magnitude of change in state foster care and adoption systems since the passage of ICWA, we display the growth in the numbers of Native children in foster care or adoption for those states for which we have historical data in Figure 1. Some states have seen modest declines in AIAN foster care caseloads over time. Idaho has seen the steepest decline. 83% fewer Native children were in foster care in 2019 than were in foster care in 1976. Maine, New Mexico, Utah, and Wyoming have also seen caseload declines since the passage of ICWA. However, most of these states have seen substantial increases in the numbers of Native children in foster care. Nearly nine times more American Indian children were in foster care in Oklahoma in 2019 than were in foster care in 1976. California saw more than 400% growth in the Native foster care population over this period, and many other states saw caseloads more than double.

⁵⁹ Note that for both foster care and adoption statistics, AAIA estimates from 1976 likely understate the true number of AIAN children affected by these systems. Some states records did not record whether a child was Native, and it is likely that true numbers of family separation in 1976 for AIAN families was higher than those reported. As with census population estimates, cultural practices of self-identification as American Indian/Alaska Native make cross-time comparisons difficult.

⁶⁰ *Hearing to Establish Standards*, *supra* note 49, at 538.

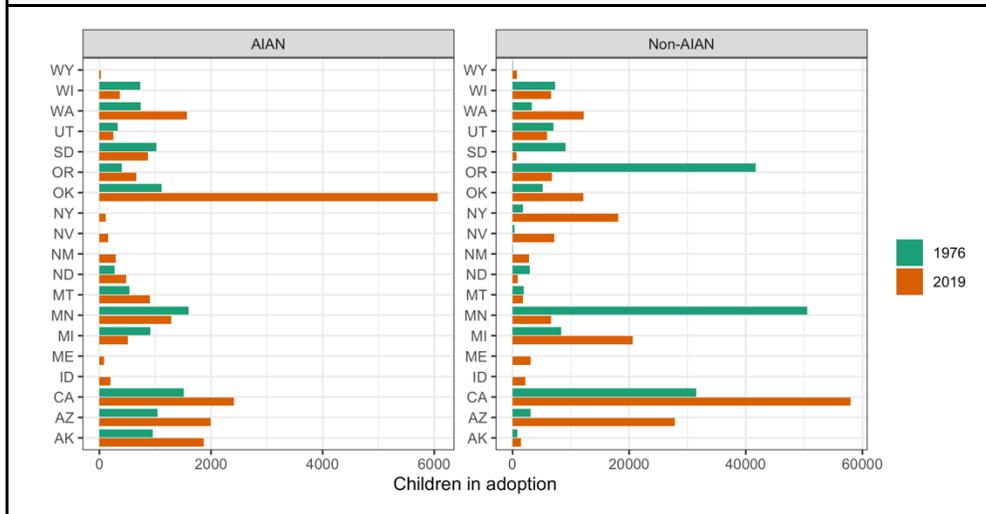
Table 1. Children in foster care and U.S. Census child population 21 year and under, 19 select states, 1976 and 2018.

Group	Period	Foster Care (percent change)	Adoption (percent change)
AIAN	1970s	5687	11,157
	2019	17,241 (+203%)	19,221 (+72%)
Non-AIAN	1970s	55364	172,684
	2019	109,374 (+98%)	161,318 (-7%)

State-involved adoptions of AIAN children have also increased in most of these states since the passage of ICWA. While 5 states saw a reduction in the numbers of AIAN children in adoption between 1976 and 2019 (Wisconsin, Michigan, Utah, Minnesota, and South Dakota), 7 saw increases in the number of AIAN children in state-sponsored adoptions. Oklahoma saw the steepest increase, with about 5 times more Indian children in state-sponsored adoptions in 2019 than there were in 1976.

In the 13 states that had complete adoption and foster care data in the AAIA data collection, there were 16,884 AIAN children in either adoption or foster care, compared to 36,462 AIAN children in adoption or foster care in 2019. However, these numbers exclude children who were living in off-reservation Bureau of Indian Affairs boarding schools. In the 1970s, there were about 26,000 AIAN children in BIA boarding schools in 1974.⁶¹ Inclusive of boarding schools, the magnitude of state-sponsored Native family separation has decreased since the passage of ICWA. However, the magnitude of Native family separation through the child welfare system has substantially increased since the passage of ICWA.

⁶¹ *Id.* at 603.

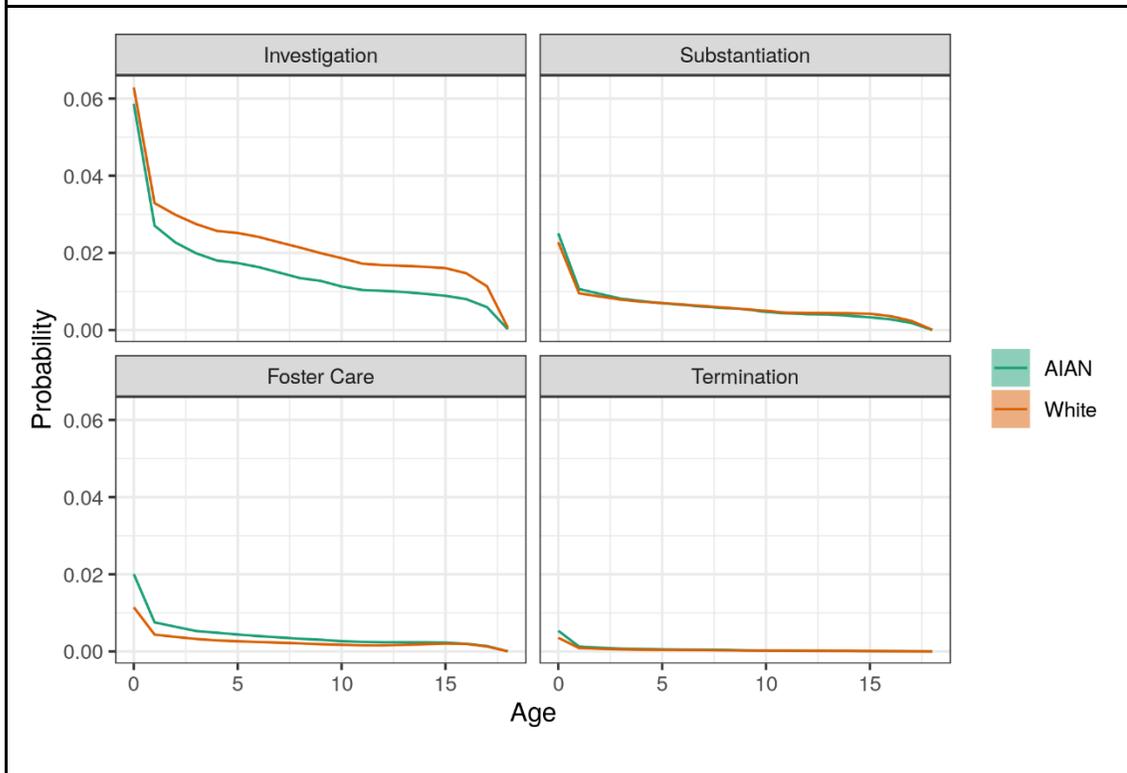
Figure 1. Children in foster care and adoption, select states 1976 and 2019

D. The Timing and Prevalence of Interventions

Across all groups, infants are most likely to be subjected to investigation and separation through the child welfare system. Figure 2 uses data from the 2014–2018 AFCARS and NCANDS to display the age-specific risks of experiencing four child welfare events for the first time in a child’s life: CPS investigation; substantiation or confirmation of a CPS case; removal into foster care; and termination of parental rights. Risks for all outcomes are highest for infants. Mothers with prior history of CPS contact, and mothers subjected to high levels of surveillance while pregnant and during birth, are routinely subjected to intrusive investigations and family separations.⁶²

⁶² Dorothy Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419 (1991); Kelley Fong, *Getting Eyes in the Home: Child Protective Services Investigations and State Surveillance of Family Life*, 85 AM. SOC. REV. 610 (2020).

Figure 2. Probability of child welfare event incidence for AIAN children by age 18, 2014–2018 risk levels, US totals



Over the life course, and at the national level, at risk levels observed between 2014–2018, we find that 26% of AIAN children are ever investigated by a child welfare agency, 11% ever have an allegation of abuse or neglect confirmed by a child welfare agency, 8% ever are removed from their families and placed into foster care, and about 1.2% ever have their parents' rights terminated through the child welfare system. For white children, by contrast, about 35% are ever investigated by a child welfare agency, 11% ever have a substantiated case, 5% are ever removed into foster care, and 0.8% ever have their parents' rights terminated.⁶³

⁶³ Note that these lifetime incidence rates for AIAN children differ from the author's prior published estimates. This difference is a function of the different population data used for computing risks. This study uses adjusted

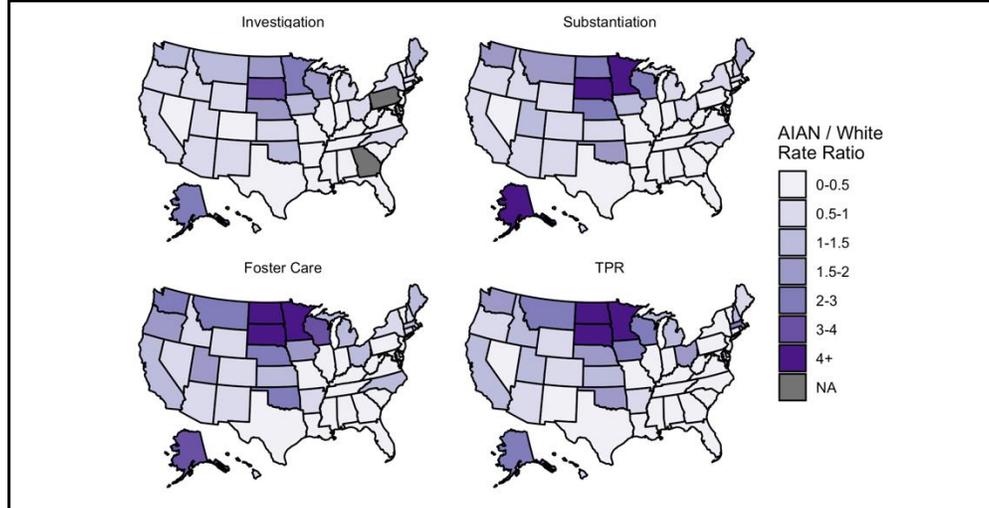
At the national level, AIAN children are 31% less likely than white children to ever be investigated by CPS, as likely as white children to ever have an agency-confirmed case of child abuse or neglect, 60% more likely than white children to ever enter foster care, and 46% more likely than white children to ever have their parents' rights terminated. However, these national averages obscure geographic variation in inequality risk.

E. The Contemporary Geography of Native Family Separation

As shown in the lower-left panel of Figure 3, there are 20 states where AIAN children are more likely than white children to enter foster care. In Minnesota, for example, AIAN children are 8.3 times more likely than white children to ever be separated from their families and placed into foster care. We estimate that about 44% of AIAN children in Minnesota will experience this form of family separation before the age of 18. AIAN children are more than twice as likely as white children to enter foster care in 10 states: Minnesota (8.3 rate ratio, 44% lifetime risk); South Dakota (7.0 rate ratio, 21% lifetime risk); North Dakota (4.3 rate ratio, 25% lifetime risk); Alaska (4.1 rate ratio, 23% lifetime risk); Wisconsin (3.8 rate ratio, 19% lifetime risk); Nebraska (2.8 rate ratio, 19% lifetime risk); Montana (2.8 rate ratio, 28% lifetime risk); Washington (2.4 rate ratio, 15% lifetime risk); Oklahoma (2.4 rate ratio, 17% lifetime risk); and Iowa (2.0 rate ratio, 22% lifetime risk).

AIAN alone or in combination data from the Census PEP, while most prior estimates (See, e.g., Yi et al., *supra* note 47) use data from NIH SEER bridged-race population estimates. This approach is described in Section II.B, *supra*.

Figure 3. Inequality in lifetime risk of experiencing child welfare system events. Cumulative risk computed using 2014–2018 period life tables. Note missing investigations data in PA and GA.



States with high levels of foster care inequality for AIAN families also tend to have high levels of inequality in rates of investigation of AIAN families, the substantiation of investigations of AIAN families, and the termination of AIAN parents' rights. This geographic clustering shows the intensity of the involvement of the child welfare system. The mechanisms of inequality and rates of exposure for AIAN children are complex.

F. Institutional Sites of Inequality in the Child Welfare System

The production of a child welfare case begins with the surveillance of families⁶⁴ by mandated reporters of child maltreatment (primarily police, educators, and medical professionals)⁶⁵ and by family and community members. If participants in this diffuse surveillance network make an affirmative decision to report a child or family to a state or local child protection agency, that agency then makes a screening

⁶⁴ Fong, *supra* note 62.

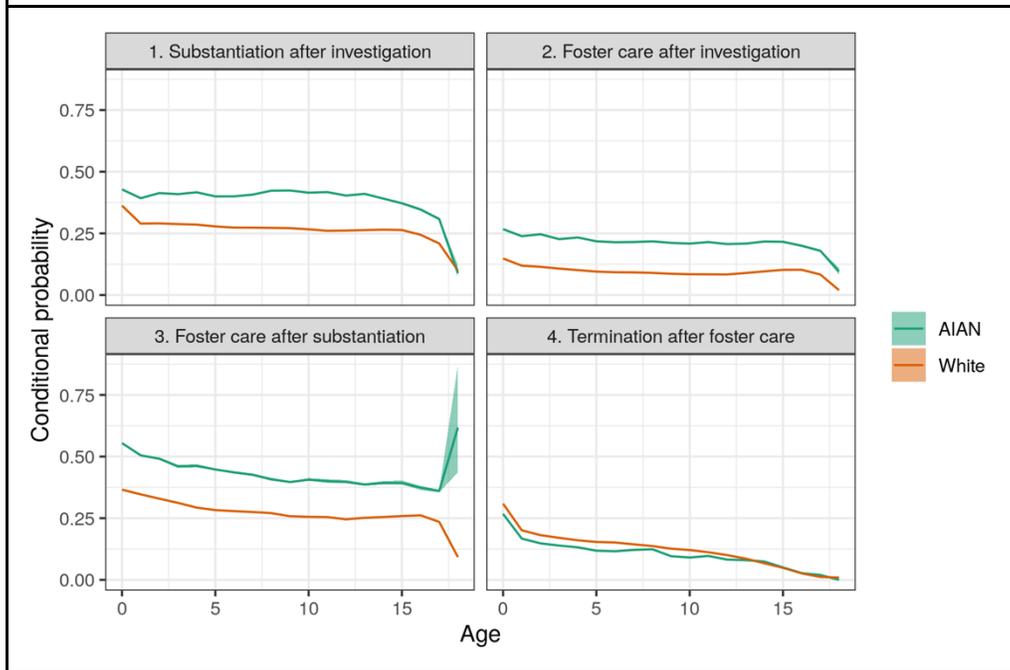
⁶⁵ Frank Edwards, *Family Surveillance: Police and the Reporting of Child Abuse and Neglect*, 5 RUSSELL SAGE FOUND. J. SOC. SCI. 50, 52–53 (2019).

decision about whether to dispatch an investigator to evaluate the child and family. After the worker's investigation, the agency decides whether allegations of maltreatment could be confirmed or substantiated. At any point after an investigator initiates contact with a family, they can recommend that a child be removed from their family into foster care, subject to the oversight and approval of a family court. If an agency decides that reunification with their family is not in the best interests of the child, or certain timelines specified by federal law⁶⁶ have passed, the agency will often proceed with efforts to formally sever the legal relationship between a child and their family caretakers.

Below, we evaluate the likelihood that children transition from an earlier stage of case processing to a later stage of case processing. We ask, for example: among those children investigated by a child welfare agency, how many had at least one confirmed allegation of abuse or neglect? We conduct this analysis separately for white and AIAN children to reveal the stages in case processing during which inequalities for AIAN children emerge. We evaluate four decision points that are observable by joining the NCANDS and AFCARS data at the child-level: (1) substantiation after investigation; (2) foster care placement after investigation; (3) foster care placement after substantiation; and (4) termination after foster care. Note that children can be removed from their families into foster care without an agency substantiating a case of child maltreatment. Figure 4 displays these conditional probabilities for both AIAN and white children.

⁶⁶ For example, the Adoption and Safe Families Act of 1997 specifies that states should proceed with termination of parental rights after a child has been in foster care for 15 of the prior 22 months. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89.

Figure 4. Age-specific risk of child welfare system event, conditional on prior system event at 2014–2018 levels of risk



At nearly all ages, AIAN children are more likely than white children to have a case substantiated if they are investigated. At all ages, AIAN children are more likely to enter foster care than white children if they are investigated. Around 27% of AIAN infants who are investigated are placed into foster care nationally, compared to around 15% of white infants. Around 55% of AIAN infants that are the subject of a substantiated maltreatment allegation are removed into foster care, compared to about 37% of white children. Nationally, AIAN children in foster care are less likely than White children in foster care to see their parental rights terminated at nearly all ages. But higher levels of foster care placement do result in higher overall rates of termination of parental rights (TPR) for AIAN children than white children.⁶⁷

⁶⁷ Christopher Wildeman et al., *The Cumulative Prevalence of Termination of Parental Rights for U.S. Children, 2000–2016*, 25 CHILD MALTREATMENT 32 (2020).

Conditional on contact with the child welfare system, AIAN children are far more likely than their white peers to be removed from their families and placed into foster care.⁶⁸ While differential surveillance may explain some variation in removal, the removal decision itself, based on recommendations from child protection social workers and decisions by family court judges, explains a substantial proportion of the inequality in overall exposure to family separation through foster care for AIAN children.

IV. WHY DOES NATIVE FAMILY SEPARATION PERSIST?

We find that the crisis of Native family separation is ongoing. Despite the intent and breadth of the Indian Child Welfare Act, many jurisdictions have failed to fully implement its provisions and AIAN children remain far more likely than their non-Native peers to be removed from their families by the state.⁶⁹ With the closing of the boarding schools, there are now fewer total AIAN children in state custody than there were in the mid-1970s. However, there are dramatically more AIAN children in foster care and adoptive homes in the states for which we have complete data than there were in the 1970s. This transformation in social context, and to some extent a lack of public awareness about this shift, likely shapes how and why the rates of child separation among Native families remain disproportionately high.

Overall, our analyses strongly suggest that post-investigation decision making by child welfare agencies plays a crucial role in this crisis. Agencies are more likely to substantiate maltreatment of Native children once investigated, and more likely to separate them from their family conditional on initial contact. As a result, contact with the child welfare system prompts a crisis for Native families. Even with the necessary protections of ICWA, once AIAN families are the subject of child welfare system investigations, their children are far more likely to be removed from the home than non-Native children. To this point—and within the context of deep austerity, expansive surveillance, assaults on tribal sovereignty, and the ongoing

⁶⁸ *Id.* at 35.

⁶⁹ Note that current federal data systems do not track a child's tribal affiliation or ICWA eligibility. American Indian/Alaska Native is included as a racial category in current versions of AFCARS.

failure to honor treaty obligations—the affirmative protections and active efforts of the Indian Child Welfare Act cannot end the crisis of Native family separation alone. For example, so long as the state fails to remedy the economic and social inequalities that drive referrals to the child welfare system, and continues to deem family separation an appropriate intervention when families are in need of care and resources, this crisis will persist. In the U.S., child welfare systems are broadly tasked with addressing poverty-related family crises—including eviction and housing precarity, routine contact with law enforcement, and a lack of critically needed medical and mental health resources. In the absence of a meaningful welfare state, family separation has become a central intervention to respond to child poverty, deepening already existing inequalities in the family separation crisis.⁷⁰ Set within this larger context, critically needed ICWA protections rightfully fight to keep families together. What these protections cannot do is directly impact the scope of state surveillance over Native children and provide resources to uplift and support Native children and families absent separation into the foster care system. It is likely the case that so long as state child welfare systems prioritize family regulation over care these inequalities will persist.

A. Land, Sovereignty, and Children

As previously described, the founding of the U.S. was predicated upon a desire to erase Native Peoples and their reciprocal relationships to one another and their homelands. To realize these goals, settlers forcibly enacted geographic displacement, separated tribes from vital resources, and prohibited the teaching of Native languages and worldviews. Given the current and ongoing struggles between tribes and the federal government, including legal battles for jurisdiction over children and land, we suggest that these historical logics of elimination and dispossession persist and must be taken seriously in ongoing research.

Treaties signed between early Americans and Native Peoples outlined federal responsibilities for Native health, safety, and well-being. Unfortunately, the continued violations of these binding legal agreements left a trail of broken treaties—and

⁷⁰ Dettlaff & Boyd, *supra* note 48.

subsequently broken families—across the nation.⁷¹ As the spatial control of Native land solidified, and the material and symbolic function of the westward frontier waned, the fictive notion of the frontier was transferred to the control of the Native body. This is not to say that the control of Native lands and bodies was not already taking place simultaneously. But rather, we mark here a particular shift that manifested in a variety of ways, namely in assimilationist projects and the removal of Native children from their homes. Like the concept of *terra nullius*, or “nobody’s land,” we assert that the nation’s child welfare system demands and creates the continuous “discovery” and claiming/taking of Native children as *filius nullius* or “nobody’s child.”⁷² More specifically, we suggest that once physical removal was deemed successful, settlers turned toward the surveillance and management of the Native family as a site of social and cultural control. This nexus of land and body critically illustrates the coercive power of the state to harm Native Peoples⁷³ as well as all other communities that reject colonial intrusion into family well-being.

The dual and dehumanizing framework of “nobody’s land” and “nobody’s child” involves forced dependence and ultimately diminishes tribal sovereignty as a central goal.⁷⁴ Similar to the idea that a vast, untapped land was in need of stewardship and privatization, the concept of a child without a parent or a child without kin rationalizes settler-logics of discovery. That is, when the settler-state’s reliance on cultural assumptions about the appropriateness of a nuclear family steeped in white, middle-class values is not visible, settler assumptions suggest that children have been abandoned, live without care and intention, and need rescue and stewardship, much like the Native lands from which the children were taken. Through this lens, Native kinship is seen as antithetical to settler family norms. Using slippery settler logics as validation, a community that is framed as incapable of appropriately rearing a child is also framed as incapable of producing land and community governance schemas that warrant respect as sovereigns. To undermine tribal sovereignty—which in effect reduces threats against settler

⁷¹ Fletcher & Singel, *supra* note 41.

⁷² Goldstein, *Ground Not Given*, *supra* note 16, at 88.

⁷³ Frederick J. Turner, *The Significance of the Frontier in American History*, ANNUAL REPORT OF THE AM. HIST. ASS’N FOR THE YEAR 1893, 199 (1893).

⁷⁴ Goldstein, *Ground Not Given*, *supra* note 16, at 88.

claims on lands, resources, and children—there is an incentive for the state to continuously “discover” Native children in need of rescue. That is, to diminish the power and futurity of tribal sovereignty, the state manufactures and then rediscovers Native family members made vulnerable by the state, continuing the genocidal practices of removal discussed in Part I.

B. The Native Family as a Site of Settler Regulation

Despite systematic efforts to the contrary, Native families and communities continue to cultivate their relationships and responsibilities to Indigenous lands, waters, and non-human relations. As with any cultural community, the ability to pass on this knowledge to one’s children is paramount to ensure cultural continuity and social cohesion. In Native families, children are also the key to ensuring that tribal communities can continue to exist as independent nations capable of exercising their tribal sovereignty. Unsurprisingly then, settler efforts to control Native lands and bodies highlight the family unit as a key site of settler regulation. Legal scholars Bethany Berger, Addie Rolnick, and Kim Pearson each explain that the practice of separating Native families—by way of child removal specifically—emerges from settler logics about land as well as racist logics about belonging, worthiness, and the family. Rolnick and Pearson unravel these racialized logics and suggest that:

For, although Indians are not identically situated to other racial minority groups, the harm that ICWA was designed to counteract was a racial harm in the sense that the work of severing Native children from tribal communities was part of an effort to eradicate those communities (defined by law and social practice as racially inferior) by absorbing them via interracial marriage and cultural reprogramming.⁷⁵

Armed with destructive racial logics informed by white supremacy, the settler-state has long regulated Native families to assist in its control of Native land, water, and resource rights.

⁷⁵ Addie C. Rolnick & Kim Pearson, *Racial Anxieties in Adoption: Reflections on Adoptive Couple, White Parenthood, and Constitutional Challenges to ICWA*, 4 MICH. ST. L. REV. 727, 732 (2017); Bethany R. Berger, *In the Name of the Child: Race, Gender, and Economics in Adoptive Couple v. Baby Girl*, 67 FLA. L. REV. 295 (2016).

Parallel to attacks against anti-discrimination legislation, the state has also used racist logics to devalue the political import of indigeneity. Anti-ICWA organizations and supporters, for example, use these racist logics to devalue the political and sociocultural orientation of Indigenous Peoples and instead attack ICWA provisions as race-based and exclusionary. This harmful and inaccurate framing erases the political status of Native children and knowingly reduces a tribe's efforts to protect their community's children in the short term, and in the long term diminishes the strength and viability of tribal sovereignty. These anti-ICWA intentions and outcomes in and of themselves are settler colonial.

Scholarship on Native family regulation resonates with legal scholar Dorothy Roberts's identification of the racist logics of U.S. child welfare systems. Following demands for Black inclusion in access to welfare policy systems in the early to mid-20th century, public child welfare systems became more intensely focused on surveillance, regulation, stigmatization, and removal⁷⁶—an approach that disrupts and subordinates families. Roberts explains that Black motherhood has been systematically devalued and denigrated,⁷⁷ while Black children have been constructed as uniquely threatening and unworthy of the privileges of a nurturing childhood by white policy institutions.⁷⁸ Black mothers have been portrayed by policy makers as irresponsible, presenting imminent harms to both their own children and to the nation.⁷⁹ For Black and Native mothers alike, there is an invested interest in presenting them as inherently dangerous and deficient relative to white families. This framing allows child removal to become naturalized as a desirable and logical intervention. Taken together, these experiences demonstrate the state's willingness to intervene into Black and Native family life. This is the case despite our understanding

⁷⁶ Michaela Christy Simmons, *Becoming Wards of the State: Race, Crime, and Childhood in the Struggle for Foster Care Integration, 1920s to 1960s*, 85 AM. SOC. REV. 199 (2020)

⁷⁷ DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 65 (2002) [hereinafter ROBERTS, SHATTERED BONDS] ("Modern social pundits have held Black mothers responsible for the disintegration of the Black family").

⁷⁸ Simmons, *supra* note 76, at 216 ("Scholars have found that black children are often 'denied the developmental reality' of childhood that undergird protective policy and institutions").

⁷⁹ ROBERTS, SHATTERED BONDS, *supra* note 77.

that, “[i]n a liberal-democratic society that respects individual rights and highly values the family and its autonomy, child removal is one of the gravest and most intrusive actions that government can take.”⁸⁰ These patterned actions against minority communities must not be taken lightly.

The manifestation of settler and racist logics in the surveillance of family life have myriad material implications for the health and safety of Native Peoples. For example, Native families have been marginalized and managed by economic dispossession, control of Native women’s bodies and reproduction, and the intrusion of white women and mothers into the socialization of Native children. Each of these elements of social control sought to collectively address the nation’s continued investment in managing the “Indian problem.”⁸¹ In some cases, economic troubles placed Native parents and families in impossible and impoverished situations where their only access to critical resources would be in the hands of the government.⁸² Seemingly benevolent policies traumatized Native families while improving settlers’ likelihood of securing greater control of Native lands and resources.⁸³ Efforts to secure Native lands have also been linked with the regulation of Native women’s biological reproduction through the promotion of

⁸⁰ Leroy H. Pelton, *Separating Coercion from Provision in Child Welfare: Preventive Supports Should Be Accessible Without Conditions Attached*, 51 CHILD ABUSE & NEGLECT 427, 427 (2016).

⁸¹ The “Indian problem” refers to the problem that settlers had with the existence of Native Peoples on land that settlers wanted to create their own homes and societies.

⁸² JACOBS, GENERATION REMOVED, *supra* note 33, at 136.

⁸³ MARGARET D. JACOBS, WHITE MOTHER TO A DARK RACE: SETTLER COLONIALISM, MATERNALISM, AND THE REMOVAL OF INDIGENOUS CHILDREN IN THE AMERICAN WEST AND AUSTRALIA, 1880-1940, xxx (2009) [hereinafter JACOBS, WHITE MOTHER TO A DARK RACE] (“Australia’s ‘protection’ policies and the U.S. government’s ‘assimilation’ program, each of which included [I]ndigenous child removal as a key element, have often been characterized as more enlightened approaches, or at least well-intentioned if misguided efforts, that broke with earlier and more brutal methods of colonization. However, these policies shared the same fundamental goal of earlier strategies—that of dispossessing [I]ndigenous people of their land—and aimed to complete the colonization of the American West and Australia by breaking the affective bonds that tied [I]ndigenous children to their kin, community, culture, and homelands.”).

hospital births over midwives, gendered policing of venereal disease, birth control, abortion, and sterilization.⁸⁴

In addition to policy addressing land and bodies, white women played a critical role in securing the Native family as a site of settler regulation. White women constructed a comparative and gendered motherhood binary, where Native women were portrayed as deficient and ill-equipped to raise their own children based upon harmful, racist stereotypes about Native “barbarity.”⁸⁵ In contrast, white women were situated as ideal caretakers and mother figures for Native children, a position that many white women were eager to take on.⁸⁶ In this way, white mothers and families were framed as liberal, caring, and “beyond race,” willing to sacrifice any negativity they might receive from other white people as a result of welcoming non-white children into their home.⁸⁷ These intentions, and their attachment to a domesticity and mothering framed as unreachable by Native mothers, mirror how “the violent displacement of Indigenous nations and the calculated expansion of the U.S. imperial nation-state remained likewise perpetually entangled with more intimate forms of possession and extermination.”⁸⁸ These interdependent connections between the nation and the home suggest a further need to reevaluate the continued reliance on state systems for Native child well-being and call into question any presumptions that Indigenous genocide is anything but ongoing.

V. NATIVE FAMILIES AND THE ABOLITION OF CHILD WELFARE

In this concluding section, we emphasize that routine and persistent intrusions in Native families and tribes are rooted in

⁸⁴ Theobald, *supra* note 32, at 6 (“Native women’s reproductive practices had long been a source of fascination for Euro-American colonizers, who used their perception of Indigenous reproduction to serve a number of purposes”).

⁸⁵ JACOBS, WHITE MOTHER TO A DARK RACE, *supra* note 83, at 42 (“Colonial officials’ rhetoric of rescuing and providing opportunity to [I]ndigenous children depended on harshly stigmatizing [I]ndigenous communities and families”).

⁸⁶ *Id.* at 281–282 (“[T]he state became a legal or fictive guardian to the children, and then subcontracted many of its guardianship responsibilities—providing protection, education, discipline and punishment, affection and emotional support—to white women”).

⁸⁷ Goldstein, *Ground Not Given*, *supra* note 16.

⁸⁸ *Id.*

the settler-state's longstanding investment in white supremacy. Settler desires to displace and erase are not gone but have manifested in a variety of institutional practices and policies that affect the health and safety of Native children and homes. Before transitioning into a summary of how our findings and framing might contribute to the visionary freedom work taking place in abolition collectives around the U.S., we begin with a brief overview of attempts to reform ICWA within the context of the settler-state's persistent attachment to family regulation. Most examples of such efforts focus on the need to ensure and increase ICWA compliance to provide Native families with the protections mandated by the law. Next, we examine the contributions of Black activists and communities at the forefront of the movement to abolish the child welfare system. We conclude by envisioning an abolitionist approach that redirects social and financial resources into the hands of Native families and works cooperatively with tribal nations to promote Indigenous communities of care. To this end, we argue that the child welfare system in its entirety must be abolished in order to stop the routine surveillance and separation of Native children from their families by the state. In so doing, we affirm that ICWA has provided, and will continue to provide, a necessary intervention to protect Native families so long as this intrusive system remains.

A. Existing and Ongoing Reform

Tribal communities and Native family advocates understand the multi-dimensionality of state-violence against Native Peoples in the U.S. and fight to protect Native families from these harms using a variety of tools. In child welfare matters, Native families rely on ICWA to mitigate harms and promote cultural and social stability in the lives of Native families, even despite considerable compliance and resource obstacles. Efforts to enhance the power and reach of ICWA have grown in recent decades using education, public outreach, and collaboration-building between tribes and state and federal social services. To monitor and ensure national ICWA compliance with various systems and jurisdictions, advocacy groups including Casey Family Programs, recommend that ICWA performance measures be developed and integrated into tribal, state, and federal reporting systems such as the federal Administration for Children and Families (ACF) and Family Services Reviews.

Additional efforts focus on the role of judges and courts and emphasize enhanced training on ICWA's intent. Efforts include best practice guidelines and link ICWA compliance with courtroom dynamics and actors involved in child welfare cases. Intentional training would ensure, for example, that presiding judges ask on the record, if not already established, about a child's potential AIAN heritage.⁸⁹ In many jurisdictions, judges, social workers, and attorneys⁹⁰ already receive training to improve their understanding of ICWA compliance and sanctions, but other legal actors such as guardians ad litem and special advocates would also benefit from intentional, data-driven education.⁹¹

Related efforts call for increased empirical evaluation of ICWA compliance and outline a variety of methods to do so. These methods include court observations within and across child welfare cases, reviewing case records to ensure compliance over time,⁹² and the use of qualitative methods such as focus groups to envision additional compliance efforts.⁹³ While we do not disagree with the merit and importance of such data collection, our quantitative findings indicate that the ongoing rate of Native child removal is persistent and may remain so in the event that the larger infrastructure of a punitive child welfare regime stays intact. It is the confluence of our own findings, the findings of tribes and advocates in decades prior, and the critical moment of institutional reckoning unfolding around us that underscore the need to rethink the end goal of compliance-based research. Instead, we suggest that compliance analysis would be greatly enhanced with a reorientation toward liberation and abolition.

B. Thinking with Liberation and Abolition in the Context of Child Welfare

Black activists and communities have long been at the forefront of the movement to promote abolition generally and

⁸⁹ *Id.* at 4.

⁹⁰ *Id.* at 13.

⁹¹ *Id.* at 6.

⁹² ALICIA SUMMERS & STEVE WOOD, MEASURING COMPLIANCE WITH THE INDIAN CHILD WELFARE ACT: AN ASSESSMENT TOOLKIT, NAT'L COUNCIL OF JUV. & FAM. CT. JUDGES 8 (2014), https://www.ncjfcj.org/wp-content/uploads/2014/02/ICWA_Compliance_Toolkit_Final.pdf [<https://perma.cc/H8Z4-DH96>]; Williams et al., *supra* note 39.

⁹³ SUMMERS & WOOD, *supra* note 92; Williams et al., *supra* note 39.

abolish the child welfare system specifically. A variety of scholars, including the work of critical geographer Ruth Wilson Gilmore, provide guidance on how to ground oneself in the collective learning, sharing, and service for a free and just future for all peoples. This abolitionist approach to social inequality involves a clear acknowledgment of the harms committed against a community, as well as the roots of that harm, visible.⁹⁴ Abolition subsequently dismantles oppressive systems and builds life-affirming institutions⁹⁵ and spaces that promote healthy communities in ways that resonate with local knowledge. In summary, an abolitionist perspective seeks to address the origins of social insecurity,⁹⁶ acknowledge structural harm,⁹⁷ dismantle institutions that are beyond reform, and reimagine possibilities that prioritize social justice. In the context of child welfare, abolitionists argue that the current child welfare system is flawed beyond repair and reform is insufficient.⁹⁸ Advocates call for a new framework that is fundamentally anti-racist and rethinks how and why society supports the well-being of children and families⁹⁹ above and beyond shifting funds from one social institution to another.

Critical legal scholar Dorothy Roberts and others explain that after being largely excluded from the child welfare system prior to the 1960s, Black children today are disproportionately represented in the surveillance and policing of family life.¹⁰⁰ Similar to the experiences of Native families, advocates for Black children and families note that poverty and single parent family

⁹⁴ Lisa Sangoi, Co-Founder & Co-Director, Movement for Family Power, Keynote Address at upENDING the Child Welfare System: The Road to Abolition Conference, (Oct. 29, 2020), <https://upendmovement.org/2020/10/29/keynote-address-upend-convening> [<https://perma.cc/KZ4F-R9NM>].

⁹⁵ Ruth Wilson Gilmore, *Abolition Geography and the Problem of Innocence*, in FUTURES OF BLACK RADICALISM, 224 (Gaye Theresa Johnson & Alex Lubin eds., 2017).

⁹⁶ Theresa Rocha Beardall, *Abolish, Defund, and the Prospects of Citizen Oversight after George Floyd*, SOC'Y FOR THE ANTHROPOLOGY OF WORK (Dec. 1, 2020); Ruth Wilson Gilmore, Keynote Conversation at the Making and Unmaking Mass Incarceration Conference (December 5, 2019), <https://mumiconference.com/transcripts> [<https://perma.cc/9RZY-KV9V>].

⁹⁷ Sangoi, *supra* note 94.

⁹⁸ Alan J. Dettlaff et al., *It Is Not a Broken System, It Is a System That Needs to be Broken: The upEND Movement to Abolish the Child Welfare System*, 14 J. PUB. CHILD WELFARE 500, 501 (2020).

⁹⁹ *Id.* at 502.

¹⁰⁰ Dettlaff et al., *supra* note 98, at 2.

structures are predictors of child removal,¹⁰¹ and that even when controlling for poverty and family structure, racial disparities continue to be present.¹⁰² Also salient to the Native experience, Black families receive differential treatment by child welfare workers who show a lack of cultural sensitivity, express judgment about Black parenting styles, and compare Black parenting against white and middle-class parenting perspectives.¹⁰³ The contemporary child welfare system acts as a racialized system of family regulation that blames Black and Native mothers for the structural conditions of poverty and inequality in which they live and parent. The system also blames mothers for the failures of an incredibly austere American welfare state. Instead of providing support to families in crisis, current systems prioritize the surveillance and punishment of Black and Native families. Abolitionists argue that these separation-oriented state family regulation systems do not, and in their current configurations cannot, advance the best interests of Black and Native families.

C. Reimagining Indigenous Communities of Care

Many advocates agree that the child welfare system is beyond repair because the system's disruptive and punitive intentions are antithetical to a support system that centers the dignity of family and extended kin networks. As with the issue of racially-biased policing in the U.S., the question of reform versus abolition relies upon measurable harm reduction and presumptions that more or less state intervention will keep families safe. Critics counter that social systems that are rooted in racism¹⁰⁴ must be abolished. We stand with this position and argue for an abolitionist approach to child welfare that

¹⁰¹ *Id.* at 21.

¹⁰² MILLER, RACIAL DISPROPORTIONALITY IN WASHINGTON STATE'S CHILD WELFARE SYSTEM, WASH. ST. INST. FOR PUB. POL'Y, DOCUMENT NO. 08-06-3901, at 1 (2008), https://www.wsipp.wa.gov/ReportFile/1018/Wsipp_Racial-Disproportionality-in-Washington-States-Child-Welfare-System_Full-Report.pdf [<https://perma.cc/CD32-TZYJ>].

¹⁰³ Marian S. Harris & Wanda Hackett, *Decision Points in Child Welfare: An Action Research Model to Address Disproportionality*, 30 CHILD. & YOUTH SERV. REV. 199, 207 (2007).

¹⁰⁴ *What Does it Mean to Abolish the Child Welfare System as We Know It?* CTR. FOR STUDY SOC. POL'Y, (June 29, 2020), <https://cssp.org/2020/06/what-does-it-mean-to-abolish-the-child-welfare-system-as-we-know-it> [<https://perma.cc/5Q3D-SD7K>]; Dettlaff et al., *supra* note 98, at 501.

reimagines family safety in ways that center the active dismantling of racist policies.

We conclude by envisioning an abolitionist approach to child welfare in which researchers can play an important role. First, researchers can and must consider how their scholarly interventions can open up space for the fight for abolition to meaningfully grow. One way this may be possible rather quickly is through study design. For example, we rightfully situate our empirical findings within a theoretical framing of the state as a settler-state, a political and sociohistorical actor invested in white supremacist values that manifest in surveillance and family separation. We do so in order to call to account the structural violence that cannot be divorced from the stories the data tell about the effects of centuries of anti-Native subordination. Second, this empirical approach positions our findings and implications in service of the visionary freedom work taking place in abolition collectives and in service of tribes and advocates who continuously demand increased protections for their children and families. We affirm that ICWA has provided, and will continue to provide, a necessary intervention to protect Native families so long as this intrusive and punitive child welfare system remains.

Third, poverty disproportionately burdens Native families and there is a clear relationship between poverty and involvement in the child welfare system.¹⁰⁵ We argue in favor of redirecting funding from the foster care system directly to families and communities;¹⁰⁶ the expansion of social safety net programs to mitigate mistreatment and neglect caused by financial precarity;¹⁰⁷ and a prioritization of increased access to affordable housing,¹⁰⁸ healthcare services, community infrastructure, and fresh food and water. We suggest that child welfare funding that further empowers state authorities, which historically have acted to separate Native families, must be reallocated into Native homes. These homes have often been deemed financially “unfit,” acting as justifiable grounds for child

¹⁰⁵ MILLER, *supra* note 102, at 21.

¹⁰⁶ Dettlaff et al., *supra* note 98, at 508.

¹⁰⁷ *What Does it Mean to Abolish the Child Welfare System as We Know It?* CTR. FOR STUDY SOC. POL'Y, (June 29, 2020), <https://cssp.org/2020/06/what-does-it-mean-to-abolish-the-child-welfare-system-as-we-know-it> [https://perma.cc/5Q3D-SD7K]; Dettlaff et al., *supra* note 98, at 510.

¹⁰⁸ CTR. FOR STUDY SOC. POL'Y, *supra* note 107.

removal for more than a century. These recommendations are attentive to the fact that financial circumstances within urban and tribal communities are complex.¹⁰⁹ Nonetheless, we suggest that resource allocation for Native children and families must be both equitable and reconciliatory as resource constraints remain a grave inequality in Native sovereign nations more broadly and in the administration of child welfare specifically. Importantly, we wish to highlight here that financial resources alone cannot appropriately remedy the problem of family separation. A recognition of and support for the effects of multigenerational trauma, honoring the care found within extended Native kin networks, and movements to revitalize community-centered values to strengthen families are all essential components of a path forward.

Additionally, we advocate for an abolitionist agenda that reimagines child welfare and supports the building of urban *and* reservation Indigenous communities of care led by and for Native Peoples and tribes. Indigenous care communities would prosper alongside the promotion of tribal sovereignty, adherence to treaty obligations, and a return of homelands, resources, and waterways to Native communities. Allies interested in supporting Indigenous communities of care must recognize that tribal autonomy is paramount, must continue to fight against efforts to prioritize family regulation over community support, and educate others about the historical significance of Native land theft and genocide. Some examples of how an abolitionist approach to child welfare might positively impact Native families include the immediate termination of the use of congregate care facilities such as group homes in favor of investing in Native community-based support and greater recognition of informal kinship networks.¹¹⁰ Movements can look to existing programs including individual- and family-level ICWA efforts and the intentional recruitment of ICWA-compliant foster families. Recruitment requires the recognition and elimination of social and economic barriers for Native households to become a foster

¹⁰⁹ See generally Matthew L.M. Fletcher, *In Pursuit of Tribal Economic Development as a Substitute for Reservation Tax Revenue*, 80 N.D. L. REV. 759 (2004).

¹¹⁰ CTR. FOR STUDY SOC. POL'Y, *supra* note 107; Dettlaff et al., *supra* note 98, at 510.

family¹¹¹ in ways that speak to the necessity of mutual aid in cultivating safe and affirming homes for all Native families. Similarly, efforts to radically rethink care outside of formal institutions and agencies need not look far as tribal communities in both urban and rural spaces have participated, and continue to participate, in mutual aid collectives that provide nourishment for one another in the face of institutional neglect.

VI. CONCLUSION

In 1978, ICWA introduced federal protections for Native children (enrolled and eligible for membership), families, and tribes against unnecessary removal and affirmed the role of the tribe as an important partner in child welfare proceedings. In this Article, we used administrative and historical data to statistically evaluate the magnitude of change in AIAN family separation since the passage of ICWA and locate the institutional pathways that funnel AIAN families into the child welfare system. We find that the frequency of AIAN children's placement into foster care has remained relatively stable since the passage of ICWA, that AIAN children remain at an incredibly high risk of family separation through the child welfare system, and that the post-investigation removal decision by child welfare agencies is a key mechanism of inequality in family separation. Based upon these findings, and our framing of family separation as an inherent element of white supremacist settler-state logics, we argue that the child welfare system in its entirety must be abolished in order to stop the routine surveillance and separation of Native children from their families by the state. We also suggest that ICWA has provided, and will continue to provide, a necessary and desperately needed intervention to protect Native families so long as this intrusive system remains. We are hopeful that abolitionist principles can intersect with the work of Native child welfare advocates committed to placing social and financial resources into the hands of Native families. Coupled with the

¹¹¹ Killos et al., *supra* note 39, at 12; In a recent pilot, Casey Family Programs purposefully sought to recruit and retain Native families interested in becoming foster families. They did so by working closely with Native families to prepare them for licensure and also by providing financial and material support directly to these families. The goal was to ensure that, in the end, Native children would be placed in foster homes that preserve their connection to their culture, traditions, and birth parents. Such efforts require meaningful collaborations between states and tribes as well as a centralized state application system for those interested in becoming foster families.

necessity of cultural respect and the centering of human dignity and family rights, these efforts can work cooperatively with urban and reservation communities to promote their vision of Indigenous communities of care. The time is now to make right on the nation's promise to end family separation among Native families and tribes.

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Tribal Child Welfare Systems' Experiences With Prenatal Exposure to Alcohol and Other Drugs

A Case Study

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A Case Study

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Executive Summary

The prevalence of children with prenatal substance exposure (PSE) to alcohol and other drugs within child welfare (CW) populations is not well established.^{1,2} Such exposures can result in adverse birth outcomes as well as developmental, physical, behavioral, and cognitive effects. When it comes to detecting and intervening with children with PSEs, CW agencies are often challenged, and conditions such as Fetal Alcohol Spectrum Disorders (FASDs) may be frequently misdiagnosed and under-identified (Chasnoff et al., 2015).

The prevalence of PSE-related experiences (substance use patterns, substance use during pregnancy, prenatal exposures, and resulting conditions for children) within CW populations of Tribal communities is difficult to ascertain. There is a great deal of variation within and among American Indians and Alaska Native (AI/AN) populations, including geography, history, political jurisdiction, and social and cultural conditions. The confluence of higher poverty rates, less access to physical health and mental/behavioral health services—resulting in poorer health and mental health outcomes—as well as historical and continued trauma contributes to higher rates of misuse for many types of substances in some Tribal communities. An additional complicating factor in accurately assessing the occurrence of prenatal substance exposure in AI/AN populations is the level of variation in how frequently AI/AN caregivers come to the attention of CW systems across the 50 states. In Minnesota, for instance, 15 percent of AI/AN children can expect to experience a CW investigation before their first birthday (Edwards & Rocha Beardall, 2020). In California, more than half of AI/AN children experienced a child protective services investigation at some point before their 18th birthday (Putnam-Hornstein et al., 2021).

The unique policies and practices of Tribal CW programs are a strength in addressing these important public health concerns. The Indian Child Welfare Act (ICWA) guides policy and practice for AI/AN children and families and requires “active efforts” to prevent out-of-home placement, and in the event of a placement, to reunify children and their families. This legal guidance, coupled with an emphasis on family preservation, underpin important work done by Tribal CW programs to address PSE while remaining committed to preserving family and cultural ties (Earle, 2018).

¹ For purposes of this report, involvement in CW is defined broadly as any individual who has documented contact with CW services. This could involve those receiving adoption or foster care services as well as individuals with brief contact for support or other voluntary services.

² See appendix A for a glossary of terms and conditions appearing throughout this report.

In 2016, the Administration for Children and Families' Children's Bureau and Centers for Disease Control and Prevention engaged James Bell Associates and ICF to assist in conducting a study of prenatal alcohol and other exposures in CW, including an exploration of these issues in Tribal CW systems. Early in the project, the team sought Tribal partners who possess both a broad knowledge of Tribes and an expertise in research to formulate the aims of the Tribal study, listed below.

1. Within a single Tribe, understand Tribal CW policies and practices related to identifying, assessing/referring, and caring for children and families affected by PSE.
2. Identify strengths-based and promising practices among Tribal CW and allied systems as well as Tribal communities regarding children with PSEs and their families.
3. Explore Tribal needs related to these practices.
4. Identify potential recommendations for Tribes, local and federal CW agencies, and public health agencies.
5. Examine the current referral process for services as well as pathways for children and families to identify areas for improvement.

The team was guided by principles to co-create an effective evaluation (Tribal Evaluation Workgroup, 2013). Led by a Tribal researcher, the team first held multiple listening sessions with diverse Tribal stakeholders across the state of Minnesota in 2018 to understand issues related to PSE, to develop relationships with Tribes, and to inform the study. In 2019, the team engaged the *Ombimindwaa Gidinawemaaganinaadog* Red Lake Family and Children Services agency to co-develop a case study. After Tribal council and IRB approval, in 2020 the Tribal liaison and a team member conducted two data collection efforts: (1) a service process mapping activity; and (2) interviews with nine key informants.

Key Findings

Insights From Service Process Mapping

The service process mapping provided the team and Tribal CW agency with information on how children and families currently move through this agency's CW system when there are reports of possible PSE (see maps in appendix E). The mapping process shed light on service pathways for pregnant mothers and/or prenatally exposed infants, factors that affect processes, gaps, and areas for improvements. The takeaways were:

1. Currently, no validated assessment or decision-making tools are used by this agency to guide the intake process when there are reports of prenatal alcohol or other drug exposures.
2. The participants in the study were less aware of the relevant referral partners and the process to identify children affected by PSE (e.g., with resulting conditions from PSE, such as FASDs) than those processes for serving and supporting pregnant mothers.

3. The two most frequent points of referral for pregnant mothers who are using substances are (1) family preservation services (internal CW program referral); and (2) chemical dependency services (external agency referral) for supporting pregnant mothers.
4. Challenges that emerged included (1) struggles with maintaining and communicating processes consistently across agencies; and (2) because all births currently occur off-reservation, the Tribal programs must follow the lead of external agencies (e.g., hospital and law enforcement)—which perhaps delays the provision of strengths-based, cultural ways of approaching maternal substance use and PSE.

Themes From Key Informant Interviews

Selected themes in six areas emerging from the nine semi structured interviews are presented below (see report for full list).

1. Understanding of relevant needs and strengths of the Tribal community

- **Staff expressed a deep passion and commitment to supporting mothers struggling with substance use disorders** in Red Lake. Providers shared powerful examples of mothers recovering and maintaining or regaining custody of their children despite barriers.
- **Alcohol and polysubstance use were not perceived as common**; participants perceived heroin, methamphetamine, and opioids as the most frequent substances used by pregnant mothers.

2. Services for pregnant mothers and/or infants with prenatal substance exposures

- **There has been a helpful shift in practice within the Tribe's human services** to emphasize family preservation and relationship-based services. Services include relationship development and compassionate work with families, all of whom are perceived as “relatives” to those providing services; this is in line with the traditional community understanding of relationships reflected in the agency's new name “Uplifting Our Relatives.”
- **Tribal social workers take active measures to support pregnant women to maintain custody of their children** whenever safely possible. If a child is removed, the goal is to place the child with relatives while the mother is assisted to regain her health, so that she can safely parent. Extended family relatives have traditionally stepped in as caregivers. This established way of being is now supported by Tribal systems as best practice.
- **A range of substance abuse programs are available to pregnant mothers** to support them to safely stop or reduce usage. Red Lake CW seeks to provide voluntary services that include outpatient programs, medically assisted treatment options, and health care. Social workers can assist with issues related to housing, transportation, food resources, and other resources that pregnant women may need.
- **Most Tribal programs employ culture-based programming, including the use of traditional ceremonies, healers, and medicines**—e.g., teaching women how to smudge (burn) sage. These cultural practices can help reinforce for the pregnant woman a connection to her culture and develop a broader network of support for her and her family.

3. Facilitators to implementing services

- **Tribal Council and agency leadership was lauded for shifting the approach from a punitive response to PSE to a supportive, healing one** that draws on the culture and traditions of the people of Red Lake. A strengths-based approach was unanimously noted as being the best way to support individual recovery from substance use.
- All interviewees described a **dedication and hopefulness for success**. Most of them said they never give up on substance-using pregnant women—even if the woman herself is not ready to change. As one interviewee expressed, “We’ll be here when she is ready.”
- **The close-knit community is a source of pride and strength, but can also present challenges**, e.g., for those who want to recover but have a lot of people around them who are still using and can provide easy access to alcohol and other drugs.
- ***Ombimindwaa Gidinawemaaganinaadog*: Red Lake Family and Children Services is well regarded and seen as an effective support for pregnant women by partners**, including substance abuse providers, law enforcement, and the courts. With organizational shifts toward family support and preservation and away from child removal, women are more inclined to seek support if they know that they will not lose their child into the CW system.

4. Challenges to implementing services

- **Lack of consistent funding** means that some programs providing services through short-term grants can’t be sustained. For example, a partnership with the local hospital for supporting prenatal mothers no longer exists.
- **System barriers** such as lack of integrated services, inconsistent communication, absence of a centralized list of services for pregnant women with substance use, and challenges with confidentiality between programs can lead to inconsistent supports for women.
- **Lack of key services and resources on the reservation** (housing, birthing facilities, in-patient treatment, evaluation for children with suspected FASDs, screening and diagnosis, midwifery, doulas, etc.) means that supports aren’t easily accessible, and individuals must access programs outside of their community that may not be culturally supportive.
- **There is a lack of information and resources** to identify the short- and long-term effects of prenatal alcohol and drug exposures among children, and services for these children. However, information and services exist for pregnant caregivers who are using substances.

5. Recommendations for improved services

- **There are needs** to better monitor and serve pregnant caregivers with alcohol and drug use issues and children prenatally exposed to substances, **including (1) tools and resources to guide assessment of prenatal alcohol exposure** and understanding of effects (2) **improved data** on the number of affected families; (3) **centralized services** on the reservation; (4) **long-term treatment and aftercare programs with housing** on reservation; and (5) **training about PSE and the long-term effects** for Tribal leadership, community members, and service providers.
- Interviewees suggested **building on the many strengths that were identified to expand and improve services (such as a greater emphasis on alternative birthing services)**. One example is a midwifery program could be offered through the Tribal college.

Conclusions

Through a collaborative research effort, *Ombimindwaa Gidinawemaaganinaadog “Uplifting Our Relatives”* (Red Lake Family and Children Services) provided a unique look into one Tribal Nation’s approach to serving families affected by PSE. While the program and Tribe are unique in approach, history, and current context, and caution is warranted in drawing conclusions from only one case study, the lessons learned through listening sessions, process mapping, and interviews can speak to considerations for Tribal CW programs and federal agencies and suggest areas for future exploration and study. See the report for full list of considerations.

Implications for Tribal Child Welfare Programs

Red Lake Nation is exercising Tribal sovereignty by creating a Tribally based program to serve its relatives through supportive services rather than child removal and punitive treatment of parents. Their work speaks to the importance of:

- **Tribal and Agency Leadership and Support.** Tribal agencies can mobilize Tribal leadership to change ways of practice within CW to a decolonized approach that builds on cultural values and strengths including changes to Tribal legal codes to support family preservation.
- **Clear and Consistent Practice Built on an Ethic of Family Preservation.** Tribal agencies can develop practices through active efforts with all families that include cultural approaches to healing. These practices include placing children with extended family when removal is necessary, with a central goal of provision of services to address substance misuse so that family reunification can occur as soon as possible. Another practice is to consider PSE cases specifically and collectively as a program and develop a practice map to clarify key touchpoints to identify and pathways for providing prevention and intervention services.
- **Supporting a Well-Trained and Skilled Tribal CW Workforce.** Tribal agencies can train Tribal staff to utilize a Tribal practice model of interacting and responding to families in need as one would assist a relative, including a “never give up” attitude of hope. They can ensure that training addresses issues of PSE, including how to recognize risk and effects on the child and how to sensitively explore substance use with families, and knowledge and implementation of Tribal resources to support children and families.
- **Building an Integrated System of Providers and Community Members.** This agency has created a work climate of treating colleagues as relatives and supporting one another based in cultural values and teachings. They recommend improving communication and the inclusion of all voices (including elders and others with lived experience), and to explore stronger collaboration between systems and potential referrals to public health, early childhood and early intervention, local hospitals, as well as other agencies to support families and children.

Implications for Federal Agencies

Study insights pointed to six ways for federal agencies to support Tribal Nations, recognizing that all Tribes are different and should be approached with humility and the spirit of partnership.

- Honor Tribal sovereignty and culture. Listen and respect the voices of Tribal Nations because they are most knowledgeable about their community needs, resources, and values.
- Insofar as possible, support and help fund Tribes to develop resources and implement processes and programs that are based in their traditional knowledge and wisdom. Tribes have ways to provide prenatal care and to care for the mother and child before and after birth that differ from Western traditions (e.g., Family Spirit home-visiting program).
- Engage in Tribally informed collaborative research to explore how to serve indigenous children and families who are affected by PSE. This effort should include traditional ways of seeing children who have been affected as sacred beings who have gifts to offer the community, rather than as children in need of services, and supporting mothers with doulas at birth.
- Support culturally appropriate training and tool development targeting Tribal service providers in identifying and supporting children who have been prenatally exposed to alcohol and other drugs.
- Support capacity building around data collection and use within Tribal CW programs. Participants noted a need for better data and to understand their existing data related to PSE.
- Consider collaborating with and investing in Tribes to further explore, develop, implement, and evaluate strategies that are described in the report in Implications for Tribal Child Welfare Programs and Opportunities for Red Lake Nation would be most effective.

I. Introduction

Background

The prevalence of children with prenatal substance exposure (PSE) to alcohol and other drugs within child welfare (CW) populations is not well established.^{3,4} Such exposures can result in adverse birth outcomes as well as developmental, physical, behavioral, and cognitive effects. Though prevalence estimates vary, substance use is a common issue in families involved in CW and can be indicative of substance use during pregnancy (Wulczyn et al., 2011; Young et al., 2007). In 2019, parental drug abuse was a factor for 34 percent of children removed from their home, and alcohol abuse was reported (perhaps under-reported) as an issue in families for 5 percent of children entering the foster care system (Children’s Bureau, 2020). The actual prevalence may be far higher. Reports indicate that caseworkers may fail to identify parents’ substance use disorders. When comparing caseworker detection of problematic substance use during the investigation phase of a CW case with parent self-disclosure of substance use in a national survey, researchers found discrepancies: 64 percent of parents who self-disclosed drug issues, and 82 percent of parents who self-reported alcohol issues were not identified by caseworkers (Seay, 2019).⁵

The high rates of drug and alcohol use in families may leave children at greater risk for PSE and resulting conditions such as Fetal Alcohol Spectrum Disorders (FASDs), which are reported more for children in the CW population than for those in the general population (Astley et al., 2002; Popova et al., 2019). When it comes to detecting and intervening with children with PSEs, CW agencies are often challenged, and conditions such as FASDs may be frequently misdiagnosed and under-identified (Chasnoff et al., 2015).

As is the case for the general CW population, the prevalence of PSE-related experiences (e.g., substance use patterns, substance use during pregnancy, prenatal exposures, and resulting

³ For purposes of this report, involvement in CW is defined broadly as any individual who has documented contact with CW services. This could involve those receiving adoption or foster care services as well as individuals with brief contact for support or other voluntary services.

⁴ See appendix A for a glossary of terms and conditions appearing throughout this report.

⁵ Note that many statistics on CW involvement and parental substance use derive from federally reported CW datasets such as the Adoption and Foster Care Analysis and Reporting System (AFCARS) and the National Child Abuse and Neglect Data System (NCANDS). These datasets only include a subset of American Indian children served through CW systems. Many Tribal CW programs do not receive federal funding for their services and, as such, do not report in these systems. See: National Child Welfare Resource Center for Tribes. (2011). *Findings from the National Needs Assessment of American Indian/Alaska Native Child Welfare Programs*. Author.

conditions for children) within CW populations of Tribal communities is difficult to clearly ascertain. There is a great deal of variation within and among American Indians and Alaska Native (AI/AN) populations, as aggregated by geography, history, political jurisdiction, and social and cultural conditions. In addition, the confluence of higher poverty rates, less access to physical health and mental/behavioral health services—resulting in poorer health and mental health outcomes—as well as historical and continued trauma contributes to higher rates of misuse for many types of substances in some Tribal communities. According to the 2018 National Survey on Drug Use and Health (NSDUH), in aggregate analysis, Native Americans have the highest rates of alcohol, marijuana, cocaine, inhalant, and hallucinogen use disorders compared with rates of other ethnic groups, and the highest rates of substance dependence or abuse (Young & Joe, 2009). It is important to note, however, that AI/AN populations also abstain from alcohol at a higher rate than does any other group (Erikson, 2016).

Regarding substance use during pregnancy, one recent study in a rural Tribal Nation in the Central United States discovered that substance use rates were higher than national averages, finding 74.6 percent of women smoked during pregnancy and 35.4 percent of the women both smoked and consumed alcohol during pregnancy (Jorda et al., 2021). An additional complicating factor in accurately assessing the occurrence of prenatal substance use in AI/AN populations is the level of variation in how frequently AI/AN caregivers come to the attention of CW systems across the 50 states. Recent analysis of state CW data found that although AI/AN and White children have similar nationwide rates of “screened in” investigations,⁶ wide differences based on geography remain. In Minnesota, for instance, 15 percent of AI/AN children can expect to experience a CW investigation before their first birthday (Edwards & Rocha Beardall, 2020). In California, more than half of AI/AN children experienced a child protective services investigation at some point before their 18th birthday (Putnam-Hornstein et al., 2021).

Some studies report higher rates of children with an FASD in Tribal communities compared with the general population (Burd & Moffat, 1994; May et al., 2002). One recent study of the prevalence of FASDs in a reservation-based Tribal community estimated a prevalence rate of 4.1 percent (41 per 1,000 children) based on a sample of Tribal children aged 5–7 years old (Montag et al., 2019). Another study of racial differences in the prevalence of PSE in the general population of Washington state, based on an examination of birth records and diagnostic codes related to PSE, found Tribal children to have a higher prevalence of diagnosed PSE (Rebbe et al., 2019). In this study, the rate

⁶ Screening procedures vary based on state statutes. The act of “screening in” a report is a process by which CW workers determine if an allegation that resulted in a report to child protective services warrants a more in-depth assessment; this process does not mean that a report was substantiated.

of prenatal exposure to alcohol diagnosed at birth was 6.5 births per 1,000 children for Tribal and 0.8 births per 1,000 for White children.

The incidence and prevalence of exposure to opioids and resulting conditions such as Neonatal Abstinence Syndrome (NAS) among Tribal infants and children also is not well established. In the Rebbe et al. study, prevalence of prenatal exposure to amphetamines was five times greater for Tribal children than for White children and exposure to opioids was three times greater for Tribal children than for White children (Rebbe et al., 2019). Some Tribal leaders have reported NAS as a growing issue in their communities (U.S. Senate Committee on Indian Affairs, 2015).

Although rigorous data on the prevalence of prenatal exposure within Tribal communities remain elusive, what is clear is that the unique policies and practices of Tribal CW programs are a strength in addressing these important public health concerns. The Indian Child Welfare Act (ICWA) guides policy and practice for AI/AN children and families “[t]o protect the best interest of Indian Children and to promote the stability and security of Indian Tribes and families by the establishment of minimum federal standards for the removal of Indian children and placement of such children in homes which will reflect the unique values of Indian culture...” (25 U.S.C. 1902). ICWA requires “active efforts” to prevent out-of-home placement, and in the event of a placement, to reunify children and their families. This legal guidance, coupled with an emphasis on family preservation, underpin important work done by Tribal CW programs to address PSE while remaining committed to preserving family and cultural ties (Earle, 2018).

Overview of the Prenatal Alcohol and Other Drug Exposures in Child Welfare (PAODE-CW) Project

To better understand PSE of children who are in the CW system, in 2016, the Administration for Children and Families’ Children’s Bureau and Centers for Disease Control and Prevention (CDC) engaged James Bell Associates (JBA) and ICF International (ICF) to assist in conducting the Prenatal Alcohol and Other Drug Exposures in Child Welfare (PAODE-CW) project. The team was tasked with designing and executing descriptive research exploring CW systems’ response to PSE in state, local/county, and Tribal CW jurisdictions. The team conducted a mixed-method study in 22 CW agencies in 5 states, conducting interviews and surveys with CW staff and in a subgroup of agencies carrying out additional surveys with service providers, interviews and focus groups with caregivers, and case record reviews.

Given both the lack of clear information on PSE and the opportunities for unique practice solutions in Tribal communities, a critical subcomponent of this project was a separate exploration of these issues in Tribal CW systems, using methods appropriate to a single Tribal culture and setting. The overarching goal of this case study was to identify current approaches and practices to identify and care for children with PSE and their families as well as to pinpoint those processes that may support positive outcomes for Tribal children and families. As a 2016 policy statement by the U.S. Department of Health and Human Services described: “In recent years, Tribal leaders and members in many communities have raised the concern of an increase in the number of infants born affected by alcohol and substance use,” and “there has been little research or guidance on these issues particularly tailored to building on the unique strengths and meeting the unique needs of Tribal communities” (U.S. Department of Health and Human Services, 2016).

PAODE-CW Tribal Case Study Aims

Early in the project, the team sought Tribal partners who possess both a broad knowledge of Tribes and an expertise in research. The PAODE-CW team collaborated to develop specific aims of the Tribal study component of the PAODE-CW project. These aims were:

1. Within a single Tribe, understand Tribal CW policies and practices related to identifying, assessing/referring, and caring for children and families affected by PSE.
2. Identify strengths-based and promising practices among Tribal CW and allied systems and Tribal communities regarding children with PSE and their families.
3. Explore Tribal needs related to these practices.
4. Identify potential recommendations for Tribes, local and federal CW agencies, and public health agencies.
5. Within a single Tribe, examine the current referral process for services as well as pathways for children and families to identify areas for improvement.

II. Case Study Design

The following two activities conducted early in the overall PAODE-CW project directly informed the design and methodology of the Tribal case study component.

Review of Literature on Research Issues in Working With Tribal Nations

The study team completed a focused review of literature examining historical and cultural issues of conducting research with Tribal populations; issues related to data access, ownership, and approval processes; as well as recommended practices for conducting research with Tribal Nations.

Consultation With Tribal Researchers and Stakeholders

The study team convened multiple groups of Tribal stakeholders and experts to inform the study design. Two virtual focus groups were held in March and April 2017 to gather input on conducting research with Tribal communities and on issues facing Tribes in addressing PSEs. The study team consulted an expert panel, including researchers with experience carrying out research and evaluation in Tribal contexts (see appendix B), to help develop the study design and methods. These expert consultants represented a breadth of knowledge in Tribal CW and early childhood research. Consultants and team members met for a two-day in-person planning meeting in August 2017. Research staff sought from this cadre of Tribal consultants guidance and input at the design phase as well as periodically during the study itself.

These planning activities resulted in a set of recommendations about the investigation's approach and principles to be followed. Outcomes from the planning meeting included a proposed study design, sampling criteria and recruitment strategies, as well as data collection methods.

Study Principles

The principles outlined in the Children's Bureau's *Roadmap for Co-Creating Collaborative and Effective Evaluation to Improve Tribal Child Welfare Programs* (Tribal Evaluation Workgroup, 2013) guided the study design and methods. This document and other discussions of Tribal research

ethics note that research involving Tribal communities should not merely describe or judge phenomena at a static point in time; the research must have clear benefits to the community and point to decisions for the future (LaFrance, 2004; Smith-Morris, 2007). Community-based participatory research has been used to promote inquiry that is fair and that benefits the Tribal community by integrating research with local capacity building (Cross et al., 2004). The consultants affirmed that the study must consider issues of building trust and relationships with Tribal nations to ensure a collaborative and effective partnership.

Study Design and Methodology

The study team and consultants determined that a **collaborative case study design**, with components adapted from community participatory approaches (Sahota, 2004; Tumiel-Berhalter et al., 2005), would be the most effective approach to meet the research aims. Principles and considerations for collaborative case study approaches were adopted and implemented for this case study (see box on next page). The consultants recommended that the design process include co-creation of qualitative data collection methods (e.g., semi structured interviews, focus groups, document review) to be conducted in person with diverse Tribal stakeholders. Measures were to be guided by the study aims but also focused on specific areas of interest for the participating Tribal community. The team recommended that study participants for data collection be identified by the Tribal communities themselves but should include Tribal CW directors, case workers, and other Tribal CW staff; Tribal staff affiliated with other Tribal departments and programs (e.g., behavioral health, Tribal court); and Tribal leaders (section IV: Case Study gives additional details about eventual study participants and measures). Given that the case study is limited in focus to one Tribal context, the information is not intended to be generalized beyond the specific setting.

Collaborative Case Study Principles and Considerations Applied in Tribal Case Study Design

- Prioritize Tribal involvement, contributions, and permission in all study activities.
- Engage Tribal leaders and staff in general discussions about their expectations and desired outcomes of the study.
- Recognize that to build trust as well as authentic and effective collaborative relationships, the study team and Tribal communities need to get to know one another—which requires time and effort.
- Emphasize sensitivity to culture and traditional values as well as consider definitions and expectations of behavior within each Tribal community.
- The study process is an opportunity for inquiry; information that is uncovered can be a tool to provide feedback and used to benefit the Tribal site(s).
- Ensure that the Tribal community maintains “ownership” of the data.
- Report findings back to Tribal representatives, ensure that the Tribe has the opportunity to review and provide feedback on reporting of results, and ensure Tribal involvement in all reports of findings.
- Be flexible about the timing of all study activities and remain open to changes in circumstances, time frames, and Tribal communities’ preferences.
- Recognize the privilege of working with the Tribal sites and foster respect, open-mindedness, and humility.

Site Recruitment

The study team and expert consultants determined that recruitment would be most effective by enlisting the support of Tribal researchers who have preexisting relationships with candidate Tribal communities (“sites”). The expert consultants recommended that Tribal consultants from among the design group be considered as potential sources of relationships that could facilitate introduction of the study to Tribal communities, conduct needed outreach and collaboration on Tribal site aims and methods, and lead data collection with Tribal sites.

The following factors were included as preferred criteria to select and rank candidate Tribal sites had:

- Existing relationships with the Tribal consultants
- Strong and stable CW infrastructure and capacity
- A sizable CW population
- A service delivery system that served children who were prenatally exposed to alcohol and other drugs and their families, with priority for Tribes that may be particularly affected by alcohol abuse

- Efforts already underway by Tribe to address prenatal substance exposures
- A program located within states on U.S. mainland (i.e., “lower 48”)
- Attainable Institutional Review Board (IRB)/Tribal research approval requirement processes and timing

The team identified an initial list of eight Tribal communities. Four of them were targeted for initial engagement, with the goal of recruiting two communities for participation in collaborative case studies. Two Tribal researchers with preexisting relationships with the four targeted communities were appointed to lead engagement and recruitment efforts in the role of Tribal consultant liaisons.

III. Study Engagement and Recruitment

Initial Recruitment

The Tribal consultant liaisons reached out to key contacts in the four selected Tribal communities (Tribal CW agency leaders) between January and July 2018. Per principles, early outreach discussions were open, authentic, and transparent; they included such topics as description of the study, the Tribe's potential interest in participating in the study, possible benefits of participation, and Tribal approval processes (including IRB) needed for the Tribe to participate.

Three of the four initially prioritized Tribal communities declined participation, mainly due to competing agency, Tribe priorities or other initiatives that precluded time-intensive collaboration with the study team. The fourth Tribal community expressed interest in learning more about the study and worked with the study team and one of the Tribal consultant liaisons to develop and submit a research application for Tribal approval. However, ultimately this Tribal community declined participation due to a community tragedy that occurred near the time of planned study initiation. In late 2019, this Tribal consultant liaison successfully engaged a fifth Tribal community from the region that had participated in listening sessions (see below) to participate in the collaborative case study.

Building Engagement Through Listening Sessions

One of the Tribal consultant liaisons, who has relationships and experience working with multiple Tribes in the Great Lakes region, next arranged for members of the study team to meet with existing cross-Tribe collaborative groups. The intent of these meetings was twofold: (1) to describe the study to build interest/motivation to participate; and (2) to hear from Tribal CW staff and other Tribal stakeholders about their interest around the topic of children with PSEs, their general approach, and experiences and needs in their communities. Two meetings were held, one in fall 2018 and another in spring 2019, with diverse Tribal stakeholders including Tribal council members, who frequently oversee and approve Tribal-wide priorities and changes to policy; Tribal CW agency directors and staff; state social service agency staff; and representatives from court and legal organizations including Tribal CW attorneys, judges, and court monitors.

Structured as “listening sessions,” the meetings had open-ended questions designed to elicit current processes as well as strengths-based and promising practices related to identifying and caring for children affected by PSE and their families; needs and challenges in this area also were discussed. The sessions explored perspectives on how to successfully engage Tribal communities in the proposed research. To ensure open and authentic engagement and the building of trusting relationships with the study team, these sessions were designated as *information gathering* activities and not as formal data collection.

Team members took high-level notes and summarized themes; they then shared these themes with the participating groups (see appendix C). Key themes from the listening sessions informed further recruitment strategies, the ensuing study activities, and implications and recommendations for future efforts.

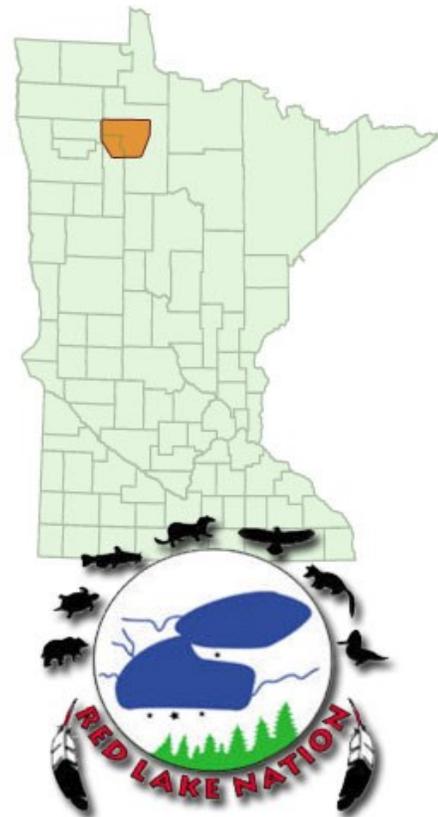
IV. Case Study

Overview of *Ombimindwaa Gidinawemaaganinaadog* “Uplifting Our Relatives” (Red Lake Family and Children Services)

The Red Lake Nation was an ideal partner in this case study for multiple reasons: (1) a long-standing relationship with the Tribal consultant liaison (Dr. Priscilla Day); (2) a human services program with a reputation for innovative practice; and (3) an expressed interest in knowing more about how their agency addresses challenges regarding children with prenatal alcohol and other drug exposures and their families. As would be true with a case study in any Tribal nation, the context is unique to the individual Tribe; that said, many of the challenges and opportunities noted by the Red Lake Nation are most likely shared by other Tribal communities.

Red Lake has developed significant infrastructures due to its political status as a closed reservation and its location in rural northern Minnesota on the border with Canada. Like all sovereign Tribes, Red Lake has Tribal governance that oversees programs designed to meet the needs of its citizens. Those structures include public works, a department of natural resources, a housing authority, planning and economic development, public health and Indian health services, a nursing home, Tribal law enforcement, Tribal schools and a Tribal college, and a host of human service programs, all of which serve Tribal citizens across the lifespan.

Map of Red Lake Nation
(image courtesy of [MN Indian Affairs Council](#))



Case Study Methods

Beginning in November 2019, the study team worked closely with representatives from *Ombimindwaa Gidinawemaaganinaadog*: Red Lake Family and Children Services to develop the case study. Team members and Tribal site representatives began by co-developing the research questions, working from the study aims noted above.

Case Study Design and Approvals

The case study was intended to be fully collaborative. In collaboration with the Tribe, researchers prepared all methods and measures, with such methods and measures designed to help address the key research questions and questions of interest to Tribal members. At the request of the two staff members who served as points of contact for the study, methods primarily addressed understanding PSE and services of use to pregnant mothers and infants/young children. Starting in February 2020, Tribal staff and study team members met both in person and virtually to refine instruments and methods as well as to gain an understanding of the Tribal site, the Tribal CW practices, and the context in which services were being delivered.

Prior to any study design activities, the Tribal CW director obtained Tribal Council approval for participation. An important part of approval is acknowledgment that the Tribe approves the methodology used; owns the raw, de-identified data from this study; and may use those data in any way it deems ethical and responsible according to Tribal law and precedent. The agreement also states that the study principal investigators and the sponsoring agencies will not unreasonably restrict the Tribe in an ethical use of its own property—the de-identified study data. Researchers submitted all study material and documents, including this report, to the Tribe for review and approval. The Tribal case study also was submitted to the PAODE-CW IRB of record for approval.

Methods and Instruments

The study team conducted two data collection efforts: (1) a service process mapping activity to collect data on service referrals, gaps, and needs; and (2) interviews with nine key informants to further shed light on practices and opportunities related to addressing PSE.

Service Process Mapping

To provide needed background and context for the study team and to respond to the additional study aim 5, a visual map of CW services and processes constituted the first data collection activity. Process mapping is used to identify current practices in the form of decision pathways, which depict key agencies and individuals and how their services are initiated or provided. Such maps can

illuminate key touchpoints where gaps or inconsistencies in service provision may reside (Heher & Chen, 2017; Langley et al., 2009).

The mapping process was completed through an in-person half-day meeting and three virtual meetings with the study team, three representatives of the Tribal CW agency, and a director of a key partner agency. The study team led participants through a structured series of questions designed to elicit the pathways and decision points for when pregnant mothers who are using substances come to the attention of the agency. The process maps (appendix E) describe the agency intake, voluntary services, referral partners, and (Tribal) court-ordered processes. Participants reviewed the maps and flagged the key areas for potential improvement (see intake map in appendix E for flagged areas).

Open-Ended Interviews

To address study aims 1 through 4 above, the study team conducted open-ended interviews with nine CW case workers and staff from partner agencies (e.g., behavioral health); two of these individuals also participated in process mapping activities. The Tribal consultant and team applied a semi structured interview guide that explored the following:

- Background Information about the interviewee
- Understanding of relevant needs and strengths of the Tribal community
- Services for pregnant mothers and/or prenatally exposed infants
- Facilitators and challenges to implementing services
- Recommendations for improved services
- Effect of COVID-19 on services for pregnant mothers and prenatally exposed children
- Any other additional information participants wanted to provide

The interview guide is presented in appendix D. Each question was designed to yield information that helped paint a picture of the context for identification of children at risk for prenatal exposures. In addition, questions about services provided to pregnant women who are using alcohol and/or other drugs were included. Interviewees could discuss gaps, challenges, and recommendations to improve services.

The study team determined sampling for the interviews in close consultation with the director of CW and her managers. Interviews took place between June and August 2020. Given the exploratory nature of the case study, nine individuals were deemed an adequate sample of service providers.

Methodological Note Regarding COVID-19 Pandemic

It is important to note that these interviews were completed during the COVID-19 pandemic in 2020. Red Lake Nation, as a closed reservation, closed its borders such that only Red Lake Tribal members could enter. Tribal law enforcement officers stopped all persons entering the reservation and requested proof of citizenship. Those who could not provide proof of citizenship were turned away. As the threat of the pandemic became clear in March 2020, Red Lake Nation, like many other areas, closed programs and businesses and allowed only essential staff to continue working. Many workers, including Tribal staff, were furloughed. Those who continued working did so virtually. These precautions had an effect on the method of the interviews (which were conducted virtually with collaboration video and audio software, instead of in person) and may have affected responses since practices and daily activities were being conducted virtually, which is atypical. The effect of this virtual engagement is discussed later in this report.

The nine interview participants included the following:

- Tribal CW case workers and other CW staff ($N = 4$); and
- Staff affiliated with other Tribal departments and programs ($N = 5$).

These Red Lake Nation-affiliated staff members represented a broad range of systems including law enforcement, court, public health, behavioral health, and substance abuse. Of the nine interview participants, seven were American Indian women and two were White staff members (one male and one female). All of the staff members interviewed were familiar with the context and services provided.

In addition to the pandemic, these data collection activities were conducted in a time of significant change for the agency.

- Recent changes in agency leadership in the Tribal CW program were leading to a shift in focus toward family preservation and family restoration and away from past emphases on child removal. These shifts in practice, led by the human services director and program staff and with support from the Tribal Council, are intended to lessen generational and community trauma over time.
- Recent reorganization of agency structures and practices of the Tribal CW program were transitioning child safety to a family wellness and community-based model. This effort included changing the name to reflect the community belief of “uplifting our relatives,” which became the

new name of the agency: *Ombimindwaa Gidinawemaaganinaadog* “Uplifting Our Relatives.” The agency was previously called Red Lake Family and Children Services.

Case Study Findings

Insights From Service Process Mapping

The service process mapping provided the study team and Tribal CW representatives with important insights into how children and families currently move through the Red Lake CW system when there are reports of possible PSE. The mapping process addressed aim 5 and shed light on the following:

- Current service pathways for pregnant mothers and/or prenatally exposed infants
- Gaps and barriers to implementing services

Tribal CW representatives identified factors that affect their processes and noted gaps and areas for potential improvement (see appendix E). By outlining key activities and decision points and by discussing how staff determine pathways and service referrals for these families, some key takeaway points became apparent:

- Currently, no validated assessment or decision-making tools are used to guide the intake process when there are reports of prenatal alcohol or other drug exposures.
- The participants in the study were less aware of the relevant referral partners and the process to identify children affected by PSE (e.g., with resulting conditions from PSE, such as FASDs) than those processes for serving and supporting pregnant mothers.
- The two most frequent points of referral for pregnant mothers who are using substances are (1) family preservation services (internal CW program referral); and (2) chemical dependency services (external agency referral) for supporting pregnant mothers.
- Tribal agency representatives expressed challenges with maintaining and communicating processes consistently across agencies for cases involving PSE.
- Because all births currently occur off-reservation, the Tribal CW agency and other relevant programs must follow the lead of external agencies (e.g., hospital and law enforcement)—which perhaps delays the provision of strengths-based, cultural ways of approaching maternal substance use and prenatal exposures.

These high-level insights then were further explored through the key informant interviews.

Themes From Key Informant Interviews

The nine key informants in this case study represented a diverse group of both CW staff and external partners within the Tribe. Each interview was recorded and transcribed. Two members of the study team independently coded the transcripts thematically, applying both a deductive (e.g.,

coding according to a priori constructs from study questions and objectives) and an inductive approach (e.g., identifying emergent themes newly generated from the data). Coding was then compared and discussed to develop a final list of themes that emerged from interviews with consensus from the two-person coding team. Theme categories are described below. Specific themes within categories reflect multiple mentions by informants (at least two different informants):

- Understanding of relevant needs and strengths of the Tribal community
- Services for pregnant mothers and/or prenatally exposed infants
- Facilitators to implementing services
- Challenges to implementing services
- Recommendations for improved services
- Effect of COVID-19 on services for pregnant mothers and prenatally exposed children

Understanding of Relevant Needs and Strengths of the Tribal Community

The interviewees had a deep knowledge about experiences of pregnant mothers in Red Lake. Also, because these interviewees represented different programs, the team was able to gain an overall system view of programs and needs.

“We adapt, adjust, and overcome. . . I would say, you know, the direction we’re moving in is extremely positive, and I think over the next couple of years, we’ll see far more successes than we will failures.” — Interviewee

Key Themes

- Staff expressed a deep personal passion and commitment to supporting mothers struggling with substance use disorders in Red Lake because they understand the importance of having healthy Tribal citizens.
- Providers shared powerful examples of mothers recovering from substance misuse and maintaining or regaining custody of their children despite barriers.
- All nine participants indicated that they think heroin, methamphetamine, and other opioids are the most frequent substances used by pregnant mothers. Although alcohol is used, participants perceived it to be far less prevalent than other drugs. One participant with firsthand access to toxicology reports supported this perception by noting, “[W]ith the moms that we’re seeing over the past, for sure, 2 to almost 3 years, I mean, it is almost always heroin, fentanyl, or some kind of opioid.” The potential for polysubstance use was not specifically raised in these interviews.

“From what I know, methamphetamine is, like, the number one and then heroin the second one because [users] usually will start with heroin, and it becomes too expensive and access prohibitive. So, meth has become the primary, then heroin, and then alcohol, whereas probably 10 years ago, alcohol was the biggest concern.” — Interviewee

Services for Pregnant Mothers and/or Prenatally Exposed Infants

As a result of the shift in practice within the Tribe’s human services (child welfare as well as behavioral health and other service providers) to emphasize family preservation and relationship-based services, staff members are successfully supporting pregnant women with services that mitigate risk and assist mothers to maintain or regain custody of their children. Successful services include relationship development and compassionate ways of working with families, all of whom are perceived as “relatives” to those providing services. This thinking is in line with the traditional community understanding of relationship, which is reflected in the agency’s new name “Uplifting Our Relatives.”

“And so I think through our actions and through our diversion of out-of-home placements and into family preservation . . . I think that family members and community members will . . . learn to trust us.” — Interviewee

Key Themes

- A range of substance abuse programs are available to pregnant mothers to support them to safely stop or reduce usage. These offerings include outpatient programs, medically assisted treatment options, and health care.
- Red Lake CW seeks to provide voluntary services, when possible, to pregnant women who use substances.
- Social workers can assist with issues related to housing, transportation, food resources, and other resources that pregnant women may need.

“How can we set up a system where the baby isn’t removed, but the baby and mom are placed in a way that we can ensure safety for that baby and that bonding can happen? . . . [W]rapping her around with services that are paying attention to her spiritually, emotionally, physically, I think, is how I would say let’s start to rethink about safety.” — Interviewee

- Tribal social workers take active measures to support pregnant women to maintain custody of their children whenever safely possible. If a child is removed, the goal is to place the child with relatives while the mother is assisted to regain her health, so that she can safely parent. Extended family relatives have traditionally stepped in as caregivers when parents need assistance. This established way of being is now supported by Tribal systems as best practice to retain the culture, identity, and health of children and communities.
 - When women do encounter the court system, judges tend to encourage women to seek treatment. The goal is for the court to only use an involuntary civil commitment or “72-hour” as a last resort to and to shift from punitive ways of working with pregnant women, such as incarceration, to using a healing and wellness approach through referrals to Tribal programs.
 - Most Tribal programs employ culture-based programming, including the use of traditional ceremonies, healers, and medicines. For example, teaching women how to smudge (burn) sage or to drink cedar tea. These cultural practices can help reinforce for the pregnant woman a connection to her culture and develop a broader network of support for her and her family.
-

“[W]e are focusing more on... our value system, the Seven Grandfather Teachings . . . incorporating our spirituality, our ceremony.” — Interviewee

Facilitators to Implementing Services

During the interviews, it became clear that the Red Lake Nation has significant strengths that it draws upon to provide holistic, supportive services to pregnant mothers who are struggling with substance abuse.

I think that we have a real strong leadership at the government level and then also at the, at our, organizational level. And so those, our leaders, are our strengths because they are supportive of working with mothers who are, you know, struggling with drug use in a more supportive, positive way—more of a strength-based way. And so, I think that allows for us to transform our work so that it isn't punitive and so that we're not disrupting those bonds and those family ties."

— Interviewee

Key Themes

- Tribal Council and agency leadership was noted as a critical strength that has shifted the approach from a punitive response to PSE to a supportive, healing one.
 - Every interviewee reported that the people of Red Lake and their culture and traditions are a source of strength and support that is drawn on in service delivery. The interviewees clearly saw the culturally centered, strengths-based approach as being the best way to support individual recovery from substance use.
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"There is that strong sense of community or family, which I think is beautiful and wonderful." — Interviewee

- All interviewees spoke about their personal commitment and passion to serve Red Lake members and described a strong dedication and hopefulness for success. Most of them said they never give up on substance-using pregnant women—even if the woman herself is not ready to change. As one interviewee expressed, "We'll be here when she is ready."
- The close-knit community is a source of pride and strength noted by all interviewees. At the same time, this closeness can present challenges for those who want to recover but have a lot of people around them who are still using and can provide easy access to alcohol and other drugs.
- Interviewees noted that they felt *Ombimindwaa Gidinawemaaganinaadog*: Red Lake Family and Children Services is well regarded by partners, including substance abuse providers, law enforcement, and the courts, and is seen as an important and effective support for pregnant women. This is increasingly true with organizational shifts toward family support and preservation and away from child removal. One interviewee noted that women are more inclined to seek support if they know that they will not lose their child into the CW system.

“But I do think what makes the program successful is creating that community around these moms, getting them to buy-in, and a lot of time that’s not directly going up against their use. Just being able to take a different way kind of around the abuse or use.” — Interviewee

Challenges to Implementing Services

Interviewees shared many challenges to implementing services. Some discussed the geography—that Red Lake is very rural and removed from important resources and services. Like many rural and reservation agencies, Red Lake faces considerable challenges in hiring trained staff due to its location and lack of housing on the reservation, and so has had to creatively blend funding sources to develop and maintain services. Red Lake has secured multiple sources of financial support including grants, state and federal contracts, and the steadfast support of the Tribal Council.

“Transportation, housing, childcare—those are, like, the three big issues. You know, we live in a very rural area with high unemployment and high poverty. So, jobs, too, would be another issue—finding sustainable jobs that provide a living wage.” — Interviewee

Key Themes

- Lack of consistent funding means that most programs provide services through short-term grants, resulting in some important efforts not being sustained. One interviewee described a partnership with the local hospital for supporting prenatal mothers that no longer exists. Another interviewee external to the CW program noted that one important goal is “to have sufficient funding, and to not have funding pending and not come in, because [Red Lake has] had that. The funding was supposed to come in, it doesn’t come in, and you can’t pay the people, you can’t move forward.”
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“Red Lake does not deliver any babies at Red Lake. And so that becomes an issue because then they can go to Bemidji for their prenatal care, and we don’t necessarily know whether they are substance abusing or not.” — Interviewee

- System barriers such as lack of integrated services, inconsistent communication, absence of a centralized list of services for pregnant women with substance use issues, and challenges with confidentiality between programs can lead to inconsistent supports for women.
- All Red Lake pregnant women deliver off the reservation because there is no medical facility for births. As a result, sometimes Tribal local programs don't know about a substance-exposed infant until after the birth, when they are contacted by the hospital or law enforcement.
- Lack of key services and resources (housing, birthing facilities, in-patient treatment, evaluation facilities for children with suspected FASDs, screening and diagnosis, midwifery, doulas, etc.) on the reservation means that many supports aren't easily accessible and that to use these services individuals must access programs outside of their culture and community that may not be culturally supportive. Inpatient and other kinds of treatment are provided off the reservation, and there is a lack of support for women leaving treatment when they return home to the reservation and transition to local Tribal supports that could help them stay sober.

“The challenges, I believe, are. . . the motivation and the desire from the mother herself to really work on her sobriety and her recovery. . . We can have all these wonderful resources and services, but if [the women are] not ready to receive them, then it’s gonna be. . . unsuccessful.” — Interviewee

- Six staff working directly with caregivers noted that no matter how effective services are, an individual must be receptive to receiving the support and “want to” heal. Those interviewed noted that persistence and nonjudgmental approaches on the part of service providers were key to building motivation.
- Information and services exist for pregnant caregivers who are using substances. However, there is a lack of information and resources to identify the short- and long-term effects of alcohol and drugs among children, and services for these children.

Conclusions and Recommendations for Improved Services

Interviewees generously offered recommendations for improving communication and services, some of which are described in appendix E. The key themes of their recommendations are below.

“We always know exactly what we’re doing within each of our organizations. . . but that’s not always communicated to the people who need the service. And so, I think. . . developing a more public communication loop. . . a spot where everyone knows if you want service in the community, you go here.” — Interviewee

Key Themes

- It is important to develop ways to encourage and support communication between systems and services providers, both on- and off-reservation, who are serving women within Red Lake.
- There is a need for improved data on the number of pregnant caregivers with alcohol and drug use issues and children exposed to substances.
- There is a need to develop centralized services for pregnant women with alcohol and other drug use issues on the reservation.

“It would be nice to have, like, a sober community or a sober neighborhood or even a sober apartment complex where these moms and these families can go to.”

— Interviewee

- Tribal agencies can work on enhancing timely and efficient identification of prenatally exposed infants and children as well as follow-up support systems to assist them into adulthood both at home and in the school system.
- There is a need for a long-term treatment and aftercare program with housing for mothers and children on reservation.
- Tribal leadership, community members, and service providers need training about PSE and the long-term effect of such exposure on children.
- Interviewees suggested building on the many strengths that were identified to expand and improve services. One interviewee suggested a greater emphasis on alternative birthing services, such as a midwifery program that could be offered through the Tribal college.

“I think the other thing is that we really need to make sure that our community understands how important it is to not be afraid to reach out for support and services when they are substance abusing and they become pregnant.” — Interviewee

Effect of COVID-19 on Services for Pregnant Mothers and Prenatally Exposed Children

The COVID-19 pandemic has affected Red Lake in much the same way as it has other communities. Although life on the reservation has inherent challenges, quick action taken by Tribal Leaders, the site’s geographic isolation, and the closed nature of this reservation community offered additional layers of protection from the pandemic.

“I see it’s much more fragmented with their service delivery right now. Siloed.”

— Interviewee

Key Themes

- All programs continued to provide some level of service. Some programs had reduced staff. Most providers were working from a distance when feasible. A few systems continued to engage in limited face-to-face services (for example, providing transportation to a mother and her newborn infant home from the hospital).
- All interviewees reported feeling like services were more fractured because of the pandemic, especially between systems.
- Three interviewees reported a need to communicate even more frequently during the pandemic which resulted in these individuals working more closely together. These individuals also noted that they had more time since they didn’t spend as much time traveling to see families; some programs felt that the pandemic had enhanced lines of communication and strengthened partnerships.
- Informants across programs noted that, overall, COVID-19 has had a negative effect on service availability for substance-using pregnant women, who experienced more isolation during lockdown than before the pandemic.

V. Opportunities for *Ombimindwaa Gidinawemaaganinaadog* “*Uplifting Our Relatives*” (Red Lake Family and Children Services)

The research team and *Ombimindwaa Gidinawemaaganinaadog* plan to continue their collaboration by sharing case study findings with relevant community and agency partners and co-developing PSE-focused training or tools. Process mapping, interviews, and internal discussions of this case study brought to light several opportunities for serving pregnant women and children who have been prenatally exposed to substances at Red Lake Nation. Red Lake has an opportunity to do the following:

- Develop and implement processes and tools to support staff in exploring potential exposures and possible effects on children and families, ensuring identification and documentation of exposures at key points of service delivery including during intake processes.
- Develop a clearer understanding of supports for children who have been exposed prenatally to and affected by substances.
- Strengthen relationships with Red Lake Public Health and others who screen for substance exposure (both among women and children) and develop a process for referral to family as well as child supports that can be provided locally.
- Provide information and clear processes for off-reservation providers such as local hospitals for notifying Tribal service providers when substance use disorders are suspected. Further explore caregiver interventions that promote healing and decrease shame, stigma, and bias for those struggling with substance abuse.
- Continue to serve young mothers and pregnant women within Red Lake Nation instead of off-reservation.
 - One recently developed program that is being implemented is *Obaasheng Treatment Program*—an inpatient, on-reservation treatment facility that has agreed to enroll mothers and their babies to prevent separation.
 - Another key future partnership may be with the *Family Spirit* home visiting program, an evidence-based intervention focused on supporting first-time mothers. Family Spirit employs Native community members as paraprofessionals and is a program where Tribal elders and mothers bring prenatal and postnatal resources to new mothers to foster connections and support.

- Continue efforts to create a location and a strategy to provide families with a “one-stop shop” or more coordinated services for help with addiction and recovery with a continuum-of-care model. This approach could include a virtual hub for service integration.
- Update the Tribal legal code to include a family preservation section that clearly outlines a family-preservation approach for serving caregivers who are using alcohol or other substances. A workgroup is currently updating the code.
- Improve the program’s ability to understand the scope of prenatal alcohol and other drug exposure through clear and consistent data collection and reporting.
- Seek out intergenerational perspectives to incorporate advice or wisdom from elders about how to keep children safe, help families heal, and expand community connections.
- Continue and expand cross-disciplinary work to improve the development and implementation of strengths-based services that draw from culture and traditions.

VI. Discussion and Implications

Through a collaborative research effort, *Ombimindwaa Gidinawemaaganinaadog “Uplifting Our Relatives”* (Red Lake Family and Children Services) provided a unique look into one Tribal Nation’s approach to serving families affected by prenatal exposure to alcohol and other substances. Key informants within the Tribe’s CW program and community partners described services and identified needs and strengths of the program as well as recommendations for improving practice. While the program and Tribe are unique in approach, history, and current context, many of the insights shared by Red Lake reflected what was shared during the multi-Tribal listening sessions from Tribal stakeholders (appendix C). Caution is warranted in drawing broad conclusions from one case study in a single Tribe and generalizing to other Tribes. However, taken together, the lessons learned through listening sessions, the process mapping, and case study interviews warrant considerations for Tribal CW programs and federal agencies and suggest areas for future exploration and study.

Implications for Tribal Child Welfare Programs

Red Lake Nation is exercising Tribal sovereignty by creating a Tribally based program to serve its relatives through supportive services rather than child removal and punitive treatment of parents. The work at Red Lake Nation and insights from listening sessions speak to the importance of the following:

Tribal and Agency Leadership and Support

- Encourage support from Tribal leadership to change ways of practice within CW to a decolonized approach that builds on cultural values and strengths, including changes to Tribal legal codes to support family preservation.
- Mobilize commitment and tenacious leadership within the Tribal CW agency to make organizational changes and to assert Tribal sovereignty in serving families and children.

Clear and Consistent Practice Built on an Ethic of Family Preservation

- Develop policies and practices that support family preservation through active efforts with all families that include cultural approaches to healing.
- Place children with extended family when removal is necessary. A central goal of these placements should be provision of services to address substance misuse so that family reunification can occur as soon as possible.

- Consider PSE cases specifically as a program and develop a practice map to clarify key touchpoints for identification as well as pathways for providing prevention and intervention services for families, infants, and children.

Supporting a Well-Trained and Skilled Tribal CW Workforce

- Train Tribal staff members to understand and utilize a Tribal practice model of interacting and responding to families in need as one would assist a relative. This should include utilizing a “never give up” attitude of hope for all families.
- Invest in Tribal staff by supporting continued education through university degree programs and continuing education, especially Tribally informed training.
- Ensure that training addresses issues of PSE, including how to recognize risk and effects on the child and how to sensitively explore substance use with families. This effort may be particularly important for alcohol and polysubstance use involving alcohol, which can result in long-term neurobehavioral and physical effects on the child.
- Training also could build knowledge and implementation of Tribal resources to support children and families affected by alcohol exposures. Participants in listening sessions discussed that prenatal alcohol exposure or FASDs is frequently overlooked as a medical issue in CW decisions and early education screening for the purpose of providing supports to parents and children. For example, they noted that children in this region are entering kindergarten with alcohol and other drug exposures that have been not previously acknowledged or addressed.

Building an Integrated System of Providers and Community Members

- Create a work climate of treating colleagues as relatives and supporting one another based in cultural values and teachings.
- Improve communication and the inclusion of all voices (including elders and others with lived experience).
- Explore stronger collaboration between systems and potential referrals to public health, early childhood and early intervention, local hospitals, and other agencies to support families and children (e.g., cross-system collaboration with agencies devoted to CW, education, police, substance abuse, the courts, behavioral health, public health).

Implications for Federal Agencies

It is important to acknowledge that all Tribes are different in size, geography, and culture. There is no “one size fits all” when working with Tribal Nations. It is best practice to approach Tribes with humility and the spirit of being a responsive partner.

- Honor Tribal sovereignty and culture. Listen and respect the voices of Tribal Nations because they are most knowledgeable about their community needs, resources, and values.
- Insofar as possible, support Tribes to develop resources and implement processes and programs that are based in their traditional knowledge and wisdom, rather than requiring strict adherence to Western models.
 - Tribal stakeholders discussed how Tribes have ways to provide prenatal care and to care for the mother and child before and after birth that differ from Western traditions, and these Tribal ways could be fiscally supported, studied, and disseminated beyond Tribal Nations. Stakeholders mentioned examples such as the *Family Spirit* home-visiting program.
- Engage in Tribally informed collaborative research to explore how to serve indigenous children and families who are affected by PSE. This effort should include traditional ways of seeing children who have been affected as sacred beings who have gifts to offer the community, rather than as children in need of services.
 - Tribal stakeholders discussed the potential positive effect of having Tribal doulas present at birth to help to create cultural and historical ceremony and celebration of bringing a sacred being into the world, in particular for those mothers who may be struggling with substance use.
- Support training and tool development focused on supporting Tribal service providers in identifying and supporting children who have been prenatally exposed.
- Support capacity building around data collection and use within Tribal CW programs. Both within the case study and in listening sessions, participants noted a need for better data and to better understand the data they do have as they relate to PSE.
- Consider collaborating with and investing in Tribes to further explore, develop, implement, and evaluate strategies that are described above in Implications for Tribal Child Welfare Programs and Opportunities for Red Lake Nation. This ensures that such a collaboration also embodies the critical components of honoring Tribal sovereignty, respecting cultural and traditional wisdom, and approaching with cultural humility.

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VIII. Appendices

Appendix A. Glossary of Terms and Definitions

American Indian and Alaska Native (AI/AN): An individual who self-identifies as descending from any of the indigenous peoples of the United States.

AFCARS: The Adoption and Foster Care Analysis and Reporting System collects case-level information from state and tribal title IV-E agencies on all children in foster care and those who have been adopted with title IV-E agency involvement.⁷

Caregiver: Caregivers discussed in this report include foster parents, kinship caregivers, foster-to-adopt parents, and adoptive parents.

Case study: A research method focused on understanding a phenomenon through exploration of a single subject (individual, agency, concept, etc.). The goal of a case study is often depth of understanding, not generalizability.

Child welfare (CW): For purposes of this report, involvement in CW is defined broadly as any individual who has documented contact with CW services. This could involve those receiving adoption or foster care services as well as individuals with brief contact for support or other voluntary services.

Children involved with child welfare (CW): Children from families with an open CW case that may be receiving services in the home of their original families or may be placed out of home and under the custody of the CW system.

FASDs: Fetal alcohol spectrum disorders is an umbrella term that encompasses several diagnostic categories (not a clinical diagnosis itself) related to the adverse effects resulting from in utero exposure to alcohol, including fetal alcohol syndrome (FAS), partial fetal alcohol syndrome (pFAS), alcohol-related neurodevelopmental disorder (ARND), alcohol-related birth defects (ARBD), and finally, Neurobehavioral Disorder Associated with Prenatal Alcohol Exposure (ND-PAE), a mental

⁷ U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. (2021, May 24). *Data and research: AFCARS*. <https://www.acf.hhs.gov/cb/data-research/adoption-fostercare>

health diagnosis added to the American Psychiatric Association Diagnostic and Statistical Manual (5th edition) in 2013.⁸

Foster child: A child raised by someone who is not its biological or adoptive parent.

Indian Child Welfare Act (ICWA): Legislation passed in 1978 which guides policy and practice for AI/AN children and families “[t]o protect the best interest of Indian Children and to promote the stability and security of Indian Tribes and families by the establishment of minimum federal standards for the removal of Indian children and placement of such children in homes which will reflect the unique values of Indian culture...” (25 U.S.C. 1902). ICWA requires “active efforts” to prevent out-of-home placement, and in the event of a placement, to reunify children and their families.

In-home child welfare services: The target population for CW in home services is families who have come to the attention of the public CW agency because of alleged child maltreatment. In general, families receiving in-home services have an open case with the agency, whether the alleged maltreatment has been substantiated through an investigative process. The goals of in-home services are to stabilize the family and ensure the safety and well-being of the children in the home to prevent placement or re-entry into foster care.⁹

NAS: Neonatal abstinence syndrome is a result of the sudden discontinuation of fetal exposure to substances that were used or abused by the mother during pregnancy.¹⁰

NCANDS: The National Child Abuse and Neglect Data System is a voluntary data collection system that gathers information from all 50 states, the District of Columbia, and Puerto Rico about reports of child abuse and neglect. NCANDS was established in response to the Child Abuse Prevention and Treatment Act of 1988. The data are used to examine trends in child abuse and neglect across the country, and key findings are published in the Children’s Bureau’s Child Welfare Outcomes Reports to Congress and annual Child Maltreatment reports.¹¹

⁸ American Academy of Pediatrics, FASD Program. (n.d.) *Common Definitions*. Retrieved July 2, 2021 from <https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/fetal-alcohol-spectrum-disorders-toolkit/Pages/Common-Definitions.aspx>

⁹ D’Aunno, L.E., Boel-Studt, S., & Landsman, M.J. (2014). Evidence-based elements of child welfare in-home services,” *Journal of Family Strengths*, 14(1), 1-44. Available at: <https://digitalcommons.library.tmc.edu/jfs/vol14/iss1/3>

¹⁰ Kocherlakota P. (2014). *Neonatal abstinence syndrome*. NIH National Library of Medicine. Retrieved July 2, 2021 from <https://pubmed.ncbi.nlm.nih.gov/25070299/>

¹¹ U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau. (2021, July 1). *Reporting systems: NCANDS*. <https://www.acf.hhs.gov/cb/research-data-technology/reporting-systems/ncands>

Opioids: Opioids are a class of drugs used to reduce pain. Common types of prescription opioids are oxycodone (OxyContin), hydrocodone (Vicodin), morphine, and methadone. Heroin is an illegal opioid.¹²

PAE: Prenatal alcohol exposure occurs when a woman drinks any amount of alcohol while pregnant.

PSE: Prenatal substance exposure occurs when a woman uses drugs or drinks alcohol during pregnancy. Drugs may be prescription medications or illegal substances, and include nicotine, alcohol, marijuana, opioids, cocaine, and methamphetamine, among others. Although PSE could include the commonly used nicotine as well as other less common toxic substances, nicotine is not addressed in this report.

Tribal Council: The governing body of a tribal nation.

Tribe: For purposes of this report, a tribe is defined as one of the 574 federally recognized tribal nations in the United States. These nations hold a unique, sovereign status and relationship with the United States government¹³.

¹² Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. (2021, March 16). *Opioid basics*. <https://www.cdc.gov/opioids/basics/index.html>

¹³ National Congress of American Indians (2020). *Tribal nations and the United States: An introduction*. Retrieved September 8, 2021 from: https://www.ncai.org/tribalnations/introduction/Indian_Country_101_Updated_February_2019.pdf

Appendix B. Tribal Expert Consultants and Tribal Stakeholders Who Informed the Study

Tribal Expert Consultants

Dolores Subia BigFoot, Ph.D.

Northern Cheyenne Tribe, member

Professor

University of Oklahoma Health Sciences Center

Center on Child Abuse and Neglect

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University of Minnesota Duluth

Anita Fineday, J.D.

White Earth Band of Ojibwe, member

Managing Director

Indian Child Welfare Programs

Casey Family Programs

Crystal (Crys) O’Grady, J.D.

Cherokee

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National Indian Child Welfare Association (NICWA)

Michelle Sarche, Ph.D.

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Associate Professor

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Community and Behavioral Health

Centers for American Indian and Alaska Native Health

Puneet Sahota, M.D., Ph.D.

Research Director

National Indian Child Welfare Association (NICWA)

Additional Stakeholders Who Contributed to the Tribal Study

Autumn Ambroday

Leech Lake Band of Ojibwe, member

Psychiatrist, White Earth Nation

Primary Physician, Urban Maternal Mitigation and Outreach Services

Kathy Deserly

Co-Director, Children's Bureau's Capacity Building Center for Tribes

Kimberly Fowler

Vice President, Technical Assistance and Research Center

National Council of Urban Indian Health

Marilyn Zimmerman

Director, National Native American Children's Trauma Center

Institute for Educational Research, University of Montana

Appendix C. Listening Sessions With Tribal Communities

The Tribal Consultant, Dr. Priscilla Day (member of Leech Lake Tribe and Professor of social work at the University of Minnesota, Duluth), convened two meetings on reservation sites with Tribal community leaders and service providers to participate in “listening sessions” with Children’s Bureau and study team representatives.

Nineteen participants attended a three-hour Tribal listening session in September 2018. Participants included representatives of five Tribal communities reflecting the following roles: Tribal council members and elders, Tribal child welfare agency directors and staff, ICWA managers, Tribal liaisons with state social service agencies, representatives from court and legal organizations including Tribal child welfare attorneys and judges.

Seven participants attended a 75-minute listening session in January 2019. The meeting was held with an advisory group to state social service agencies, which included representatives from multiple Tribes, program managers, and an urban health service organization. Two of the participants in this meeting also participated in the September 2018 listening session.

Dr. Priscilla Day facilitated each discussion. Open-ended questions were posed to elicit perceptions about current Tribal processes as well as strengths-based and promising practices related to identifying and caring for Tribal children and families affected by prenatal substance exposure (PSE). Needs and challenges in this area also were discussed. The sessions also explored perspectives on how to successfully engage Tribal communities in the proposed research focused on children with prenatal exposures and how to design the study to be of value to Tribes as well as the Children’s Bureau.

To ensure open and authentic engagement and the building of trusting relationships with the study team, these sessions were designated as information gathering and not as formal data collection. Notes from the meetings were organized into general topics that align with the open-ended discussion questions. These topics are listed below, each followed by examples of Tribal participants’ perceptions and observations (aggregated across participants) on the topic:

1. Critical issues in the State/Region related to substance misuse and Tribal child welfare

- Severe substance use related issues are increasing in Tribal communities in the State.
- Families may not be ready to admit substance use or PSE when working with child welfare for fear of child removal.
- Alcohol, including prenatal alcohol exposure or fetal alcohol spectrum disorder (FASD), is frequently overlooked as a medical issue in child welfare decisions and early education

screening for the purpose of providing supports to parents and children. For example, children are entering kindergarten with alcohol and other drug exposures that have been not previously acknowledged or addressed.

2. Tribal-State relationships regarding child welfare are complicated

- Good relationships between state child welfare systems and Tribes are important but the relationship is often complicated due to variety of issues including when states are noncompliant with the Indian Child Welfare Act (ICWA).¹⁴
- Definitions of child safety, permanency, and well-being are different for Tribes—Tribes should be able to define those based on Tribal values through the exercise of their sovereignty.
- State child welfare language to uphold “best interests of the child” is not followed when Tribal children are removed from families to non-native placements. The participants noted a growing evidence showing the lifetime trauma caused by child removal instead of family preservation.
- Disproportionality of Tribal children in State child welfare system is a significant concern.
- Tribes need to be supported by States in their work to keep Tribal children in the home while providing families resources and support.

3. Historical (intergenerational) trauma is important to understand when examining Tribal child welfare and substance misuse

- History of policies detrimental to Tribes and Tribal populations continues to resonate in Tribal communities.
- Need for acknowledgement of intergenerational and personal trauma by all systems serving Tribal children and families.
- One Tribal community member said, “We need real deep intergenerational healing...historically it is the bottom line for addiction.”
- The Truth, Healing and Reconciliation models can lead to healing.¹⁵

4. Tribal strengths and Tribal approaches to address PSE are often overlooked by outsiders

- Every Tribal Nation knows how to take care of themselves within their own communities but often lack resources.
- Tribes have their own teachings and ways that are passed down. For example, Tribes have ways to provide care for the mother and child before and after birth that are different from

¹⁴ See <https://Tribalinformationexchange.org/index.php/icwa/> and <https://Tribalinformationexchange.org/index.php/icwa/> for discussion of state non-compliance with ICWA and presentation of data addressing disproportionality of Tribal children in state child welfare systems.

¹⁵ A goal of the Truth and Reconciliation model is to give voice to Tribal people who have had experiences with state child welfare. See Maine Wabanaki-State Truth and Reconciliation Commission (Wikipedia): https://en.wikipedia.org/wiki/Maine_Wabanaki-State_Truth_and_Reconciliation_Commission

Western traditions. Traditional ways of knowing are carried from Tribal ancestors and should be given validity in service provision.

- Successful programs in Tribal communities are steeped in Tribal cultures. Culturally based programs are believed to work best.¹⁶ Participants mentioned programs and recent efforts as examples:
 - *Family Spirit* home-visiting mental health promotion and substance abuse prevention intervention for American Indian teenage mothers that employs Native community members as paraprofessionals
 - Tribal examples of collaborating across systems to create a center to address substance misuse among families (including pregnant and parenting mothers) applying cultural ways
 - Tribal doulas being present at birth and helping to create cultural and historical ceremony and celebration of bringing a sacred being into the world
 - Tribal Elders and mothers bringing baskets of prenatal and post-natal resources and products (e.g., diapers, food) to new mothers to fostering cultural connection and support
- Tribes have culturally specific teachings about ways to keep babies safe. Tribal Nations treat children as sacred beings and have many practices, teachings, and ceremonies to protect and nurture children to become the persons they are meant to be to fulfill their purpose on earth.
- Tribal teachings are there to promote healthy coping.
- Harm reduction methods could be helpful because currently parents who use substances are reluctant to seek prenatal care because they are concerned about losing their children to the child welfare system in which Tribal children are over-represented.
- Tribes have natural medicines that can be used instead of mainstream medications such as Ritalin, Prozac, Risperdal, etc. For example, some Tribes use cedar to make a healing tea or other natural medicines that can help to calm oneself, or they use smudging with sage to help center one's thoughts.
- Informal, community support systems are needed, beyond those offered by programs; "like support for using our traditional ceremonies and medicines."

5. Socioeconomic factors affect positive outcomes for children and families in Tribal communities

¹⁶ Although not specifically mentioned by participants, this linked report speaks to the importance of Tribal cultural teachings and ways in addressing prenatal substance exposure and presents program examples:

https://ncsacw.samhsa.gov/files/tapping_Tribal_wisdom_508.pdf. See also https://preventionsolutions.edc.org/sites/default/files/attachments/Culturally-Informed-Programs-to-Reduce-Substance-Misuse-and-Promote-Mental-Health-in-American-Indian-and-Alaska-Native-Populations_0.pdf

- Housing shortages continue to be a critical issue in Tribal communities and lack of housing can impede reunifications. Having stable housing is often a condition of family reunification and the lack of adequate housing on reservations continues to plague Tribal families.
- Lack of money affects access to food and good nutrition. Education about nutrition is needed as well as Tribal ways of “how to subsist and survive”. Food insecurity often is exacerbated on reservations. Colonization led to the disruption of traditional ways to hunt and gather food. Many reservations are “food deserts” with not only a lack of nutritional food options but also very high prices since food has to be transported to remote geographical locations.

6. Tribal needs to further enhance Tribal child welfare approaches to support families affected by PSE

- Each Tribe has the knowledge and answers to address their community’s needs, but funds are often lacking for fiscal support to set up Tribal programs that address those needs.
- Tribes need good data systems and increased data capacity—without data systems. Tribes are challenged by the burden of tracking and reporting data required by grants and have less support for identifying data that they would find more meaningful.
- Federal and State dollars to develop innovation in cross system data systems with Tribes could fill a major need.

7. Suggestions for working with Tribes to develop collaborative study

- It is important to understand and respect Tribal sovereignty, which is the cornerstone of understanding Tribes’ relationship with federal and state governments.
- Research should be driven by tribally defined priorities.
- Tribal traditions and teachings related to exposure to prenatal alcohol and other drugs must be recognized and acknowledged in research.
- Demonstration and research projects are needed that further the work of documenting PSE and prenatal alcohol exposure Tribal practices across systems to highlight best practices and understand gaps.
- Presentations, publications, and other means of dissemination about best Tribal practices are needed.

Appendix D. Discussion Questions for Semi Structured Interviews

Background Information

1. Can you share how you are involved in the work of addressing prenatal substance exposure?

Probe for:

- Respondents' length of involvement
- Purpose of the service you provide

Understanding of Relevant Needs and Strengths of the Tribal Site Community

2. What are the most pressing needs facing the Red Lake community when it comes to prenatal substance exposure?

Probe for:

- Relevance to identification; treatment; prevention
 - Prevalence of particular substances (ask about alcohol if it isn't spontaneously mentioned)
3. What do you see as some of the most critical strengths of the Red Lake community that can be drawn on to address those needs?

Probe for:

- Key community or cultural values and their role in guiding relevant work
- Informal community resources available
- Relevant services

Services for Pregnant Mothers and/or Prenatally Exposed Infants

4. Can you describe the services your agency/department provides for pregnant mothers and/or prenatally exposed infants?

Probe for:

- Description of the process of how participants come to the program
- Description of participation in interviewee's program

- Role in identification of PSE
 - Types of substances (probe for alcohol)
 - Referral partners
 - Desired outcomes
5. [For non-CW staff] How would you describe your agency's relationship to the Tribal child welfare program

Probe for:

- Collaboration
 - Challenges
 - Opportunities for future partnership
6. [For CW staff] How would you describe your program's relationship with key partners in addressing prenatal substance exposure?

Probe for:

- Collaboration
- Challenges
- Opportunities for future partnership

Facilitators and Challenges to Implementing Services

7. What are some successes you have had addressing prenatal substance exposure?

Probe for:

- Individual successes and program successes
 - By type of substance if relevant
- Successes related to implementing program services

8. What are some challenges you have encountered in addressing prenatal substance exposure?

Probe for:

- Policies
- Funding/lack of resources
- Organization culture
- Communication
- Territorial/role confusion issues

- Documentation and monitoring of PSE and services
 - COVID-19 pandemic effects on service provision to address prenatal substance exposure
 - Changing community needs related to prenatal substance exposure due to COVID
9. Can you describe how your program collaborates with others in addressing prenatal substance exposure?

Probe for:

- What typically happens?
- How successful are these collaborations?
- Describe a successful collaboration
- Describe barriers to collaboration

Recommendations for Improved Services

10. What recommendations would you offer for improving services for pregnant mothers and prenatally exposed children?

Probe for:

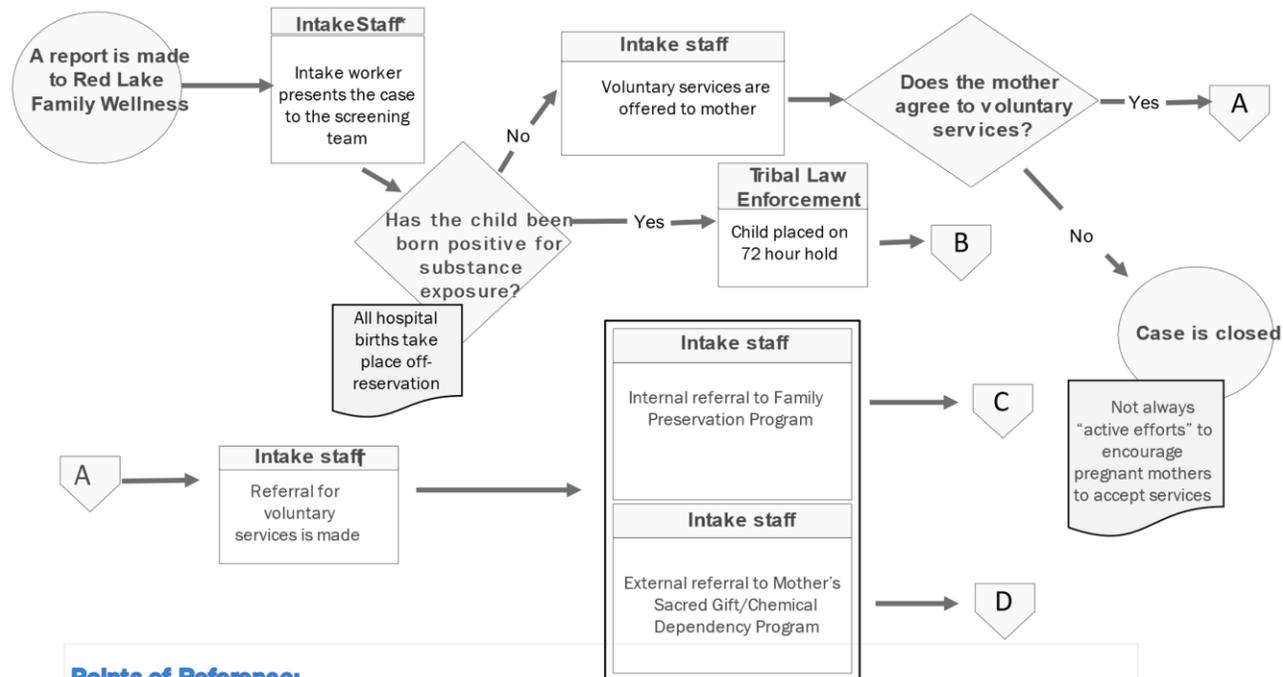
- Recommendations for their own agency
- Recommendations for the child welfare agency (if different; probe about identification of PSE and needs)
- Recommendations for the community
- Training, staffing, better collaboration, resources, policy, etc.

Additional Information

11. Anything else you would like to add?

Appendix E. Service Process Maps Demonstrating Pathways and Points of Intervention Related to Prenatal Substance Exposures

Intake Process



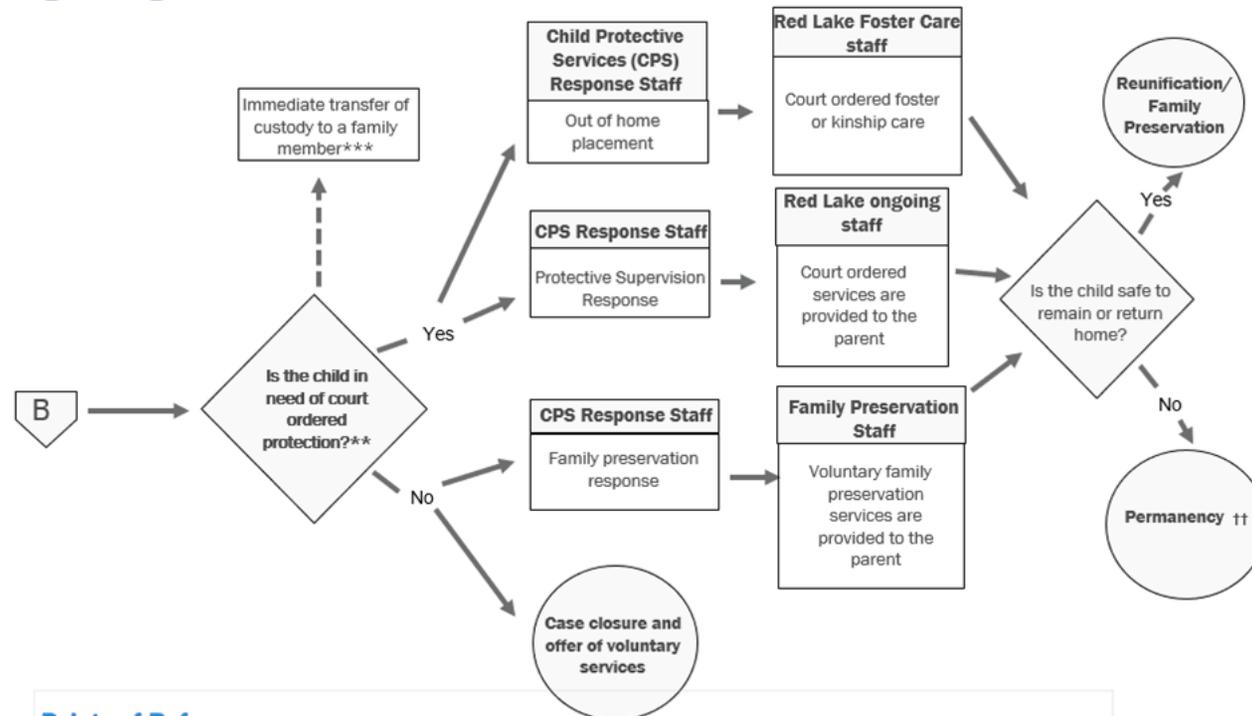
Points of Reference:

* All cases involving a pregnant mother are "screened out" for maltreatment because the child is not born

† Two voluntary referrals are always made but other potential referral partners include:

Red Lake Medication Assisted Recovery Services; First Steps to Healthy Babies; Gii-Waa-Din Treatment Center; Behavioral Health; Public Health Nursing; Juvenile Healing to Wellness Court; Family Spirit Home Visiting; CD Pregnant Women and Families Program

Ongoing Court Involvement



Points of Reference:

** Key decision point for services: What type of response is recommended at EPC (72 hour hold hearing); Key decision point for caregiver: How do they plea in admit/deny hearing (8 day hearing)?

*** Immediate transfer of custody involves little to no court involvement and requires permission from the mother

†† Family placements are sought in permanency cases

Voluntary Services Process

