

# Exploring Indian Child Welfare Act implementation and case outcomes

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## Abstract

Despite the passage of the Indian Child Welfare Act (ICWA) more than four decades ago, little is known about how or how well it is being implemented into practice by the state courts or how implementation may be related to improved outcomes for Indian children and families. This study explores how ICWA implementation in five state court sites is related to case outcomes. One hundred and fifty-one ICWA cases were reviewed for factors including active efforts findings, tribal presence at hearings, use of qualified expert witness (QEW) testimony, notice, and confirmation of ICWA status. Results are mixed. Specific ICWA implementation measures and aggregate measures were mostly not related to outcomes, but early implementation, such as having the tribe present at the first hearing, did appear related to timely permanency. Implications of these findings and future research directions are discussed.

## KEY WORDS

American Indian/Alaska native (AI/AN), foster care, implementation, Indian child welfare act, reunification

## INTRODUCTION

The Indian Child Welfare Act (ICWA) was passed in 1978 (25 U.S.C. §§ 1901–63) because of a concern that a high number of Indian children were being removed from their homes and placed primarily with non-Indian families. The intent of ICWA was to provide additional protections for Indian children to ensure that removal from the home was a last resort and that states prioritize placing the children with family or the tribe over non-Indian homes. Despite the passage of ICWA more than four decades ago, very little is known about how courts are implementing ICWA and how specific implementation practices may be related to better outcomes for Indian children and families.

American Indian/Alaska Native (AI/AN) children are more likely to enter foster care than their peers. While AI/AN children make up only 1% of the child population in the United States, they make up 2.8% of the foster care population; meaning, they are overrepresented at a rate almost three times their makeup in the general population (National Center for Juvenile Justice, 2020). This overrepresentation has only increased in the last decade, with rates in 2010 closer to two times the rate in

the general population. Twenty-one states have an overrepresentation of AI/AN children in care with some rates as high as 15 times their rates in the general population.

Not only are AI/AN children more likely to enter foster care, but they are also more likely to experience disparate outcomes in comparison with their peers. AI/AN children have lower rates of reunification (Farmer et al., 2009; LaBrenz et al., 2021; Webster et al., 2005) and higher rates of reentry into care (Shaw, 2006) in comparison with other race/ethnic groups. AI/AN youth who age out of the foster care system are more likely to experience depression and anxiety (Landers et al., 2017) and incarceration, and less likely to enroll in higher education than their peers (Watt & Kim, 2019). Despite the passage of ICWA, which is intended to provide additional protections, AI/AN children are entering foster care at high rates and achieving poorer outcomes compared to their peers. It is unclear how ICWA has impacted these families. Part of the challenge may be that it is largely unknown how well states are complying with ICWA.

## INDIAN CHILD WELFARE ACT

The Indian Child Welfare Act was passed in 1978 with hopes of protecting Indian children, reducing unnecessary removals, and ensuring children removed from the home have ties to their family and tribal culture. To determine whether the court must apply ICWA, the court must first inquire about Indian heritage of the child and determine if they are members of or eligible for membership in a federally recognized tribe (25 U.S.C. § 1903). The court must make a finding that ICWA does or does not apply. If ICWA applies, the court must notify the tribe of filing of a state court child welfare proceeding, apply an “active efforts”<sup>1</sup> standard to keep the family intact, obtain qualified expert witness testimony before placing the child out of the home, and place the child according to placement preferences outlined in ICWA. The tribe has an unqualified right to intervene at *any* stage of the proceeding (25 U.S.C. § 1911 (c)). Inherent in this is the understanding that the tribe has an interest in the case and should be part of the process.

Some guidance was provided to implement ICWA from the US Department of the Interior, Bureau of Indian Affairs (BIA) in 1979 and was updated with specific regulations for state courts in 2016 (US Department of the Interior, 2016). Organizations including the National Indian Child Welfare Association (NICWA) and the National Council of Juvenile and Family Court Judges (NCJFCJ) have offered guidance on understanding and implementing ICWA through their websites, trainings, and resources. These resources include the *Indian Child Welfare Act Benchbook* for state court judges (NCJFCJ, 2017). Despite available resources to understand and implement ICWA, it is still unclear to what extent states are complying with ICWA standards and how they are implementing the law into practice.

The limited information on ICWA adherence is due in large part to a lack of available data on ICWA cases. There is no federal oversight body to monitor implementation of ICWA or compliance with its standards, and no requirement for reporting on ICWA cases (United States Government Accountability Office [GAO], 2005). This means information available on how states are doing comes from state-wide or local efforts at exploring compliance. The GAO examined implementation issues in 2005 and found that few states could consistently identify ICWA cases and that, although states are required to discuss ICWA implementation as part of their child and family services plans and progress reports (i.e., plans to improve child welfare practice in the state), in 2003, states were having trouble reporting on adherence to ICWA. Additionally, states with low AI/AN populations often did not address ICWA in their plans, and several states, even though they noted issues with implementation, did not have plans for corrective action (GAO, 2005).

Research on how states have implemented ICWA into practice is severely limited. Most efforts are descriptive in nature, focus on local or statewide practice, and are not available for public consumption. For example, each state, Washington, D.C., Puerto Rico, and the US Virgin Islands receive federal court improvement program (CIP) funding designated to improve child welfare court practice. The CIPs report on activities every year through a structured self-assessment process.

The most recent self-assessment, from fiscal year 2021, noted that 12 states reported working on data or an assessment regarding ICWA (Capacity Building Center for Courts, 2021). Most of these are systems' improvement efforts, and any findings regarding compliance may or may not be made publicly available (e.g., Utah's statewide ICWA compliance assessment; McClure et al., 2021). When ICWA compliance evaluations have been conducted, they have shown varying degrees of implementation both within and across states (Bellonger & Rubio, 2004; GAO, 2005; Oregon Department of Human Services, 2020). Only one published journal article was found regarding ICWA compliance. The study examined active efforts, placement, and use of a qualified expert witness using a structured case file review and stakeholder surveys of caseworkers and tribal workers. Findings revealed that the state was mostly compliant with ICWA, despite the fact that caseworkers did not always fully understand ICWA. While the study notes that compliance with ICWA promotes better outcomes, it did not examine any relationships between practice and outcomes (Limb et al., 2004).

This study fills a gap in the literature by examining implementation of ICWA into practice and the relationship between implementation and case outcomes. Three research questions are posed:

1. RQ 1: Does the level of implementation of ICWA relate to case outcomes? That is, do cases that have higher levels of implementation result in better outcomes than cases that have lower levels of implementation?
2. RQ 2: Do specific ICWA implementation factors relate to case outcomes? If so, which factors are most related to case outcomes?
3. RQ 3: Does early implementation (e.g., early identification of an ICWA case) relate to case outcomes?

## METHODS

The current study was designed to explore the relationship between ICWA implementation and case outcomes. It is important to note that this is not a compliance study. The goal of the study was not to determine if courts are complying with ICWA requirements; rather, it was designed to explore how ICWA has been implemented and the relationships between implementation and case outcomes. The study focuses on what is occurring in ICWA cases in relation to ICWA implementation factors. A compliance study would tell you whether the courts are doing what they are required to do. An implementation study focuses on what court practice looks like, with no position on whether that practice aligns with the necessary components of the law. The study uses a multi-site structured case file review method to address the research questions.

### Site selection

Site selection was driven by both resources and study requirements. Researchers estimated the resources required to collect data and determined that resources for travel for onsite data collection and time to collect data would allow for approximately 50 cases in five sites, for a total of 250 cases. An invitation was sent to CIPs to determine whether they had courts/sites in their state that were interested in participating. The requirements for participation were that the site had to have a sufficient number of ICWA cases (approximately 50) that had recently closed (between 2015–2018) and that the site would be willing to provide access for the researchers to review the court case files. Courts were accepted into the study on a first come basis. Three states volunteered to participate in the study. Two of the states had two sites (counties) that agreed to participate, and one state had one county that agreed to participate. It is important to note that the period of study (between 2015 and 2018) preceded the onset of the COVID-19 pandemic. As such, this study did not address the challenges faced by many state courts and tribes after the pandemic struck in March 2020.

## Case file review

A case file review tool was adapted from the NCJFCJ's ICWA Compliance Toolkit (Summers & Wood, 2014). The tool was modified based on prior experience of the researchers to improve ease of use and ensure all items of interest were captured. The instrument captured data on six key hearings in a child welfare case, as well as the termination of parental rights hearing (if applicable). The hearings coded followed the typical progression of a case through its first year of court, including the initial hearing, an admit/deny or plea hearing, an adjudication hearing, a disposition hearing, a review hearing, and the first permanency hearing. Data were captured at each of these hearing types on ICWA implementation variables of interest. Contextual information was also captured from court case files, including presence of parents and parent attorneys at hearings, petition filing dates and petition allegations, case closure date and case outcome. Other variables included in the case file review tool were for reporting purposes to the individual sites and are beyond the scope of the reported study. Additional data were collected if a petition for termination of parental rights was filed.

All coders were trained on the tool in a virtual meetup, and the tool was pilot tested in one of the sites. During pilot testing, a small sample of cases ( $n = 5$ ) were double coded for reliability. Responses were compared, and discrepancies were discussed to increase reliability moving forward. Coder pair agreement was equal to or greater than 78% across case file items.

## ICWA implementation factors

Several factors were important to capture in the case files related to how ICWA was being implemented in practice. Again, the implementation factors were related to the law, but were not meant to be assessed in terms of whether the state is complying with the letter of the law. These include notice, use of a qualified expert witness, presence of a tribal representative at hearings, findings of active efforts, and placement. These factors were captured at every hearing listed above if the case held that hearing. Cases may have resolved before some of the hearings occurred or may have involved combined hearings.

### *Confirmation of ICWA status*

The courts identified potential ICWA cases for the study. These were cases that were flagged in the child welfare petition as a possible ICWA case. To be ICWA applicable, the child has to be a member of or eligible for membership in a federally recognized tribe. At the beginning of a case, this information may not be known. If parents identify Indian heritage, membership must be confirmed by the tribe. For this study, confirmation of ICWA status included a yes/no (was there confirmation either via a letter from the tribe or a judicial order that this is an ICWA case) and a date variable (the date that the case was confirmed as ICWA). Time to ICWA confirmation was calculated by subtracting this date from the date the child was removed from the home.

### *Notice*

Notice is an important part of ICWA implementation, as state courts must provide notice to the tribes of state court filings. Notice was assessed in this study in two ways. First, notice was coded as yes/no item as to whether there was any evidence in the file that notice had been provided to the tribe. Notice was calculated as the number of days between the petition filing and (a) when the court/agency said they were providing notice and (b) the return receipt date (if available in the file).

### *Active efforts finding*

Indian Child Welfare Act requires active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of Indian families. Active effort findings should be made prior to foster care placement and prior to the termination of parental rights. States vary in when and how often they make active efforts findings on the record. Coders indicated whether the court

made active efforts findings using a yes/no variable for every hearing. Active efforts were calculated for analysis in two ways. First, if the child was removed from the home, did the court *ever* make an active efforts finding? Second, what percentage of hearings had active efforts findings? For example, of the six hearings that were coded for the case, if four of them had active efforts findings, this number would be .67 (67%).

#### *Placement preferences*

Placement was coded at each hearing based on the placement preferences outlined in ICWA. Placement was coded as (1) parent, (2) relative, (3) Tribal foster home, (4) Indian foster home, (5) Other foster care, (6) Group home, and (7) Institution. This created a placement preferences scale with the more preferred placements closer to 1 and less preferred placements closer to 7. These were also averaged across hearings to create an “average placement” variable.

#### *Tribal involvement*

Tribal involvement was defined as the presence (either in-person or remotely/telephonically) of a tribal representative at hearings on the case. A tribal representative could be an attorney or a tribal social worker or anyone the tribe designates to represent their interests at the child welfare hearings. This study captured tribal representative involvement with a yes/no variable at the first six hearings on the case. The variable was used in analyses both as yes/no at the initial hearing on the case as well as average of tribal involvement across the hearings observed. For example, if a tribal representative was present at 3 of the 6 hearings, this was noted as .5 or 50%.

#### *Parent attorney present*

ICWA standards require an attorney for all parents or Indian custodians involved in the case. The presence of an attorney for the parent was captured as a yes/no variable at every hearing reviewed.

## Outcomes of interest

Several outcomes of interest were identified for Indian children in foster care. These included how long the child was in foster care, whether the child reunified with their family, and how long it took the case to achieve permanency. Permanency is defined as a permanent legal outcome for the child.

#### *Time to return home*

When available, the time (in days) was calculated from when the child was removed from the home to the date that the child was returned home. These data were only available in some cases where reunification occurred.

#### *Case outcomes*

The outcome of every case was coded when the child achieved permanency. These outcomes included reunification (with either parent or caretaker), guardianship, placement with a relative, adoption, or child reached the age of majority. Transfer to the tribe was also included as a reason for state court case closure, although only seven cases had this as an outcome, not a sufficient number for any statistical analyses. Each outcome was captured as its own dichotomous yes/no variable.

#### *Time to permanency*

Data were collected on the date the case officially closed. For every case, time (in days) was calculated from when the child was removed from the home to the date that the case achieved permanency. Achieved permanency was defined as the date the court ended jurisdiction for the case because the child had either achieved permanency or aged out of foster care.

## Sample

Two hundred and seventy-two cases were coded across five courts (representing three states). All of these cases had been flagged as ICWA cases. However, 92 cases were determined not to be ICWA cases by the court and 20 cases never had confirmation of ICWA status. Only confirmed ICWA cases were included in the final sample, which consisted of 151 cases.

## Creating a construct of “implementation level”

There are multiple indicators of ICWA implementation within a case. To explore an overall “implementation level,” a construct was created that integrates different components of ICWA. This construct is not a perfect measure of ICWA implementation; it is merely an opportunity to pull together different measures to calculate a percentage of implementation. Five variables were used to create this measure, they included (1) did the court provide notice to the tribe of petition filing/state proceedings (yes/no), (2) did the court ever make an active efforts finding (yes/no), (3) did the court ever provide documentation of qualified expert witness testimony (yes/no), (4) was a tribal representative ever present for the hearings (yes/no), and (5) did the courts follow placement preferences (yes/no).

Most of these variables were yes/no depending on the variables at each hearing. The placement preference variable ranked placement preferences on a scale from 1 (parent) to 7 (institution) based on the ICWA preferences (e.g., relative, tribal foster home, Indian foster home, and foster home). Cases that had an average placement of 3 or lower were considered within placement preferences. This is a somewhat artificial category as the sites may have been following placement preferences to the extent that they were able. However, for the purposes of implementation, we considered those in the top priority placements as better implementation of the Act; thus, these would be considered a “yes” for this category. This allowed for a continuous percentage variable of implementation, ranging from 0 (none) to 1 (100%).

## Analysis plan

Descriptive information including frequencies, means, and medians about the ICWA implementation factors and case outcomes were conducted first. Then, data were explored for relationships between ICWA implementation factors and case outcomes. Linear and logistic regression analyses were used to explore relationships between implementation factors and case outcomes. A series of regression analyses were conducted to explore the research questions. As the study was exploratory in nature and the sample size was smaller than anticipated, the decision was made to set the  $p$  value to .10, in hopes of identifying a significant relationship if one existed. The slightly increased risk of finding a false positive was acceptable to the researchers if it meant allowing for an opportunity to explore relationships in an area with limited research.

## FINDINGS

Data were analyzed to describe what the ICWA implementation factors and case outcomes were across the cases and to explore relationships between ICWA implementation and case outcomes. For analyses that explore reunification as an outcome, the presence of the parents at the initial hearing or the presence of the parent across the life of the case was added as a control variable. Prior child welfare research has shown that there is a relationship between the presence of the mother and reunification in the case (Bohannon et al., 2015; Summers, 2017; Summers & Gatowski, 2018; Wood & Russell, 2011). As such, this variable was added into reunification models to control for its impact.

Preliminary analyses explored site differences in the outcome variables of interest. There was no significant effect of site on time to return, reunification, or time to permanency, indicating that sites did not differ on the outcomes of interest. As such, “site” was not included in the final models.

## Confirmation of ICWA case

Only confirmed ICWA cases were part of the final sample. Cases were confirmed as ICWA an average of 151 days from petition filing (Median of 24, range 0–1252 days).

## Notice

There was evidence in the file that notice was provided to the tribe of the state filing a petition in 93% of cases reviewed. The date that notice was provided were available in 128 of 154 cases. For these cases, the average time between petition filing and notice to the tribe was 17 days (range of 1–76 days).

## Active efforts finding

Eighty-six percent of cases included an active efforts finding at some point in the case (range of 43%–100% by site). Active efforts findings were made in 75% of hearings. Range of 0–100 with 59% of cases, making an active efforts finding in every hearing.

## Placement preference

Placement was considered preferred if the child was placed with a relative or in a tribal foster home. Fifty-two percent of children were in a preferred placement at the initial hearing, and 63% were in a preferred placement by the first review hearing.

## Qualified expert witness (QEW) testimony

In cases where children are removed from the home, a qualified expert witness is required to provide testimony as to whether removal was necessary to prevent imminent physical damage or harm (25 U.S.C. § 1912(e)). Evidence of qualified expert witness testimony was found in 47% of case files.

## Tribal representative present

A tribal representative was present for at least one hearing in 48% of cases reviewed. Twenty-three percent of cases had a tribal representative present at the initial hearing on the case and tribal representatives were present, on average, in 35% of hearings across the life of the case.

## Implementation level

Implementation level averaged .51 or 51% of the ICWA implementation factors studied on each case (SD = .20), range of 17%–100%.

## Time to return to parent

Cases averaged 295 days from removal to return to parent ( $SD = 250$ ). Median time to return to parent was 202 days. Only 24 of the 60 reunification cases had available information on time to return to parent.

## Reunification

Sixty cases (44%) resulted in reunification of the child with the parent.

## Timely permanency

Time to permanency (any outcome) averaged 523 days ( $SD = 448$ ), with a median of 470 days. This ranged from 0 to 3893 days.

Each of the research questions was analyzed to explore the relationship between implementation factors and case outcomes. Findings are reported below by research question and outcome type.

## Research question 1: Does the level of implementation of ICWA relate to case outcomes?

### Time to return to parent

Average level of implementation was not related to time to return to parent ( $p > .10$ ).

### Reunification

Average level of implementation was not related to reunification ( $p > .10$ ).

### Time to permanency

Average level of implementation was related to time to achievement of permanency for cases, with higher implementation rates related to longer times to permanency  $R^2 = .055$ ,  $F(1,131) = 7.60$ ,  $p = .007$ .

## Research Question 2: Do specific ICWA implementation factors relate to case outcomes? If so, which factors are most related to case outcomes?

Analysis explored the average number of active efforts findings, whether there was QEW testimony, whether placement preferences were followed, and how often the tribe was present across the life of the case.

### Time to return to parent

There was no impact of specific implementation factors on time to return to parent ( $p > .10$ ).

## Reunification

Specific ICWA implementation factors did not predict reunification ( $p > .10$ ).

## Time to permanency

Indian Child Welfare Act implementation factors had significant effects on time to permanency  $R^2 = .07$   $F(4,113) = 2.13$ ,  $p = .08$ . Whether a QEW ever testified on the case  $\beta = .17$ ,  $p = .08$ , and the average amount of time a tribal representative was present  $\beta = .19$ ,  $p = .07$  both predicted longer times to permanency. That is, when a QEW was present on a case or when cases had higher average tribal representative presence across the life of the case, these cases took longer to reach permanency.

### Research Question 3: Does early implementation relate to case outcomes? How important are early case implementation factors (e.g., early identification of an ICWA case) in relation to outcomes?

Four factors were explored in relation to early implementation. These include tribe present at the initial hearing, parent attorney present at the initial hearing, the time from petition filing to notice, and the time from removal to confirmation of ICWA status.

## Time to return

Linear regression models indicated that there was a significant relationship between early implementation variables and time to return to parent,  $R^2 = .89$   $F(4,10) = 12.44$ ,  $p = .005$ . Further exploration of the individual factors indicated that presence of the tribe  $\beta = -.49$ ,  $p = .03$ , time to ICWA status confirmation  $\beta = .63$ ,  $p = .005$ , and time to notice  $\beta = -.36$ ,  $p = .06$  were related to time to return home. If the tribe was present, the time to return home was shorter (See Table 1). Shorter time from petition filing to notice to the tribe was related to longer times to return home. However, shorter times to confirmation of ICWA status were related to shorter times to return home.

## Reunification

Early implementation was significantly related to reunification,  $X^2(4, n = 65) = 8.50$ ,  $p = .07$ . The model explained 16% of the variance (Nagelkerke  $R^2$ ) and correctly classified 63% of cases. Only mother's presence (OR = 3.554, CI [1.59, 7.89],  $p = .05$ ) and presence of the tribe at the initial hearing (OR = 1.56, CI [.66, 3.69],  $p = .08$ ) were significant predictors of reunification. When mothers were present at the initial hearing, cases reunified 55% of the time compared to 26% when they were not present at the initial hearing. When tribal representatives were present at the initial hearing, 52% of cases reunified compared to 41% when they were not present.

TABLE 1 Presence of the tribe at the initial hearing and case outcomes.

	Tribe present at initial hearing	Tribe absent at initial hearing
Length of time (days) in care	424	550
Length of time to return home	158*	380*
Percent of cases that reunify	52%*	41%*

Note: \* =  $p < .05$ .

## Time to permanency

Early implementation was related to improved time to permanency  $R^2 = .65$ ,  $F(4, 62) = 26.74$ ,  $p < .001$ . When looking at specific factors, only time to confirmation of ICWA was related to timelier permanency  $\beta = .81$ ,  $p < .001$ , with longer times to confirmation related to longer times to permanency.

## DISCUSSION

This study offered a first look at the relationship between implementation of ICWA factors and case outcomes in child welfare cases. Findings were mixed. The average implementation variable was not related to any of the outcomes of interest for this study. Specific implementation factors were only related to timely permanency, with implementation being related to longer times to permanency. The early implementation factors, however, seemed to be related to all outcomes of interest. There could be several possible explanations for why these findings occurred.

Average implementation was a constructed measure exploring percentage of ICWA factors (e.g., made an active efforts findings, had a QEW) that a case included. Perhaps there is not a relationship between overall application and case outcomes as it was measured in this study. It may be that using a checklist of yes/no items (i.e., the court made/did not make an active efforts finding) is not a sufficient way to assess how well ICWA has been implemented. Trainings on ICWA often focus on both the letter and the spirit of the Act. As defined for this study, it focuses more on the letter of the Act. This is also true of the specific ICWA implementation factors. They include yes/no variables for ease of coding and reliability of reviewing case files. Perhaps a more nuanced measurement of ICWA factors is necessary to explore outcomes. It may be that checking a box to say that “active efforts were made” is not sufficient to fully implement ICWA as intended. Rather, it may be the *quality* of those efforts that can really impact results in a case. The study did not examine the quality of the active efforts, the quality or qualifications of the QEW, or the quality of interactions with the tribe. These things may be more important to measure than whether the findings were made or practice occurred.

It could also be that implementing ICWA leads to different outcomes than the ones measured for this study. Time in foster care and reunification may not be the best measures of outcomes for Indian children and families. Research has shown that ICWA cases often result in less reunification but are more likely to result in relative custody or guardianship. If the intent of ICWA is to preserve cultural connections to family and the tribe, then imposing state court common metrics (e.g., time to permanency) may not be the best way to determine whether ICWA is having its desired effect. In fact, it may take longer for families to achieve permanency. As noted in this study, two specific factors (QEW and average active efforts findings) and the average implementation variable were related to longer time in care. Courts that are trying to follow ICWA standards may need additional time to work with the family and the tribe, to ensure that an appropriate QEW is located and can provide testimony, and to ensure that the tribe is present, and their interests are represented in a child welfare case. These extra considerations may, in fact, delay time to permanency. It is important to note, however, that time to permanency is a state court priority, and longer times in care that result in returning the Indian child back to his or her family and/or community may be more attuned to the spirit of ICWA. As noted, research comparing time to permanency for ICWA cases is limited, as most focus on AI/AN children in care and many jurisdictions struggle with identification of ICWA cases. The limited research indicates that time to permanency for ICWA cases varies by state with some showing longer stays, others showing shorter stays and some with no difference (GAO, 2005).

The most interesting findings of the study were that *early* implementation is related to case outcomes. Unlike the other measures of whether something occurred across the life of the case, these focused on what happens at early case events or the timing of case events. If the mother (or parent) and/or a tribal representative was present at the first hearing on the case, cases were more likely to reunify, and the children spent a shorter amount of time in foster care before being returned to the parent. This finding suggests that early and active involvement of the tribe in the case could lead to

better outcomes. The challenge, of course, is identifying the case as an ICWA case early enough to give notice the tribe and ensure they are present.

Strategies to involve the tribe earlier in the case process require strong tribal-state court collaboration to ensure that communication channels are open, and that the tribe is invited and feels welcome to attend state child welfare proceedings. Courts have worked to build better relationships with tribes through practices such as creating specialty ICWA Courts (Korthase et al., 2021), which focus on gold standard practice and enhance tribal-state court relationships. Other strategies have been offered to enhance this relationship, including use of family group conferencing (Drywater-Whitekiller, 2014) to work with the family and the tribe early in the case to achieve better outcomes. Judges, attorneys, and other legal professionals can play a key role in this process by building collaborative relationships with local tribes, acknowledging the tribe when they are present at court, and creating a welcoming environment that values the input of the tribe throughout the process.

The time it took to confirm a case as ICWA was also related to time to return and time to permanency, indicating that the quicker a case is confirmed as ICWA, the quicker the family can achieve permanency. This, again, points to a need for better tribal and state court collaboration, to ensure that a process is in place to work efficiently and effectively with the tribes to know when it is an ICWA case. This could lead to better tribal involvement throughout the life of the case. It is also important for child welfare professionals to understand who to contact at the tribes and the limitations the tribes may have in their response. Some tribes lack the resources to sufficiently staff all the state court inquiries regarding ICWA. Understanding both the correct process for each tribe and the challenges the tribe may face can help to improve these outcomes.

Indian Child Welfare Act cases can be further complicated by how a tribe or parents may respond after a case is confirmed as being eligible for tribal membership. For example, tribes have the sole discretion to intervene or accept transfer of jurisdiction under the Act. In some cases, a tribe may decline to intervene or pursue transfer, even if a child is eligible, and the reasons for this can be complex (e.g., some tribes do not have the treatment resources needed to support families involved in child welfare matters and, thus, they may intervene but decline formal transfer). In other cases, tribes may determine that a child is eligible for tribal membership but the parent of the child may not pursue the steps required to finalize membership. These factors may also contribute to delays in timely ICWA confirmations.

This study asked the important questions of whether and how ICWA implementation is related to case outcomes. The findings, however, do not offer a simple answer. The fact that no relationships were found for some variables does not mean that these factors are not important or useful, just as the fact that relationships were found for some items does not mean that these are the most important factors to consider. Rather, the research seems to suggest that frontloading a case (working early in the case for ICWA implementation) may be an important consideration for future efforts. Other ICWA factors should be considered more to discover if they are meeting both the spirit and the letter of the Act, and if they working as intended to improve outcomes for Indian children.

This study is timely as, at the time of submission for publication, the Supreme Court is currently hearing *Haaland v. Brackeen* to determine the constitutionality of ICWA. Even if ICWA is overturned, findings from this study may shed some light on important state court practices that may be related to better outcomes for Indian children. For example, working collaboratively with the tribal courts, identifying cases that include the tribe and bringing in the tribe early in the process may be important practices (regardless of whether required by law) that may improve outcomes for Indian children and families.

## Limitations

This study was preliminary in nature, the first of its kind that we know of to try to link case outcomes to ICWA implementation practices across multiple sites. The intended sample size for the study was

250 cases, but only 151 of the 274 cases reviewed turned out to be ICWA cases. This reflects a relatively small sample size and the aforementioned difficulties that many jurisdictions face in consistently identifying ICWA cases. Even courts that have a way to identify ICWA cases often struggle to ensure that the cases are confirmed ICWA cases, making it a challenge to explore the issue in depth. The small sample size and way cases were selected also limit the ability to generalize the data beyond the sites. These data cannot be used to say that these implementation factors will be related to outcomes beyond these five sites. More data are needed to determine factors related to outcomes in other sites.

The research was also correlational in nature, only showing relationships between variables, so it cannot be said that any of the factors definitively led to better outcomes for children and families. This means that other factors in the cases or in the sites may have contributed to the results.

Data were also limited by how the constructs were measured. The research team chose to look for items that would be available in a case file review process, which limits what and how constructs can be captured. Most of the items were coded as dates or yes/no to increase reliability of coding. This, however, limits the data to basic constructs and lacks the ability to provide a more nuanced understanding that could occur if the study explored quality of the constructs.

Lastly, as mentioned, the period for this study preceded the onset of the COVID-19 pandemic which presented unprecedented challenges for many tribes and state courts. As such, this research does not address the more recent impacts of the pandemic on ICWA cases. Future research should strive to address all of these limitations.

## Future research directions

This study found some relationships between ICWA implementation and case outcomes, particularly for early implementation. However, there is still much more to be learned. ICWA has been around for more than 40 years, yet very little is known as a field about implementation or how implementation can lead to better outcomes. Future research should focus on how the law is applied in practice, both the basic measures of whether specific actions are occurring and the more nuanced understanding of how these actions are occurring in practice. For example, exploring how the state is defining active efforts and whether participants believe these efforts constitute active efforts to prevent removal may allow for a more nuanced understanding of the role of active efforts in cases. Research should continue to explore the relationship between tribal representation at hearings. It is important to better understand how this can impact outcomes for families. It is also important to consider who the tribal representative is, whether the tribe is represented by an attorney, and how the tribal representative participates at hearings to fully understand how tribal representation can lead to better outcomes.

Research should also examine practices like ICWA courts, and others designed to improve ICWA implementation to determine whether the interventions are effective at both improving ICWA implementation and improving outcomes for families. Most of these courts include a focus on tribal and state collaboration, as well as other qualitative and nuanced factors related to successful implementation. These specific factors should also be studied. Some of the ICWA courts are gathering data to explore effectiveness and have presented preliminary findings that are encouraging, but no final evaluation reports are publicly available at this time to illustrate effectiveness. To the author's knowledge, the first published evaluation of ICWA court changes in practice and outcomes is available in this special issue. Much more is needed to really explore the value of ICWA courts in improving both outcomes for children and families.

Finally, this study should be replicated in additional sites with a larger sample, broader scope, and extended time period to determine whether findings are consistent and to determine if ICWA implementation is related to other outcomes, including maintaining familial and tribal connections.

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90CZ0025. The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement by CB/ACF/HHS, or the U.S. Government. For more information, please visit <https://www.acf.hhs.gov/administrative-and-national-policy-requirements#chapter-8>.

## ENDNOTE

<sup>1</sup> Active efforts are the efforts made by the agency to maintain the child in the home or reunite the child with parents. According to the Bureau of Indian Affairs these efforts should be “affirmative, active, thorough, and timely.” For more information, see <https://www.bia.gov/sites/default/files/dup/assets/bia/ois/ois/pdf/idc2-041405.pdf>

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