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The effectiveness of an ICWA Court at achieving improved ICWA implementation and outcomes: A pre-post intervention study

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Abstract
This article presents findings from a quasi-experimental study of the St. Louis County (Duluth, Minnesota) ICWA Court examining its effectiveness at achieving improved ICWA implementation and a better case process and outcomes for Indian families. Using a case file review method, cases prior to implementing the ICWA Court were compared to post-ICWA Court cases on demographics, case characteristics, application of ICWA requirements, presence of parties at hearings, achievement of child permanency outcomes, and permanency timeliness. Compared to pre-ICWA Court, this study found several statistically significant improvements in the ICWA Court's handling of cases, including taking less time to confirm the case as an ICWA case, greater appearance of tribal representatives by the Dispositional review hearing stage, more active efforts findings, more placements with relatives at earlier stages of the case, more placement with relative outcomes when reunifications were not possible, and timelier permanency.

KEYWORDS
court, evaluation, Indian Child Welfare Act, pre-post

INTRODUCTION

At the end of 2020, there were just over 400,000 children in foster care in the United States. Nearly ten thousand of these children were American Indian/Alaska Native children (AI/AN; Children's Bureau, 2021). AI/AN children are disproportionately likely to enter foster care compared to their non-Indian peers. AI/AN children have long been the target of removal practices by the U.S. government. In 1978, the Indian Child Welfare Act[1] (ICWA) was passed, in hopes of preventing the unnecessary removal of Indian children from their homes. It provides guidance to states on how to handle child welfare cases that include Indian children, with special considerations and legal requirements.

[1]25 U.S. Code § 1902.

Despite the passage of ICWA in 1978, Indian children remain overrepresented in foster care and achieve poorer outcomes than their peers (see, e.g., Carter, 2009; Summers, 2016). Many states have implemented efforts to improve outcomes for Indian children. This includes implementation of an ICWA Court, a specialty court designed to focus on the needs of Indian youth and successful implementation of ICWA into practice. The current study examines the effectiveness of one ICWA Court's efforts, the St. Louis County (Duluth, Minnesota) ICWA Court, at achieving its goals of improving ICWA implementation and a better case process and outcomes for Indian families, while protecting the best interests of Indian children.

Background

ICWA was enacted in response to decades-long child welfare policies that removed AI/AN children from their families and culture, placing them first in boarding schools and then with non-American Indian families through foster care and adoption (25 U.S.C. §§ 1901-63; Child Welfare Information Gateway, 2021). The intentional, systematic removal of AI/AN children caused massive trauma to tribal nations (Smallwood, Woods, Power & Usher, 2020), which continues today as generations of AI/AN families are disproportionately likely to interact with the child welfare system, losing their children in the system at alarmingly high rates (Equal Justice Initiative, 2014; NICWA, 2021). Disproportionality for the purpose of this article is defined as the level at which groups of children are present in foster care in relation to their representation in the child population. Disproportionality is commonly calculated using data from the Adoption and Foster Care Analysis and Reporting System (AFCARS) dataset, which includes data on all the children in foster care and U.S. Census data, including child population by race and ethnicity. According to the most recently released dataset (fiscal year 2020), AI/AN children are overrepresented in the foster care system at a rate that is 2.7 times their rate in the general population.[2] The overrepresentation of AI/AN youth in foster care, while holding steady for many years, has increased in the last decade, with rates in 2010 only 2.0 times their rate in the general population (Summers, 2016) compared to 2.7 in 2020. While nationally there is an overrepresentation, some states have significantly higher proportion of AI/AN youth in care. Twelve states have disproportionality rates higher than 2.0, including Minnesota with an AI/AN overrepresentation in care rate that is 15 times the rate in the general population.[3]

Not only are AI/AN children overrepresented in the system, but they are also more likely to achieve poor outcomes during and after foster care stays (e.g., Carter, 2009; Farmer et al., 2009; Quash-Mah et al., 2010). Studies on placement of AI/AN children are mixed. One study found that they were more likely to be placed in congregate care and less likely to be in kinship care than non-Indians (Carter, 2009). Another study found that AI/AN children placed with relatives or kinship placements within an Indian community had more stable placements (i.e., placements that lasted longer), with youth having fewer overall placements across the life of their case (Quash-Mah et al., 2010).

The goal of most cases begins as reunification or returning children to the parents from which they were removed. In a review of articles exploring factors related to reunification, three studies found that AI/AN children are less likely to reunify compared to Caucasian children (LaBrenz et al., 2021; Webster et al., 2005) or children of other races (Farmer et al., 2009). Other studies have found no difference in reunification rates (Connell et al., 2006; Landers, Dane, et al., 2017; Shaw, 2010). Fewer studies have focused on reentry into the foster care system but have found AI/AN are also more likely to reenter foster care than other youth (Shaw, 2006).

Outcomes are particularly poor for AI/AN youth who have emancipated (reached the age of majority) from the foster care system. AI/AN youth exhibited more internalizing behaviors such as depression and anxiety in comparison to other youth who have been emancipated from care (Landers,

[2]It is important to note that disproportionality calculations typically include only state court data and may underestimate all children in care as tribal courts may also have Indian youth in foster care. This means overrepresentation of American Indian youth may be higher than presented.

[3]http://www.ncjj.org/AFCARS/Disproportionality_Dashboard.asp.

Bellamy, et al., 2017). A study using data from the National Youth in Transition Database found significantly poorer outcomes for AI/AN youth compared to their peers. AI/AN emancipated youth were less likely to enroll in higher education than other racial groups and were more likely to be homeless. In addition, AI/AN youth were more likely to be incarcerated in the follow-up period after exiting care, particularly in relation to white youth (Watt & Kim, 2019).

Efforts to address inequalities

Several interventions have been identified in the field to reduce disparity and disproportionality and improve outcomes for AI/AN families. One study found that cultural competence training has been effective in increasing knowledge and self-reported practices related to better identifying ICWA cases (Lawrence et al., 2012). Another study found that training judges on best practices and applicable federal law resulted in new child welfare judges being more likely to inquire about ICWA (Sicafuse et al., 2015). Community-based partnerships aimed at reducing AI/AN disparities and disproportionality have also been formed. In one state, child protective services partnered with an Indian Resource Center to work toward family preservation. A study of this intervention's efforts showed that more AI/AN were remaining in the home after the intervention than before its implementation (Bussey & Lucero, 2013). These efforts show promise in identifying ICWA youth and working with AI/AN families. Another intervention that has very little research but combines components of all the above interventions are ICWA Courts, a specialty court docket that focuses just on ICWA cases.

ICWA Courts

ICWA Courts have emerged as an intervention to work directly with AI/AN families in hopes of reducing disproportionality and improving outcomes for AI/AN youth in foster care. According to the National Council of Juvenile and Family Court Judge's (NCJFCJ) website,[4] ICWA courts represent the "gold standard of child welfare" by implementing five core principles: judicial leadership, data collection, ICWA training, tribal stakeholder collaboration, and gold standard lawyering and social work. The NCJFCJ website identifies 17 current ICWA Courts in the country (as of October 2022), working to implement practices to improve ICWA implementation and outcomes for AI/AN families. Little published research currently exists, however, examining whether ICWA Courts are successful at achieving their goals of better serving AI/AN families in the child welfare court system. The current study aims to contribute to our understanding of ICWA Court models' effectiveness by examining the implementation of one ICWA Court—the St. Louis County (Duluth, Minnesota) ICWA Court.

St. Louis County (Duluth, Minnesota) ICWA Court

A St. Louis County ICWA collaborative was formed in August of 2014 to create and build relationships with tribal partners to improve ICWA implementation. The ICWA collaborative is a partnership among local tribes, the county social service agency, guardian ad litem program, parent attorney and county attorney representatives, the 6th Judicial District Court, and the University of Minnesota Duluth's Center for Regional and Tribal Child Welfare Studies (the Center). The collaborative, using previously obtained data about current ICWA hearing practice, as well as lessons learned from attending a multidisciplinary training on ICWA implementation and input from all stakeholders including tribal partners, decided to implement an ICWA Court in St. Louis County.

[4]https://www.ncjfcj.org/child-welfare-and-juvenile-law/icwa-courts.

The ICWA Court officially launched in April of 2015 with the aim of improving ICWA implementation, case processing and permanency outcomes for AI/AN families in St. Louis County (Korthase, Gatowski & Erickson, 2021). Willingness to participate in the development of the specialized court was secured from upper levels of management of the Public Health and Human Services agency (PHHS) and the County Attorney's office early in the project. In designing the ICWA Court, the collaborative listened very closely to what tribal partners had to say about what needed changing to improve practice, and then tried to make those changes through the ICWA Court model—guided by the principle of "nothing about us without us." The goals of the St. Louis County ICWA Court are to implement protocols and practices that promote effective and timely:

- Identification of AI/AN children;
- Notice to and engagement of tribes in matters involving AI/AN children;
- Tribal participation in hearings involving Indian children;
- Tribal intervention in state court child abuse and neglect cases;
- Transfer of ICWA cases to tribal courts; and.
- Placement of Indian children according to ICWA and tribal placement preferences.

To accomplish these goals, the ICWA Court dramatically changed how ICWA hearings are heard in Duluth. The ICWA Court is a dedicated docket of child welfare hearings involving Indian children as confirmed or presumed by the definitions outlined in the ICWA and the Minnesota Indian Family Preservation Act (MIFPA). The ICWA Court dockets any ICWA identified cases (or not identified but possible ICWA cases) onto one calendar where they are heard by the same judge. Cases come to the ICWA Court judge as either identified by the county child welfare agency as possible ICWA cases or ICWA cases transferred by another judge following an initial hearing, with the ICWA Court having almost all cases involving Indian children. One primary clerk is assigned to the ICWA Court judge, increasing familiarity with all ICWA protocols. An ICWA specific Assistant County Attorney is assigned to the ICWA Court, as well as an ICWA-specific Public Health and Human Services (PHHS) agency unit. This unit includes caseworkers with Native American heritage or an expressed desire to do ICWA specific case work.

Prior to launching the ICWA Court, the ICWA Court judge had a strong interest in this area and had participated in national and local trainings on ICWA best practices. She also began visiting regional tribal courts and social service organizations to gather more information about best practices and approaches, engage with them, and develop long-term relationships. All ICWA Court professional stakeholders, including the ICWA Court Judge, received a National Council of Juvenile and Family Court Judges training on ICWA best practices that was developed in partnership with several national tribal education organizations (e.g., National Indian Child Welfare Association (NICWA), National American Indian Court Judges Association (NAICJA), and Tribal Star) was delivered by faculty who were tribal members themselves, and with participation by local Tribes. Multidisciplinary training on ICWA best practices also continued periodically thereafter.

The docket is held in a specific courtroom and at a consistent time and day. Hearings in the ICWA Court are scheduled on the afternoon docket for a time certain, increasing the opportunity for statewide tribal representatives to attend hearings in person whenever possible. Physically, hearings are held in a larger courtroom where a series of four tables form a square, where all parties, including the judge, are seated. The intent is to make the environment less intimidating and more inclusive than a normal courtroom, with the ICWA Court judge engaging more directly with parents, and providing more opportunities for parties in the case to speak with families, instead of about them. American Indian community members gifted the court with traditional medicines, which are placed within the square for families. Parent attorneys are expected to fully prepare their clients for what to expect in the ICWA Court, including the enhanced level of engagement by the judge. To help facilitate participation by the tribes, which may have considerable distances to travel to attend hearings, the ICWA Court allows for more phone appearances, groups individual tribes' cases together on the calendar, and considers distance of the tribe to court when setting hearing start and end times.

Besides calendaring and staffing of the ICWA Court with professionals trained on ICWA practices and a desire to practice in this area, and changing the courtroom environment, several key ICWA specific procedural changes were made to the handling of cases in the ICWA Court. Court reports were made more specific and detailed to ICWA requirements, for example. The County Attorney's office also began proactively addressing ICWA procedural matters on the record (i.e., notice, eligibility determinations, good cause for placement deviation, contact with the tribe for qualified expert witnesses, or QEWs). Court orders and verbal records were also tailored to include ICWA standards (i.e., notice, placement preferences, active efforts, and QEWs). For a more detailed description of the St. Louis ICWA Court development and procedures, see Korthase, Gatowski, & Erickson (2021).

Current study

This study examined the St. Louis County (Duluth, Minnesota) ICWA Court's handling of child abuse and neglect cases involving AI/AN families to determine if the ICWA Court improved application of ICWA requirements, the case process and permanency outcomes for ICWA cases. The goal of the study was to determine whether court practice changes (specific to implementation of ICWA requirements) and whether there were differences in outcomes for Indian children post-implementation. Within these two broad research questions, more detailed sub-questions are posed. Specifically, the study addressed the following research questions:

1. Is ICWA Court implementation related to improved compliance with ICWA? Compared to pre-implementation…
   - 1a. Does the ICWA court make findings regarding ICWA applicability more often post-implementation?
   - 1b. Does the ICWA court make ICWA determinations earlier in the case post-implementation?
   - 1c. Is notice to the tribe timelier post-implementation?
   - 1d. Do tribes intervene more often post-implementation?
   - 1e. Are parents and attorneys for parents present more often at court hearings post-implementation?
   - 1f. Are tribal representatives present more often at court hearings post-implementation?
   - 1g. Does the ICWA court make more of the required ICWA findings post-implementation? Including:
     - A finding that the agency has made active efforts to prevent removal
     - A finding that maintaining the child in the home would result in imminent physical damage or harm
     - Use of the clear and convincing evidence standard for the imminent damage finding
     - Use of a qualified expert testimony to determine that removal from the home would result in imminent physical damage or harm
     - A finding that placement preferences were followed (or that it is in the child's best interest to not follow placement preferences)
   - 1h. Does the ICWA court have more placements that align with ICWA placement preference (e.g., more placements with parents, relatives/kin, or tribal members) post-implementation?
2. Is ICWA Court implementation related to better outcomes for Indian youth? Compared to pre-implementation…
   - 2a. Are there higher rates of reunification or relative guardianship/placement post-implementation?
   - 2b. Are youth in foster care for less time post-implementation?

METHOD

To examine the effectiveness of the ICWA Court at improving ICWA implementation, case processing, and outcomes, a quasi-experimental research design was employed that compared pre-ICWA Court

cases to post-ICWA Court cases on variables of interest. The research was a collaboration between the NCJFCJ and the Capacity Building Center for Courts (CBCC) who made existing datasets available for our study from previous evaluations of ICWA cases in St. Louis County. Both previous studies collected data using a virtually identical structured case file review instrument that was based on the NCJFCJ's ICWA Assessment Toolkit (Summers & Wood, 2013), and both studies included members from the same research team (i.e., had common data collectors and coders).

Sampling

Post-ICWA Court cases for the study were drawn from the CBCC's existing dataset of randomly selected ICWA cases that had closed in St. Louis County between 2015 to 2017. To determine a start date to draw cases from this dataset for our post-ICWA Court study sample, we reached out to St. Louis County court stakeholders. They identified August 1, 2015 as a start date with sufficient time elapsed since the inception of the ICWA Court for all ICWA Court procedures and practices to be well established and beyond the piloting phase. Based on this guidance, all of the post-ICWA Court cases in the CBCC dataset that had opened and closed between August 1, 2015, and December 31, 2017 were included in our post-ICWA Court study sample. This ensured that all cases had been handled from inception to case closure solely by the ICWA Court. We also supplemented the CBCC dataset by coding a random sample of additional St. Louis County ICWA Court cases that opened no earlier than August 1, 2015, and closed by December 31, 2018. The supplemental data collection (n = 25) allowed us to increase the sample size of post-ICWA Court cases to include more cases with permanency outcomes that typically take longer to achieve (i.e., guardianship or TPR and adoptions). Supplemental cases were coded using the same structured case file review instrument, codebook, and coding procedures. Our final post-ICWA Court dataset contained cases that opened and closed from August 1, 2015, to December 31, 2018, a timeframe of 40 months and 30 days.

Pre-ICWA Court cases for the study were drawn from a NCJFCJ dataset comprised of randomly selected ICWA cases that had closed in St. Louis County between 2011 and 2014. Because the ICWA Court was officially launched April 8, 2015, all cases in the NCJFCJ dataset pre-dated the ICWA Court's implementation. For our study, all cases that opened and closed from August 1, 2011, to December 31, 2015, in the NCJFCJ dataset were included in our pre-ICWA Court sample to reflect a timeframe of 40 months and 30 days from inception to case closure that matched the post-ICWA Court cases. To eliminate any potential judge effect on case processing and outcomes, any cases that were heard by a different judge than the judge who would eventually preside over the ICWA Court were deleted from the pre-ICWA Court sample.

Procedures and instrumentation

All cases in both pre- and post-ICWA Court datasets were reviewed and coded using a structured case file review instrument designed to collect information on the following ICWA implementation compliance and performance measures: inquiry and notice, tribal intervention and transfer, parties' presence at hearings, use of qualified expert witnesses (QEWs), required ICWA findings, child placement, case processing timelines, and permanency outcomes. All coders in both the prior studies (i.e., CBCC and NCJFCJ) and the current study had been extensively trained on the file review process and data collection instrument using a sample of cases. Each study had coders debrief after practice, discuss questions and concerns, and resolve any discrepancies between data collected. On site, lead coders reviewed other coders completed instruments for errors and a small sample of cases was coded for interrater reliability to ensure coding was similar between all coders. While the previous studies (i.e., CBCC and NCJFCJ) reported reliability procedures, they did not report interrater reliability calculations. For the supplemental data collected for this study, however, interrater reliability was calculated and indicated strong agreement between coders (k = .88).

TABLE 1 Pre- and post-ICWA Court study samples.

	Pre-ICWA Court	Post-ICWA Court
Total ICWA cases	110	90
Hearings reviewed within cases		
Emergency protective (EPC) hearings	110	90
Admit/deny (plea) hearings	101	82
Adjudication trial	56	53
Dispositional review hearings	86	74
First permanency hearings	52	48

The final pre- and post-ICWA Court datasets were cleaned to eliminate duplicates, open cases, and any cases that were out of the sampling frame (e.g., cases that were not confirmed as ICWA cases or cases that were not handled by the same judge pre to post). This resulted in a final evaluation dataset of 110 pre-ICWA Court cases and 90 post-ICWA Court cases (see Table 1). Guided by the research questions listed above, the pre- and post-ICWA Court sample of cases were compared. Chi-square and t-test analyses for significant differences between the pre- and post-ICWA Court cases were run. All analyses were run using SPSS version 29 statistical software.

RESULTS

Sample characteristics

Both pre- and post-ICWA Court cases were heard by the same judge and had the same primary prosecuting attorney (county attorney). Characteristics of cases in the pre- and post-ICWA Court cases were analyzed to determine if they differed significantly on any feature. Very little difference was found between the samples for any of the demographic and case characteristics analyzed: gender of child (48% female and 52% male pre-ICWA Court vs. 51% female and 49% male post-ICWA Court), mean age of child at petition filing date (6.07 years pre-ICWA vs. 5.63 years post-ICWA), specific tribal membership or allegations or presenting problems in the case, with no significant differences found for any of these case characteristics (see Figure 1 for comparison of pre- and post-ICWA Court cases on allegations and presenting problems).

ICWA inquiry and applicability

Does the ICWA court make findings regarding ICWA applicability more often post-implementation?

Judges should inquire at the first hearing whether ICWA applies in the case, and at subsequent hearings if not resolved because new parties (e.g., new family members) might be identified and present at later hearings. Once applicability has been established, judges should make a finding that ICWA applies to this case.[5] Cases come to the ICWA Court judge when identified as either possible ICWA cases or whenever there is a reason to know (i.e., at removal or petition) that the case is an ICWA case. Cases also transfer from other court dockets (other judges) to the ICWA Court when ICWA applicability is suspected or identified in those other courts. The ICWA Court judge made findings that ICWA applied at all stages of the case in both the pre- and post-ICWA Court cases. However, significant differences from pre- to post-ICWA Court cases in the frequency with which the judge made ICWA applicabil-

[5]25 U.S.C. §1903(1) & (4); 25 C.F.R. §§23.2, 23.103, 23.107.

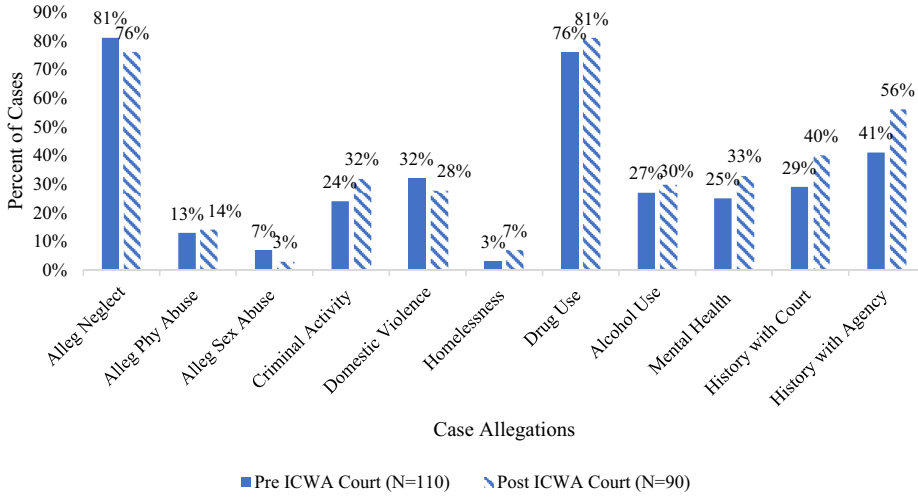


FIGURE 1 Petition allegations and presenting problems in pre- and post-ICWA Court cases. [Color figure can be viewed at wileyonlinelibrary.com]

ity findings were found for the admit/deny (plea) hearings and adjudication trials. The judge made a finding that ICWA applied in 84% (n = 69 of 82) of the post-ICWA Court Admit/Deny hearings compared to 32% (n = 32 of 101) of Admit/Deny hearings pre-ICWA Court, X^2 (1, N = 183) = 50.369, p < .0001. Seventy-nine percent of ICWA Court Adjudication trials (79%; n = 42 of 53) had a finding that ICWA applied compared to 45% (n = 25 of 56) of the pre-ICWA Court Adjudication trials, X^2 (1, N = 109) = 13.765, p < .0001.

Does the ICWA court make ICWA determinations earlier in the case post-implementation?

It took significantly less time to confirm the case as an ICWA case in the post-ICWA Court cases. ICWA confirmation was made in an average of 44 days from petition filing in the post-ICWA Court cases compared to an average of 140 days in the pre-ICWA Court cases t(138) = 3.484, p < .001. Percentages and significance for ICWA finding are reported in Table 2.

ICWA notice to the tribes

Is notice to the tribe timelier post-implementation?

ICWA specifies that a custody proceeding cannot go forward until 10 days after notice by registered mail has been received by the parents or custodian and tribes, with an additional 20 days, if requested, by the parents, custodian, or tribe.[6] By providing notice as soon as possible, courts ensure parents, custodians, and tribes have every opportunity to be involved in the case. Notice to parents and legal custodians was not tracked in the pre-ICWA Court cases so our study only compared provision of notice to tribes. While not statistically significant, the average number of days from petition filing to sending notice of the petition to the Tribe took slightly longer in the pre-ICWA Court cases (26 days on average compared to 18 days for post-ICWA Court cases). Significantly more cases post-ICWA Court (92%; n = 83 of 90), X^2 (1, N = 200) = 18.313, p < .001, however, successfully perfected notice of the petition to the Tribe compared to the pre-ICWA Court cases (45%; n = 50 of 110). When notice was perfected, the average time from petition filing to receipt of notice by the Tribe was longer for

[6]25 C.F.R. 23.11.

TABLE 2 Percent of hearings with ICWA applicability finding pre- vs. post-ICWA Court.

Hearing	Pre-ICWA Court	Post-ICWA Court
Emergency protective custody hearing (EPC)	46% ($n = 51$)	59% ($n = 53$)
Admit/deny (plea)	32% ($n = 32$)	84% ($n = 69$)* $X^2 = 50.369, p < .0001$
Adjudication trial	45% ($n = 25$)	79% ($n = 42$)* $X^2 = 13.765, p < .0001$
Dispositional review	87% ($n = 74$)	88% ($n = 65$)
First permanency review	83% ($n = 43$)	87% ($n = 42$)

*indicates statistically significant finding.

pre-ICWA Court cases, taking an average of 54 days compared to 47 days for post-ICWA Court cases (this difference was not statistically significant).

Tribal intervention and transfer

Do tribes intervene more often post-implementation?

ICWA allows the tribe to intervene and become a party to any state child welfare case at any point of the case.[7] The Tribe moved to intervene in 12 of the pre-ICWA Court cases and in 7 of the post-ICWA Court cases. The Court granted the Tribe's motion to intervene in all the cases in both pre- and post-ICWA Court samples. The Tribe moved to transfer 10 of the pre-ICWA Court cases and 12 of the post-ICWA Court cases, with the Court granting the Tribe's motion in all cases. The frequency of tribal intervention and transfer did not differ significantly in pre- and post-ICWA Court cases.

Parties' presence at hearings

ICWA requires that timely notice be provided of hearings to all parties, including tribes.[8] A goal of the ICWA Court is to facilitate the presence of parties at early and all hearings in the case. The presence of parents and children (including their attorneys), as well as appearances of tribal representatives, was compared for hearings from pre- to post ICWA Court.

Are parents and attorneys for parents present more often at court hearings post-implementation?

Table 3 illustrates percentage of parties present by hearing type. Mothers were present in more post-ICWA Court emergency protective custody (EPC)[9] hearings (66%, $n = 59$ of 90 vs. 55%, $n = 60$ of 110) than pre-ICWA Court although this difference was not statistically significant. After the initial (EPC) hearing, the frequency with which mothers appeared at hearings in both samples was similar, with only slightly more mothers appearing in pre-ICWA Court hearings and no statistically significant differences found from pre- to post-ICWA Court. As with mothers, while not statistically significant, fathers were present in more post-ICWA Court initial (EPC) hearings compared to pre-ICWA Court (37%, $n = 33$ of 90 vs. 27%, $n = 30$ of 110). Fathers' appearance at hearings in later stages of the case was also similar pre-to-post ICWA Court, except for adjudication trials where more fathers appeared in the post-ICWA Court cases (63%, $n = 33$ of 53 vs. 57%, $n = 31$ of 55), although this difference

[7]25 U.S.C. § 1911.

[8]25 U.S.C. §1912(a); 25 C.F.R. §§23.11 & 23.111.

[9]Emergency protective custody (EPC) hearings are the first hearings in the case (e.g., shelter care or preliminary protective hearings).

TABLE 3 Presence of parties at hearings pre- and post-ICWA Court.

	Hearing type				
Party present	**EPC**	**Admit/deny**	**Adjudication**	**Dispo review**	**Perm review**
Mother					
Pre-ICWA	55%	76%	68%	53%	68%
Post-ICWA	66%	72%	66%	49%	67%
Father					
Pre-ICWA	27%	43%	57%	37%	36%
Post-ICWA	37%	44%	63%	38%	38%
Tribal representative					
Pre-ICWA	29%	58%	65%	52%	67%
Post-ICWA	30%	53%	60%	78%*	74%
Mother's attorney					
Pre-ICWA	45%	76%	88%	79%	90%
Post-ICWA	50%	72%	85%	80%	87%
Father's attorney					
Pre-ICWA	11%	34%	43%	46%	58%
Post-ICWA	12%	37%	38%	46%	57%

*$p < .05$.

was not statistically significant. Children were rarely present in hearings in post-ICWA Court Cases, ranging from a low of 0% of initial (EPC) hearings to a high of 18% ($n = 8$ of 48) of First Permanency Review hearings. The presence of children at hearings was not coded in the pre-ICWA Court cases so a comparison between samples could not be made.

The frequency with which attorneys appeared in hearings for mothers, fathers and children was similar in pre- and post-ICWA Court cases, with only small differences found and none that were statistically significant. Attorneys for mothers and for children, for example, were frequently present across all hearing types in both pre- and post-ICWA Court cases. Compared to other legal representatives, there were fewer fathers' attorneys present across all hearing types in both pre- and post-ICWA Court cases. Most hearings in pre- and post-ICWA Court cases had an attorney/GAL for the child present as well.

Are tribal representatives present more often at court hearings post-implementation?

Whether and when a tribal representative was present at hearings was also explored, although the study did not determine who the tribal representative was (e.g., whether they were an attorney for tribal social services or a tribal caseworker, etc.). Presence of a tribal representative in hearings was similar for early stages of the case in pre- and post-ICWA Court cases. When compared to pre-ICWA Court cases, however, significantly more tribal representatives were present by the Dispositional hearing stage of the case in the post-ICWA Court cases (78%, $n = 58$ of 74) compared to pre-ICWA court (52%, $n = 45$ of 86), X^2 (1, $N = 160$) = 9.036, $p < .003$.

Required ICWA findings

Does the ICWA court make more of the required ICWA findings post-implementation?

The courts are required to make several specific ICWA related findings. These include making a finding that active efforts were made, a finding, by clear and convincing evidence and supported by qual-

TABLE 4 Percent of hearings with active efforts finding pre- vs. post-ICWA Court.

Hearing	Pre-ICWA Court	Post-ICWA Court
Emergency protective custody (EPC) hearing	41% (n = 45 of 110)	66% (n = 59 of 90)* X^2 = 11.640, p < .001
Admit/deny (plea)	30% (n = 30 of 101)	85% (n = 70 of 82)* X^2 = 56.577, p < .0001
Adjudication	43% (n = 24 of 56)	94% (n = 50 of 53)* X^2 = 33.106, p < .0001
Dispositional review	93% (n = 80 of 86)	92% (n = 68 of 74)
First permanency review	90% (n = 47 of 52)	94% (n = 45 of 48)

*indicates statistically significant finding.

ified expert witness testimony, that maintaining a child in the home would likely result in imminent physical damage or harm to the child, and a finding that the court is following placement preferences.

Active efforts findings

Unless a child is in immediate danger, ICWA requires that states make active efforts to prevent the break-up of AI/AN families before removal and making a foster care placement as well as active efforts to reunite an Indian child with his or her family when removal occurs.[10] Whether active efforts findings were made was examined for all cases when ICWA was either confirmed or still unknown by that stage of the case. Looking at how often active efforts findings were made at specific hearings, compared to pre-ICWA Court, significantly more active efforts findings were made at post-ICWA Court EPC (initial) hearings (66%, n = 59 of 90 vs. 41%, n = 45 of 110), X^2 (1, N = 200) = 11.640, p < .001, Admit/Deny hearings (85%, n = 70 of 82 vs. 30%, n = 30 of 101), X^2 (1, N = 183) = 56.577, p < .0001, and Adjudication trials (94%, n = 50 of 53 vs. 43% n = 24 of 56), X^2 (1, N = 109) = 33.106, p < .0001. Table 4 illustrates the percent of hearings with active efforts findings.

Imminent harm, clear and convincing evidence and qualified expert witnesses

No foster care placement may be ordered in cases involving AI/AN children in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.[11] While infrequent in both the pre- and post-ICWA Court case files, significantly more post-ICWA Court Admit/Deny hearings (11%, n = 9 of 82), X^2 (1, N = 183) = 8.735, p < .003 and post-ICWA Court Dispositional Review hearings (12%, n = 9 of 74), X^2 (1, N = 160) = 7.191, p < .01 had clearly documented findings that the child was at imminent risk of harm compared to pre-ICWA Court cases. Table 5 provides percentage of findings by hearing type.

Clear and convincing evidence findings were made more often in post-ICWA Court cases, with significantly more of those findings made in the ICWA Court EPC (initial) hearings (9%, n = 8 of 90), X^2 (1, N = 200) = 10.185, p < .001, Admit/Deny hearings (10%, n = 8 of 82), X^2 (1, N = 183) = 7.437, p < .006, Adjudication trials (11%, n = 6 of 53) X^2 (1, N = 109) = 4.119, p < .042, and Dispositional Review hearings (12%, n = 9 of 74), X^2 (1, N = 160) = 7.191, p < .007 compared to pre-ICWA Court

[10]For definitions of Active Efforts see 25 e-C.F.R. § 23.2 (2018). See U.S. also Department of the Interior, Guidelines for Implementing the Indian Child Welfare Act (ICWA Guidelines; December 2016), www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pd.

[11]25 U.S.C. § 1912.

TABLE 5 Percent of hearings with findings of imminent harm pre- vs. post-ICWA Court.

Hearing	Pre-ICWA Court	Post-ICWA Court
Emergency protective custody hearing (EPC)	27% (n = 30 of 110)	24% (n = 22 of 90)
Admit/deny (plea)	1% (n = 1 of 101)	11% (n = 9 of 82)* $X^2 = 8.735, p < .003$
Adjudication	7% (n = 4 of 56)	11% (n = 6 of 53)
Dispositional review	0% (n = 0 of 86)	12% (n = 9 of 74)* $X^2 = 7.191, p < .01$
First permanency review	0% (n = 0 of 52)	4% (n = 2 of 48)

*indicates statistically significant finding.

TABLE 6 Percent of hearings with finding by clear and convincing evidence of physical, emotional damage and qualified expert witness testimony pre- vs. post-ICWA Court.

	Pre-ICWA Court	Post-ICWA Court	Pre-ICWA Court	Post-ICWA Court
Hearing	Clear and convincing evidence of physical, emotional damage		Qualified expert witness	
Emergency protective custody (EPC)	0% (n = 0 of 110)	9% (n = 8 of 90)* $X^2 = 10.185, p < .001$	0% (n = 0 of 110)	2% (n = 2 of 90)
Admit/deny (plea)	1% (n = 1 of 101)	10% (n = 8 of 82)* $X^2 = 7.437, p < .006$	3% (n = 3 of 101)	11% (n = 9 of 82)* $X^2 = 4.733, p < .030$
Adjudication	2% (n = 1 of 56)	11% (n = 6 of 53)* $X^2 = 4.119, p < .042$	21% (n = 12 of 56)	32% (n = 17 of 53)
Dispositional review	0% (n = 0 of 86)	12% (n = 9 of 74)* $X^2 = 7.191, p < .007$	0% (n = 0 of 86)	28% (n = 21 of 74)* $X^2 = 18.643, p < .001$
First permanency review	0% (n = 0 of 52)	2% (n = 1 of 48)	4% (n = 2 of 52)	27% (n = 13 of 48)* $X^2 = 8.036, p < .005$

*indicates statistically significant finding.

cases. This indicates that foster care placements in the post-ICWA Court cases were examined by the judge, as required by ICWA, by applying the higher clear and convincing evidence standard (as indicated in the language of the findings).

Qualified expert witness (QEW) testimony was provided to make this finding in significantly more of the post-ICWA Court Admit/Deny hearings (11%, n = 9 of 82) X^2 (1, N = 183) = 4.733, p < .030, Dispositional Review hearings (28%, n = 21 of 74), X^2 (1, N = 160) = 18.643, p < .001, and Permanency Review hearings (27%, n = 13 of 48), X^2 (1, N = 100) = 8.036, p < .005. Table 6 illustrates the percent of hearings with findings and QEW testimony.

Findings that placement preferences were followed

ICWA outlines the placement preferences, in the absence of good cause for AI/AN children. For foster care placements, the first preference is with "a member of the Indian child's extended family" followed by "a foster home licensed, approved, or specified by the Indian child's tribe."[12] Significantly more findings that ICWA placement preferences had been followed were made at each hearing stage of the post-ICWA Court cases compared to pre-ICWA Court. Table 7 illustrates percentages of cases with a finding of placement preferences followed.

[12]25 U.S.C. §23.129.

TABLE 7 Percent of hearings with finding that ICWA placement preferences followed pre- vs. post-ICWA Court.

Hearing	Pre-ICWA Court	Post-ICWA Court
EPC	9% (n = 10 of 110)	29% (n = 26 of 90)* $X^2 = 12.626, p < .001$
Admit/deny (plea)	12% (n = 12 of 101)	29% (n = 24 of 82)* $X^2 = 7.363, p < .007$
Adjudication	11% (n = 6 of 56)	32% (n = 17 of 53)* $X^2 = 6.876, p < .009$
Dispositional review	0% (n = 0 of 86)	12% (n = 9 of 74)* $X^2 = 7.191, p < .007$
Permanency review	6% (n = 3 of 52)	38% (18 of 48)* $X^2 = 11.480, p < .001$

*indicates statistically significant finding.

Child placement

Does the ICWA court have more placements that align with ICWA placement preference (e.g., more placements with parents, relatives/kin, or tribal members) post-implementation?

Child placement at hearings was examined in the pre- and post-ICWA cases. Placement was coded at each hearing based on the placement preferences outlined in ICWA (i.e., parent, relative, Tribal or Indian foster home, non-Indian foster home, group home or institution). Not all of the hearings had a child placement clearly noted in the case file, but when they did, children were not typically placed with parents in early stages of the case (removal to admit/deny hearings) in either pre- or post-ICWA Court cases. While more children were placed with their parents in the post-ICWA Court cases by the Adjudication trial (32%, n = 17 of 53 vs. 25%, n = 12 of 48 pre-ICWA Court) and Dispositional Review Hearings (32%; n = 23 of 72 vs. 22%; n = 17 of 78 pre-ICWA Court), these differences from pre-ICWA Court to post-ICWA Court were not statistically significant (see Figure 2).

Significantly more children, however, were placed with relatives earlier on in the post-ICWA Court cases. For those cases with placement type at removal clearly documented in the file, 49% of children (n = 36 of 73) in the post-ICWA Court were placed with a relative at removal compared to just 21% (n = 13 of 62) of pre-ICWA Court cases, X^2 (1, N = 135) = 32.602, $p < .001$. By the initial (EPC) hearing, 54% (n = 42 of 77) of children in the post-ICWA Court were placed with a relative compared to just 26% (n = 14 of 53) of children pre-ICWA Court, X^2 (1, N = 130) = 19.484, $p < .007$. Significantly more children were placed with relatives by the Admit/Deny hearings in the post-ICWA Court cases as well (49%, n = 40 of 81) compared to the pre-ICWA Court cases (27%, n = 21 of 78), X^2 (1, N = 159) = 19.986, $p < .006$. Figure 3 illustrates the percentage of cases where the child was placed with a relative by hearing type. When not placed with a parent or relative, slightly more of the post-ICWA Court hearings with placement information provided in the court file had placed the child in an Indian or Tribal foster home (9%, n = 30 of 331 hearings post-ICWA Court vs. 7%, n = 15 of 228 hearings pre-ICWA Court). This difference was not statistically significant.

Permanency outcomes and permanency timeliness

Case outcomes

Are there higher rates of reunification or relative guardianship/placement post-implementation?

The permanency outcome of every case was coded. While rates of reunification with the charged parent were slightly higher post-ICWA Court (35% of cases; n = 31 of 90) compared to pre-ICWA Court (30% of cases, n = 33 of 110), the difference was not statistically significant. Statistically significant differences were found, however, between the pre- and post-ICWA Court cases for

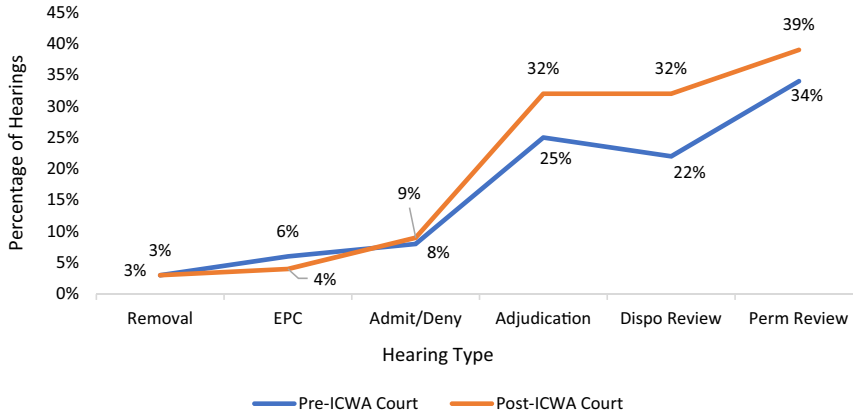
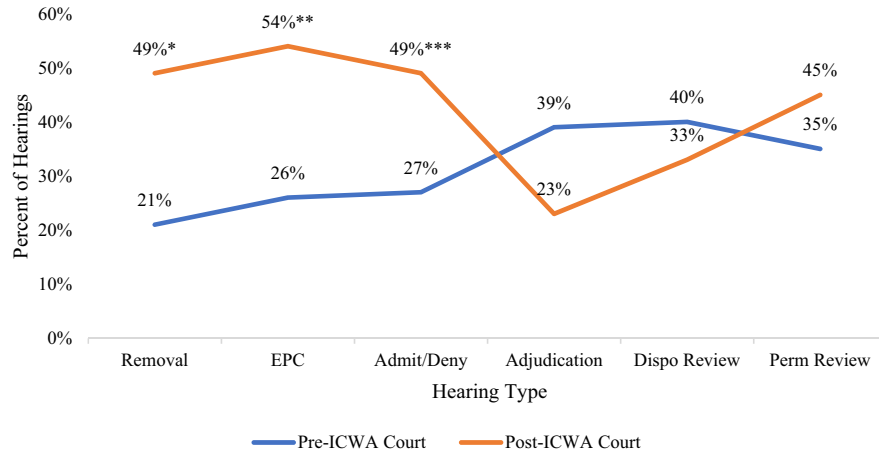


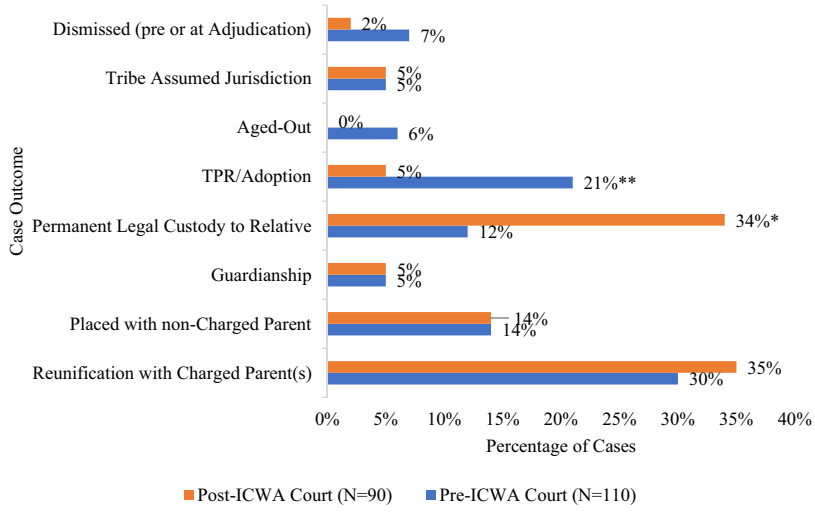
FIGURE 2 Percent of cases child placed with parent at removal and at subsequent hearing stages pre- vs. post-ICWA Court. [Color figure can be viewed at wileyonlinelibrary.com]



Note. * =p<.001; ** =p < .007; ***p <.006

FIGURE 3 Percent of cases child placed with relative at removal and at subsequent hearing stages pre- vs. post-ICWA Court. [Color figure can be viewed at wileyonlinelibrary.com]
Note: *p < .001; **p < .007; ***p < .006.

two permanency outcomes – permanent legal custody to relatives and termination of parental rights with an adoption. Significantly more post-ICWA Court cases (34%, n = 31 of 90) concluded with a permanent legal custody to a relative outcome compared to the pre-ICWA Court cases (12%, n = 13 of 110), X^2 (1, N = 200) = 35.246, p < .001. For ICWA, this is a positive outcome, as the child is maintaining familial and cultural connections by being placed with family. Also, pre-ICWA Court cases had significantly more termination of parental rights with adoption to non-relative (non-AI/AN) families case outcomes (21%, n = 23 of 110) compared to the ICWA Court cases (9%, n = 8 of 90), X^2 (1, N = 200) = 33.257, p < .001 (see Figure 4). This aligns with the spirit of ICWA, keeping family ties in place and working toward placement in the home or with family as opposed to severing parental rights and looking for stranger placements that may be outside the child's culture.



Note. * = $p < .001$; ** = $p < .001$

FIGURE 4 Percent of cases closed by permanency outcome (pre- vs. post-ICWA Court). [Color figure can be viewed at wileyonlinelibrary.com]
Note: *$p < .001$; **$p < .001$.

Time to permanency

Are youth in foster care for less time post-implementation?

For every case, time to permanency was calculated as the time (in days) from the date of original petition filing to the date the case closed. It took an average of 552.11 days from original petition filing to close the case in the post-ICWA Court cases and an average of 838.60 days from original petition filing to closure in pre-ICWA Court cases. This difference was statistically significant, with post-ICWA Court cases achieving permanency (i.e., case closure) in an average of 286.49 days less than pre-ICWA Court cases $t(198) = 4.90$, $p < .004$. Significantly more post-ICWA Court cases were also able to close within 12–24 months of the original petition filing (56%; $n = 50$ of 90) compared to pre-ICWA Court cases ((32%; $n = 35$ of 110), X^2 (1, $N = 200$), $p < .001$). Figure 5 illustrates the percentage of cases that closed within specific timeframes.

DISCUSSION

Two cohorts of ICWA cases in St. Louis County before and after ICWA Court implementation were compared to assess if the ICWA Court had improved adherence to ICWA requirements, case processing, and outcomes. Findings of this study indicate a great deal of ICWA Court practice that aligns with ICWA requirements and demonstrate several positive improvements in ICWA implementation made by the St. Louis County ICWA Court (see Table 8 for a summary of practices).

ICWA applicability findings were made throughout the case, for example, and this has improved significantly since the implementation of the ICWA Court, including taking less time to confirm cases as ICWA cases under the ICWA Court model. Notice of the petition filing to tribes was perfected in almost all the post-ICWA Court cases as well, representing a significant improvement over pre-ICWA Court cases. Qualified expert witness (QEW) testimony findings were made when appropriate, and findings that the child was at risk of imminent physical damage or harm if left in the home was made in the majority of all initial (EPC) hearings in post-ICWA Court cases (significantly more often than

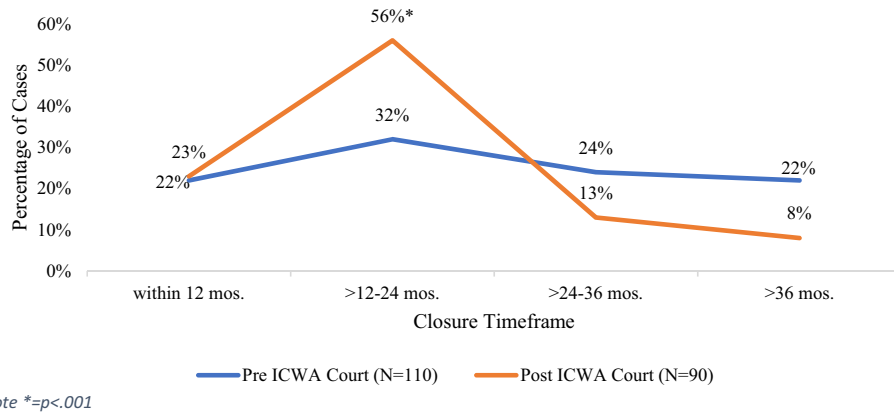


FIGURE 5 Months to case closure from petition filing pre- vs. post-ICWA court. [Color figure can be viewed at wileyonlinelibrary.com]
Note: *$p < .001$.

in pre-ICWA Court cases). While a finding that placement preferences were followed at least once across the life of the case was made in the majority of pre-ICWA Court cases, it was made in *all* of the post-ICWA Court Cases – representing a significant improvement post-ICWA Court. Active efforts findings were made at least one time in every ICWA case where the child was removed from his or her parent(s) or other legal guardian(s) in both pre- and post-ICWA Court cases and made in significantly more of the earlier hearings in post-ICWA Court cases.

Parents were frequently at the ICWA Court hearings, especially earlier hearings (although not statistically different from pre-ICWA Court). Tribal representatives, however, appeared significantly more frequently by the Dispositional Review hearings in the post-ICWA Court cases. No significant differences were found for attorney presence in hearings between pre- and post-ICWA Court cases, with attorneys for mothers and children frequently present across all hearing types and fathers' attorneys more commonly present at first disposition review hearing and permanency hearings.

With respect to child placement, ICWA Court cases were able to place significantly more children with relatives at earlier stages of the case process compared to pre-ICWA Court. While reunification rates were similar from pre- to post-ICWA Court, post-ICWA Court cases had significantly more permanent custody to relative outcomes and pre-ICWA Court cases had significantly more TPR and adoption outcomes. Finally, post-ICWA Court cases achieved timelier permanency, closing in significantly less time than pre-ICWA Court cases. Post-ICWA Court cases achieved permanency (i.e., case closure) in an average of 286.49 days less than pre-ICWA Court cases, and significantly more post-ICWA Court cases were able to close within 12–24 months of petition filing.

This study found several positive improvements in practices that align with ICWA requirements. While we cannot isolate which specific features of the ICWA Court are responsible for the positive case process and outcomes found in this study, we can examine the practice model for some insights into what was done differently and may account for the positive improvements seen from pre- to post-ICWA Court. The ICWA Court made several specific procedural practice changes (e.g., proactively addressing ICWA matters on the record, making court orders and findings tailored to ICWA standards), for example, including implementing a specialized court docket presided over by an ICWA Court judge and involving dedicated staff with special training and a desire to practice in ICWA cases. These practice changes, specialization, and enhanced and ongoing training of court stakeholders may have contributed to the ICWA implementation improvements seen in this study such as timely inquiry, confirmation of ICWA applicability, timely notice, and increased ICWA findings. The St. Louis County ICWA Court also focused on building relationships between the court, agency, and tribes to promote effective ICWA implementation and timely permanency. This

TABLE 8 Summary of findings from the pre-post assessment.

Practice/outcome	Practice/ outcomes improved post implementation	Notes regarding findings
RQ 1. Is ICWA Court implementation related to improved compliance with ICWA?		
ICWA applicability	Mixed	No difference in number of findings but finding was earlier in process
ICWA determinations	Yes	Significantly earlier in process post-implementation
Notice	No	But notice is perfected more often to tribe post-implementation
Intervention by tribe	No	
Parents and parent attorneys present at hearings	No	
Tribal representatives present at hearings	Mixed	Only at one hearing type was there a difference (higher post-implementation)
Required ICWA findings:	Yes	Findings were made more often post-implementation:
Active efforts	Mixed	At specific hearing types
Physical damage or harm	Mixed	At specific hearing types
Clear and convincing evidence standard	Yes	At specific hearing types
QEW	Yes	At specific hearing types
Placement preferences followed	Yes	At all hearing types
Placement of the child	Yes	No difference in parent placements Higher rates of relative placements earlier in process
RQ 2. Is ICWA Court implementation related to better outcomes for Indian youth?		
Reunification or relative placement	Mixed	Reunification rates similar Significantly higher permanent custody to relative post-implementation
Time in foster care	Yes	Exited care an average of 286 days sooner post-implementation

relationship-building may have resulted in the increased presence of tribal representatives in the post-ICWA Court hearings. The altered courtroom environment (designed to be more inclusive, culturally informed, and less intimidating) may have encouraged more engagement of families and tribal representatives, resulting in earlier identification of relative placement options for children.

Findings from this study indicate that the implementation of ICWA Court may be beneficial in ensuring courts are meeting legal requirements in ICWA cases, promoting the use of relatives as placement options, and achieving timely permanency. In addition, the study found positive outcomes for Indian families, with less time in foster care and more relative placements in comparison to parental terminations. While preliminary in nature, these findings suggest a positive relationship between ICWA Court implementation and outcomes. What the study cannot tell us is what about the ICWA Court implementation leads to these changes in practice.

Study limitations

This study was limited to the information available from case files. The judge could have been making verbal findings on the record, for example, or including a QEW in the hearing process that was not later reflected in the case file. Not all hearings in either the pre- or post-ICWA Court cases had the child's placement information clearly documented in the case files as well, resulting in missing data

for this measure. This study also capitalized on the existence of existing datasets for the pre- and post-ICWA Court studies. While all the variables included in these datasets were relevant to an examination of ICWA implementation and outcomes, our pre/post comparisons were restricted to the variables included in those original datasets.

Next steps for research

With respect to the St. Louis County ICWA Court specifically, future research should examine whether any modifications made to the model because of the COVID-19 global pandemic (e.g., virtual or remote court appearances) impacted the case process and outcomes. Given that the ICWA Court physical environment was altered to be more welcoming, less threatening, and culturally inclusive, it would be important to determine if moving to a virtual appearance format had any negative effects. A pre-post ICWA Court assessment of hearing quality should also be undertaken to examine whether the level of engagement of parties and breadth and depth of discussion improved under the ICWA Court model.

Research examining ICWA Courts generally is quite limited. Some ICWA Courts have been in operation for more than a decade, yet it is unclear how effective they are at ensuring better compliance with ICWA or with improving outcomes for children and youth. While this study of the St. Louis County ICWA Court contributes to our understanding of ICWA Court effectiveness, more research is needed. First, research should explore the ICWA Court process in more detail to better learn how (or if) practice has changed. To aid in this effort, ICWA Courts need to rigorously document their procedures and protocols, clearly articulating how those differ from typical (non-ICWA Court) practice, and then examine whether those different procedures and protocols result in improved ICWA implementation. This will not only facilitate evaluation but also replication. Second, research needs to be furthered by exploring the link between practice and outcomes. Understanding both what ICWA courts are doing to improve their practices *and* whether these changes in practice are resulting in improved outcomes for children and families can provide important information to the field about which practices are most helpful. While not all courts may have the resources to implement an ICWA Court, understanding which specific practices lead to better outcomes can be critical to informing the child welfare field on how to improve practice generally in courts and what efforts are critical to implement for improved outcomes, even if resources are limited.

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