

LUMMI NATION ACTIVE EFFORTS GUIDANCE

CITA JUDICIAL TRAINING 6/1/2021

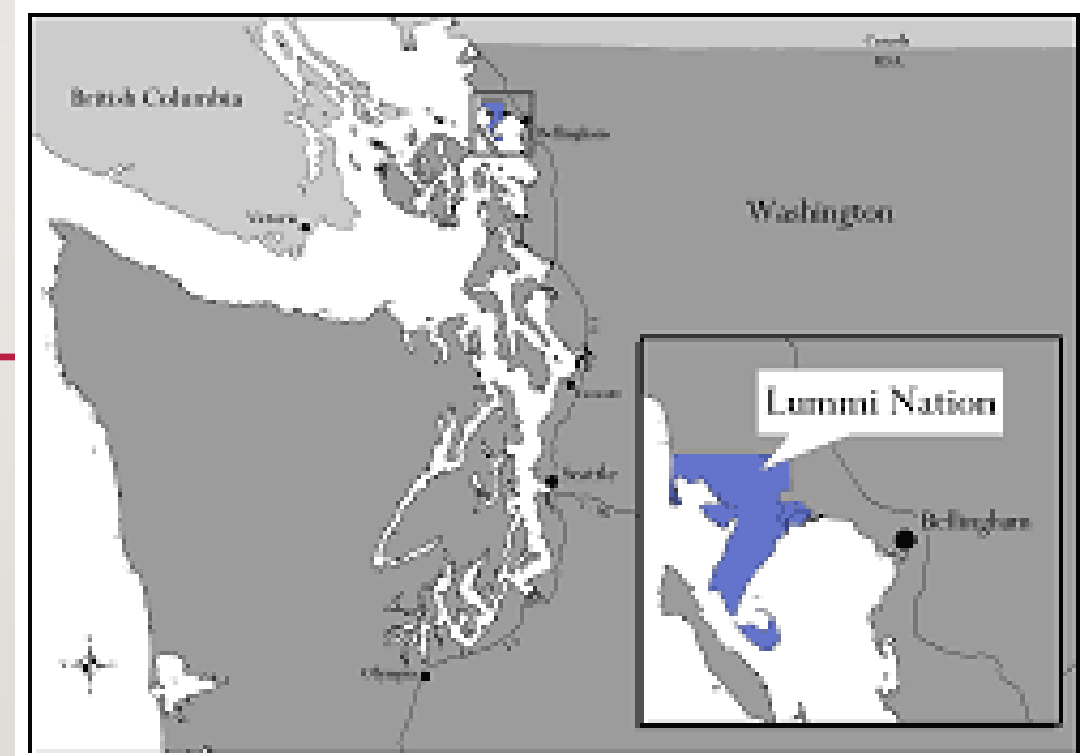
LUMMI NATION



TREATY OF 1855

INTRODUCTION

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LEAD SOCIAL WORKER
LUMMI CHILD WELFARE
LUMMI NATION



GOAL AND INTENT OF ICWA

- Reduce number of Native children entering child welfare system
- Address and reduce disproportionality
- Keep families together
- Improve quality of social work practice

WHY ACTIVE EFFORTS ARE IMPORTANT

- Arguably the most important part of ICWA
- The part of ICWA most directly relating to front-line social work practice
 - Raises required level of social work practice
 - Front-line social work largely determines case outcomes

STATUS OF COMPLIANCE WITH ACTIVE EFFORTS

- It doesn't appear that since passage (1978) that there has ever been system-wide compliance
- Losing ground, not gaining it
- Study found state courts documenting Active Efforts in dispositional hearings in 21% of cases
- 2009-2019:
 - Number of cases where Mothers & Indian Custodians were provided Active Efforts by DCYF dropped 13%
 - Provision of Active Efforts by DCYF to Fathers & Indian Custodians < 50% of cases
- 2015-2019:
 - Ongoing consultation/collaboration with tribes by DCYF < 50% of cases

STATUS OF COMPLIANCE WITH ACTIVE EFFORTS

Lummi Nation's experiences:

State Agencies:

- Social workers testifying that Active Efforts have occurred when they have not
- Despite WA DCYF acknowledging Active Efforts provided in < 50% of cases, Lummi Nation has not encountered instance where DCYF has reported/acknowledged to court Active Efforts requirements weren't met

State Courts:

- Accepting Reasonable Efforts as Active Efforts
- Putting burden on tribe to prove Active Efforts requirements weren't met rather than on State Agency to prove they were met.

RESULTS AND IMPACTS OF NON-COMPLIANCE WITH ICWA'S ACTIVE EFFORTS MANDATE

- ICWA's intent unmet
- Dependencies opening unnecessarily
- Disproportionality of Native children in foster care
 - Nationally: 2.7x
 - Washington State: 4.3x
- Feasible reunifications not occurring
- Relative placements not being preserved
- Children spending longer time in care
- Long-term resource burdens

DEFINING ICWA ACTIVE EFFORTS TERMINOLOGY

- **Active**

- Engaged in action, reacting readily, requiring expenditure of energy/activity

- **Affirmative**

- Positive or showing agreement

- **Thorough**

- Complete in all aspects

- **Timely**

- Coming early, happening at best possible moment, made at best possible moment

- **Diligent**

- Steady, earnest, and energetic effort (painstaking); careful and using a lot of effort

- **Concerted**

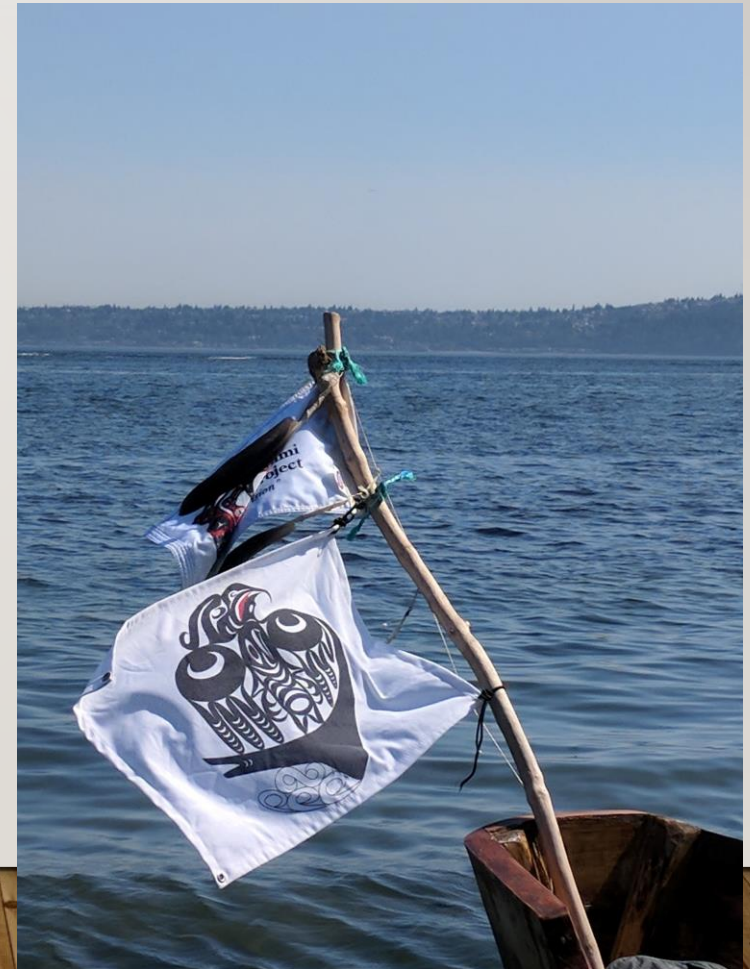
- Planned or done together for shared purpose

- **Made in good faith**

- **Tailored to circumstances of case**

ACTIVE EFFORTS VS. REASONABLE EFFORTS

- **Reasonable**
 - Moderate: Average in amount, intensity, quality, or degree
 - Not extreme
- **Passive**
 - Acted on or induced by an external agency; tending to not take an active or dominant part
 - Opposite of active



ACTIVE EFFORTS VS. REASONABLE EFFORTS

Example: Chemical Dependency Scenario

- **Active Effort**
 - Assisting in making call to providers to access/schedule evaluation and ongoing services
- **Reasonable Effort**
 - Giving list of providers to call themselves to access/schedule evaluation and ongoing services.
- **If also a sexual assault survivor:**
 - **Active Effort**
 - Coordinating chemical dependency services with provider where social worker has determined with the provider that the offender is not doing services there as well
 - **Reasonable Effort**
 - Referring for chemical dependency services with provider without determining if the offender is also doing services there

BASELINE CAPACITY ASSESSMENT

Issues that should be assessed:

- Strengths
- Transportation access
- Communication access
- Financial obstacles
- Health obstacles
- Cognitive obstacles
- Trauma history
- Stability/remoteness of residence
- Service providers (*current, proximity to, etc.*)
- Is assistance making contact with providers needed?
- Language obstacles (*inc. literacy*)
- Support System
- Childcare access
- Cultural connections

COMMON CASE FACTORS: CHEMICAL DEPENDENCY

Active Efforts:

- Assessing if chemical dependency issues exist:
 - Asking parent and collaterals
 - Reviewing case history
- Assessing if signs of CD issues could be attributed to health or other issues
- If random UA's required, ensuring access to reliable phone service and transportation to UA site.
- Assessing if underlying trauma factor in parent's CD issues and coordinating concurrent trauma services
- If inpatient treatment recommended, assisting in locating program nearest child
- Ensuring provider has relevant collateral information
- Providing collateral information on CD issues to other providers
- DOCUMENTING ALL ACTIVE EFFORTS IN DETAIL

COMMON CASE FACTORS: CHEMICAL DEPENDENCY

Would not meet Active Efforts:

- Working under assumption that CD issues exist without assessing if could be attributed to health issues
- Making CD services available without actively directly connecting parent to the service
- Addressing CD issues without also assessing if underlying trauma is factor (*and coordinating concurrent trauma services*)
- Referring to inpatient program without consideration of distance from child
- Requesting UA's without ensuring reliable phone service and transportation access
- **DOING ACTIVE EFFORTS BUT NOT DOCUMENTING THEM IN DETAIL IN RECORD**

HOW MANY ACTIVE EFFORTS ARE REQUIRED?

- **Depends on circumstances of case**
- **Must be “thorough”:** Complete in all aspects
- Incomplete Active Efforts do not meet ICWA’s requirements
- If issues identified on case are **chemical dependency, domestic violence, and housing** but Active Efforts only made as to **chemical dependency and housing**, Active Efforts are **incomplete**.
- If issues identified on case are **mental health and housing**, and state agency cannot locate parent after making all applicable Active Efforts to **locate** them (*and done applicable consultations with tribe, family, and applicable providers*), Active Efforts would be **complete** as to that parent for that period.

LUMMI NATION'S “COMPREHENSIVE GUIDE TO ACTIVE EFFORTS”



STRUCTURE OF GUIDE

- Organized into background, statutes, steps, case factors, considerations, and case scenarios.
- Information can be easily located based upon the factors of any given case.

Table of Contents

Foreword 4

Introduction 5-10

 Purpose 6-8

 Statutes 9

 Federal 9

 State 9

 Federal Guidelines 9

 Washington State DCYF Policy 9

 Other Entities' Recognition of Active Efforts 9-10

1. Active Efforts Standards: Lummi Nation Expectations 11-67

 a. Steps of Active Efforts 12-14

 b. Assessing Safety and What Active Efforts are Needed 15-17

 c. Finding/Locating Parents 18-19

 d. Baseline Capacity Assessment 20-31

 e. Service Referrals 32-34

 f. Chemical Dependency 35-37

 g. Mental Health 38-40

 h. Housing 41-43

 i. Violence/Domestic Violence/Anger Management 44-46

 j. Criminal Issues 47-49

 k. Parenting Skills 50-52

 l. Relative/Placement Search 53-56

 m. Trafficking & Exploitation 57-62

 n. Missing Children 63-65

 o. Visitation 66-67

2. Other Considerations: Lummi Nation Expectations 68-90

 a. Imminent Risk 69-70

 b. Timely Efforts 71-73

 c. Documentation of Active Efforts 74-76

 d. Tribal Consultation 77-79

 e. Resource Shortages 80

 f. How Many Active Efforts are Required? 81

 g. When Have Active Efforts Proved Unsuccessful? 82-83

 h. Culturally Appropriate Services 84-85

 i. In-Home vs. Out of Home 86-87

 j. Indian Custodians 88

 k. Voluntary Cases 89

STRUCTURE OF GUIDE

Sections contain:

- Background information on why topic is important
- List of examples of what would and would not meet Active Efforts

1.H – HOUSING

Housing issues have historically been a significant factor in the removal of Native American children into dependency cases.¹⁰⁸ A variety of factors can contribute to a parent's struggles to maintain safe/stable housing. Factors can range from poverty, limited income, credit history, and other financial challenges to mental health, chemical dependency, and criminal history issues. It is not uncommon for economic obstacles to securing housing to be the sole barrier to reunification with a parent who is otherwise ready to reunify.

Native Americans face a disproportionate number of obstacles related to housing. State Agencies and courts should take into consideration that Native Americans face issues of homelessness, poverty, and lack of affordable housing at rates higher than non-Native households¹⁰⁹. Physical housing problems (such as lack of hot/cold running water, exposed wiring, holes in floor, etc.) in tribal areas are much more severe than for US households on average; and incidence of these of these problems are about 40% higher for low-income Native households in tribal areas than for average-income Native households in tribal areas¹¹⁰.

Active Efforts related to parents' housing include:

1. Determining what housing support services are available to parent¹¹¹ (housing providers, housing advocates, financial supports, emergency shelters, etc.), making parent aware of these services, offering to assist parent in contacting these programs, and assisting parent in making contact with these programs through means such as making calls with the parent, providing parent transportations to these programs, and accompanying parent to these programs.¹¹²
2. Offering assistance to parent in completing housing application paperwork and assisting parent in completing housing application paperwork.¹¹³
3. Routinely assessing¹¹⁴ and asking parent/family¹¹⁵ (and support system members or provider if available) if their residence is stable or if they move frequently; if the residence is theirs or

¹⁰⁸ "Guidelines for Implementing the Indian Child Welfare Act", BIA (2016): E.1

¹⁰⁹ "Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report from the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs", US Dept. of Housing and Urban Development, Office of Policy Development and Research (2017)(p.76)

¹¹⁰ "Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report from the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs, Executive Summary", US Dept. of Housing and Urban Development, Office of Policy Development and Research (2017)(p.6)

¹¹¹ 25 CFR § 23.2 ("active efforts" definition examples #2 and #8)

¹¹² "Guidelines for Implementing the Indian Child Welfare Act", BIA (2016): E.4; "Online FAQ", National Indian Child Welfare Association: #13 ("What Are 'Active Efforts?'" What considerations must be made in an ICWA case?)

¹¹³ Guidelines for Implementing the Indian Child Welfare Act", BIA (2016): E.4; "Online FAQ", National Indian Child Welfare Association: #13 ("What Are 'Active Efforts?'" What considerations must be made in an ICWA case?)

¹¹⁴ 25 CFR § 23.2 ("active efforts" definition example #1); "A Guide to Compliance with the Indian Child Welfare Act", National Indian Child Welfare Association (2016): "What Services are Required in ICWA Cases?" (see "What Are 'Active Efforts?'")

STRUCTURE OF GUIDE

- Extensive use of footnotes and references with citations of supporting evidence
- Bibliography with weblinks
- Example case scenarios

someone else's who is allowing them to stay there; and if they alternate between multiple residences. If their residence is unstable, if they need to move frequently, or if they alternate between residences, this indicates need for housing support services.

4. Asking the parent¹²⁵ if there is potential that they will need to move in near future and, if so, assist parent with developing plan as to where they could go.
5. If parent struggles with maintaining sanitary/safe home environment, consulting with mental health and chemical dependency provider to determine if this is due to mental health or chemical dependency issues or if this is an underlying life skills issue.¹²⁷ If this is an underlying life skills issue, coordinate life skills education supports for parent. If this is related to mental health issues, consult with mental health provider on how to address issue. If this is related to chemical dependency issues, consult with chemical dependency provider on how to address issue.
6. If parent struggles with maintaining safe home environment in terms of keeping unsafe persons from the home; consulting with mental health, domestic violence, and chemical dependency providers to determine if this is due to mental health, domestic violence, or chemical dependency issue.¹²⁸ If this is related to domestic violence issues, consult with domestic violence provider on how to address issue. If this is related to mental health issues, consult with mental health provider on how to address issue. If this is related to chemical dependency issues, consult with chemical dependency provider on how to address issue. If there is recommendation that parent obtain protection, no contact, or no trespass order as to specific persons; coordinate assistance for parent to request/obtain such an order including coordinating someone to directly assist parent in completing paperwork. Coordinate transportation for parent to get to that assistance or the assistance to go to where parent is.
7. Advocating for parent to housing programs.

The following would not meet Active Efforts related to parents' housing:

1. Leaving it up to parent on their own to locate and self-refer to housing or housing supports.
2. Giving parent list of housing supports to contact and self-refer on their own without offering/providing assistance in contacting these supports, getting to supports, accompanying to supports, and with applying to supports.¹²⁹
3. Assuming that parent's residence is stable and not taking steps to determine stability and if need for housing assistance exists (both before and after child returns to the home).
4. Directing parent to develop their own plan, without offering/providing assistance in developing such plan, as to where they could go upon learning that parent will need to move in near future.

¹²⁵ 25 CFR § 23.2; "Indian Child Welfare Policies and Procedures", Washington State DCYF: #13; "A Practical Guide to the Indian Child Welfare Act", Native American Rights Fund (2007): 12.5

¹²⁶ 25 CFR § 23.2; "Indian Child Welfare Policies and Procedures", Washington State DCYF: #13

¹²⁷ 25 CFR § 23.2 ("active efforts" definition examples #1 and #8)

¹²⁸ 25 CFR § 23.2 ("active efforts" definition examples #1 and #8)

¹²⁹ RCW 13.38.04(1)(a)(see i, ii, and iii)

STRUCTURE OF GUIDE

- Active Efforts checklist tool to assess/assist with compliance

Active Efforts Checklist: Specialized

Clients: _____
 Time Period: _____
 Agency / Worker(s): _____

Finding/Locating Parents				
<input type="checkbox"/> Applies to Case <input type="checkbox"/> Does Not Apply to Case (parents in consistent contact this period & whereabouts known) (Is assessment of whether or not this applies to case documented in detail? <input type="checkbox"/> Yes <input type="checkbox"/> No)				
Specific Active Effort	Done this Period?	Date(s) Done	Details	Where Documented in Detail?
Attempted to reach parent at all phone numbers/email addresses on file.	<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Case Notes <input type="checkbox"/> Petition <input type="checkbox"/> Court Report <input type="checkbox"/> Other: _____
Physically went to last known residences.	<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Case Notes <input type="checkbox"/> Petition <input type="checkbox"/> Court Report <input type="checkbox"/> Other: _____
Sought out & contacted known relatives/ associates/support system for assistance.	<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Case Notes <input type="checkbox"/> Petition <input type="checkbox"/> Court Report <input type="checkbox"/> Other: _____
Contacted tribe for assistance.	<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Case Notes <input type="checkbox"/> Petition <input type="checkbox"/> Court Report <input type="checkbox"/> Other: _____
Contacted place of employment. If unable to get through via phone, physically went to place of employment.	<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Case Notes <input type="checkbox"/> Petition <input type="checkbox"/> Court Report <input type="checkbox"/> Other: _____
Contacted service providers for assistance	<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Case Notes <input type="checkbox"/> Petition <input type="checkbox"/> Court Report <input type="checkbox"/> Other: _____
Physically went to locations parent has history/reports of frequenting.	<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Case Notes <input type="checkbox"/> Petition <input type="checkbox"/> Court Report <input type="checkbox"/> Other: _____
Physically went to scheduled/known appointments.	<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Case Notes <input type="checkbox"/> Petition <input type="checkbox"/> Court Report <input type="checkbox"/> Other: _____
Contacted state GA/TANF program for assistance.	<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Case Notes <input type="checkbox"/> Petition <input type="checkbox"/> Court Report <input type="checkbox"/> Other: _____
Did internet search for parent's location.	<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Case Notes <input type="checkbox"/> Petition <input type="checkbox"/> Court Report <input type="checkbox"/> Other: _____

CLOSING

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