

SYSTEMS OF CARE WITH INCLUSION OF TRIBAL GOVERNMENTS

February 2, 2022



- Overview of Tribal Affairs within State Departments
- Tribal Demographics
- Understanding Tribal Sovereignty
- Tribal Consultation Policies
- Brief overview of the ICWA
- Strategies for Tribal Engagement
- Changes and requirements of AB 2083/AB 153 for Tribal Consultation and MOU's



Children & Youth State System of Care Team

State Departments

- Department of Social Services
- Department of Education
- Department of Health Care Services
- Department of Developmental Services

Tribal Affairs Representatives

- Stephanie Weldon, CDSS
- Judy Delgado, CDE
- Andrea Zubiate, DHCS



California Department of Social Services Office of Tribal Affairs:

- Has the responsibility for leading CDSS efforts to build better government-to-government relationships between the CDSS and California Indian Tribes (Tribes), Counties and Tribal Governments, as well as engaging Native American stakeholders.
- Implements the CDSS Tribal Consultation Policy in concert with branches and bureaus throughout the Department, to carry out meaningful consultation efforts with California Indian Tribes.
- Serves as an advisor to leadership throughout the CDSS on issues impacting Indians and Tribes.

DHCS Office of Tribal Affairs (OTA)

- The Department of Health Care Services (DHCS) announced the creation of the OTA in August 2021
- OTA serves as the principal entity to facilitate engagement between DHCS programs and Tribal partners, to strengthen and maintain an effective working relationship with Tribes and representatives of Indian health programs, and to ensure DHCS continues to meet federal obligations to seek input on matters that pertain to Medi-Cal program operations.

Key activities of the office include:

- Serving as the DHCS principal liaison with Tribes and Indian health program representatives, and urban Indian organizations (UIOs);
- Ensuring compliance with federal requirements to notify Tribes and designees of Indian health programs on proposed changes to the Medi-Cal program.

DHCS Tribal Engagement

In compliance with federal and state law, DHCS maintains the following program and processes:

- Indian Health Program (IHP): State law requires DHCS to maintain a program to for American Indians to address comparatively low health status of Tribes and urban Indians. The IHP is housed within the OTA.
- Tribal Advisory Process: Federal law requires DHCS to seek advice from Tribes, designees of Indian Health Programs, and UIOs on Medi-Cal matters having a direct effect on Indians, Indian Health Programs.
- Tribal Engagement Plan: Newly developed plan that increases engagement between DHCS, Tribes, and Indian health program representatives on DHCS policies and initiatives that affect health care for American Indians in California.

CDE American Indian Education and Tribal Consultation

Legislation

- California Education Code sections 33370
- California Code of Regulations, Title 5, Section 11996.2

Purpose

- The purpose of the [AIEOC](#) is to provide input and advice to the State Superintendent of Public Instruction on all aspects of American Indian education programs established by the state

CDE American Indian Education Center Program

Purpose

- Community/Tribal based programs
- Provide supplemental educational and cultural services to Native American students and their families

Legislation

- California Education Code sections 33370 and 33380–33385
- California Code of Regulations, Title 5, Section 11996–11996.11

American Indian Education Center- Tobacco Use Prevention Program

Purpose

- Enable CDE funded American Indian Education Centers to implement supplemental prevention education, intervention, and cessation programs, and youth development programs directed at the reduction of commercial tobacco use among Native American youth

Legislation

- California *Health and Safety Code* Section 104430

Currently

- 7 funded programs
- 3rd year of a five year cycle

Local Education Agency Tribal Consultation Requirement

Under the Elementary and Secondary Education Act (ESEA) section 20 U.S.C. § 7918 (c) section 8538, 2015, affected districts are required to consult with tribal governments on the development of their education plans

Resources and Contact Information

Resources:

- Tribal Consultation Guidance located at [Tribal Consultation - American Indian \(CA Dept of Education\) website](#)

California Tribal Overview

- 109 Federally recognized Tribes in California- 20% of all tribes in the nation.
- 104 based in California and an additional 5 with lands (Indian Country) extending into California.
- In California, Public Law 280 grants California civil jurisdiction and some criminal in Indian Country. Concurrent jurisdiction.
- State with largest population of American Indians/Alaska Natives.
- County administered, state oversight system.
- 2 Tribes with state Title IV-E agreements.
- 1 Tribe with Direct Title IV-E.
- CA is the 5th largest economy in the world.
- A list of 40+ NFRT for natural resource laws. (Graves protection and repatriation of sites disturbed by development)
- Spirit of ICWA WIC §224.4 - permissive participation in an ICWA case.
- States have no authority over tribal governments unless expressly authorized by Congress.



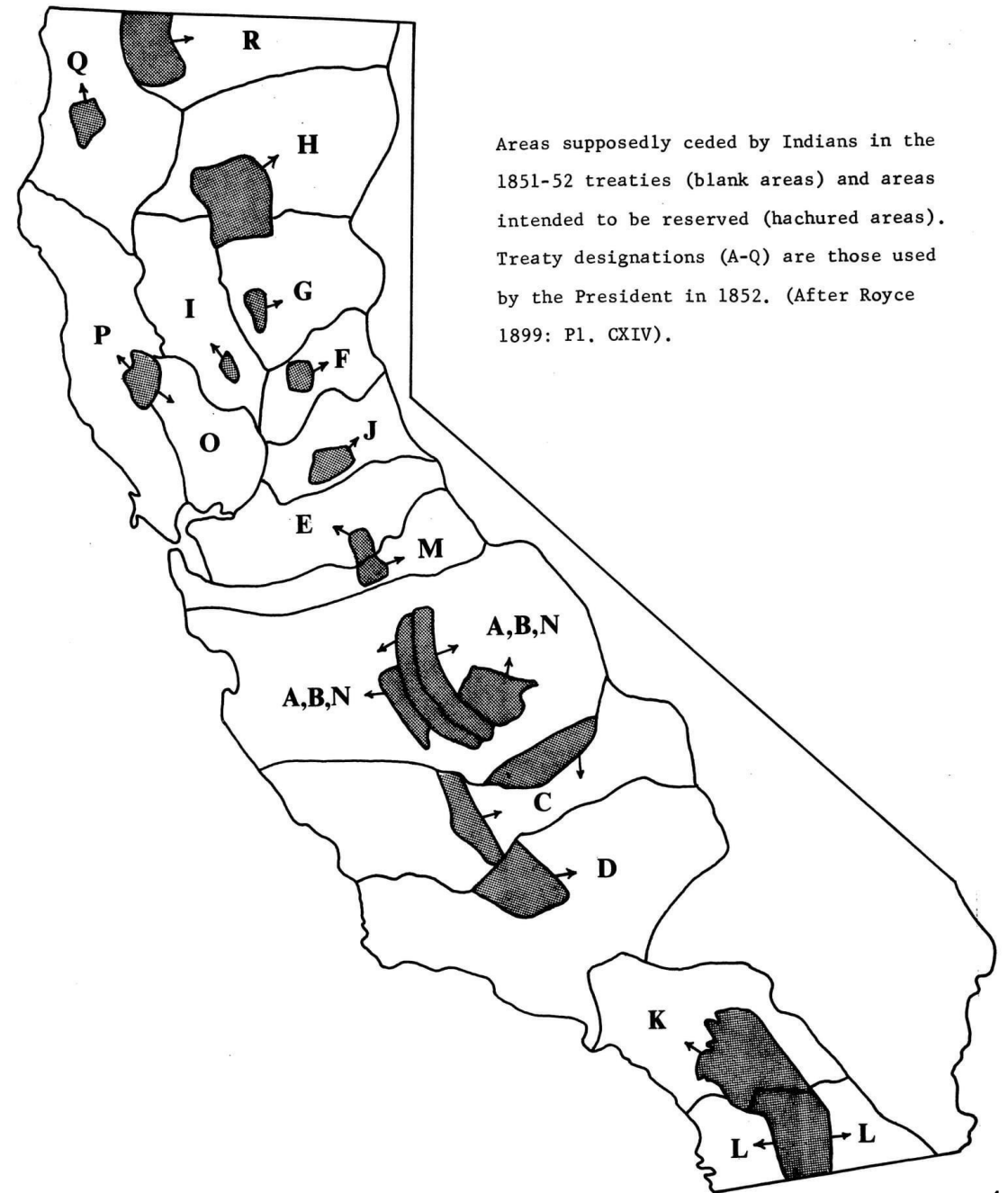
Map of California of Tribal Lands and Groups



The Special Case of CA

Unratified treaties; Landless Indian Rancheria System; BIA recognition of small numbers of rancheria occupants as tribes -- mixing Indians of multiple tribes and to the exclusion of large historic tribal populations. Membership can be controversial and may have implications for the larger context of [Indian affairs](#).

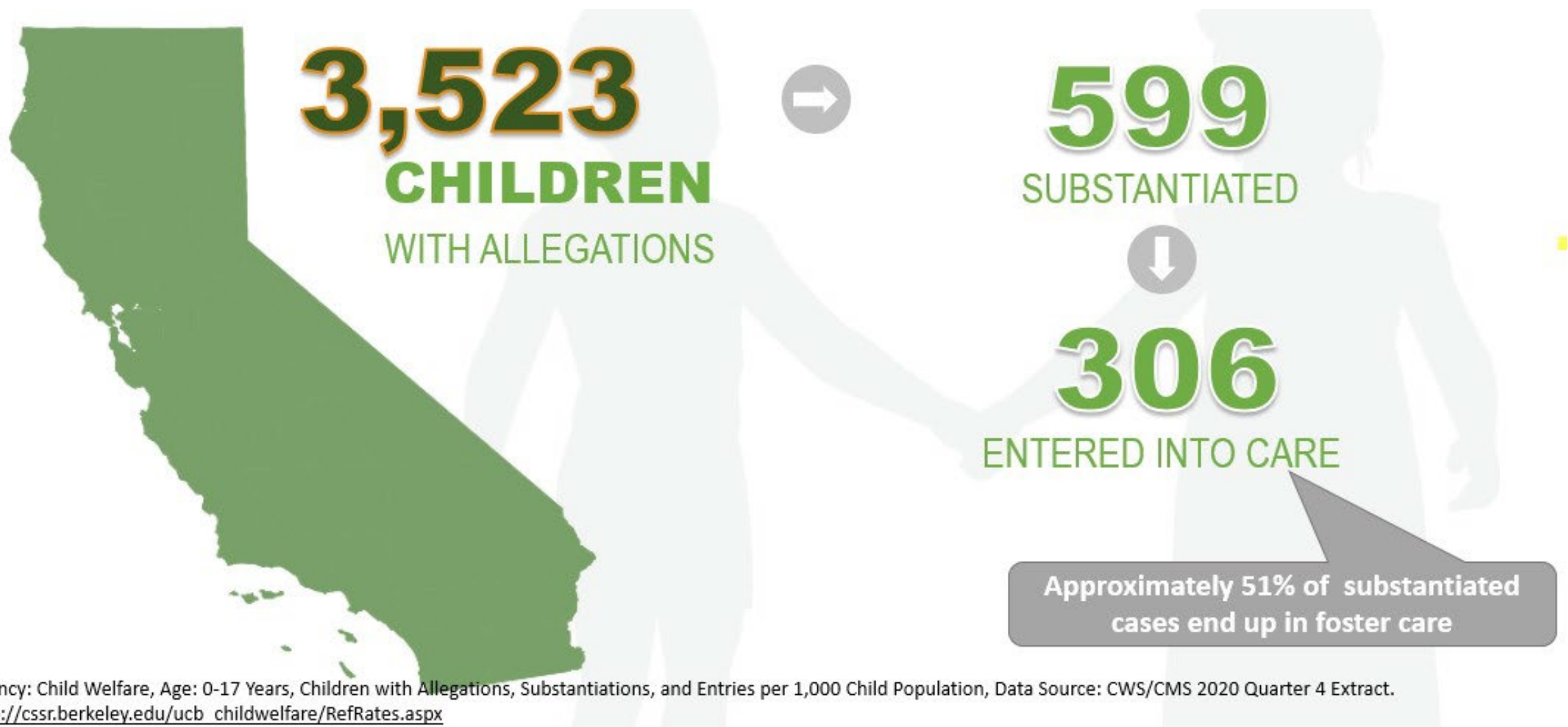
On July 8, 1852 the US Senate in closed session rejected 18 treaties that had negotiated with CA Tribes. The treaties were then sealed from the public record until 1905. The Treaties had reserved 8.5 million acres of land but have never been recognized.



Areas supposedly ceded by Indians in the 1851-52 treaties (blank areas) and areas intended to be reserved (hatched areas). Treaty designations (A-Q) are those used by the President in 1852. (After Royce 1899: Pl. CXIV).

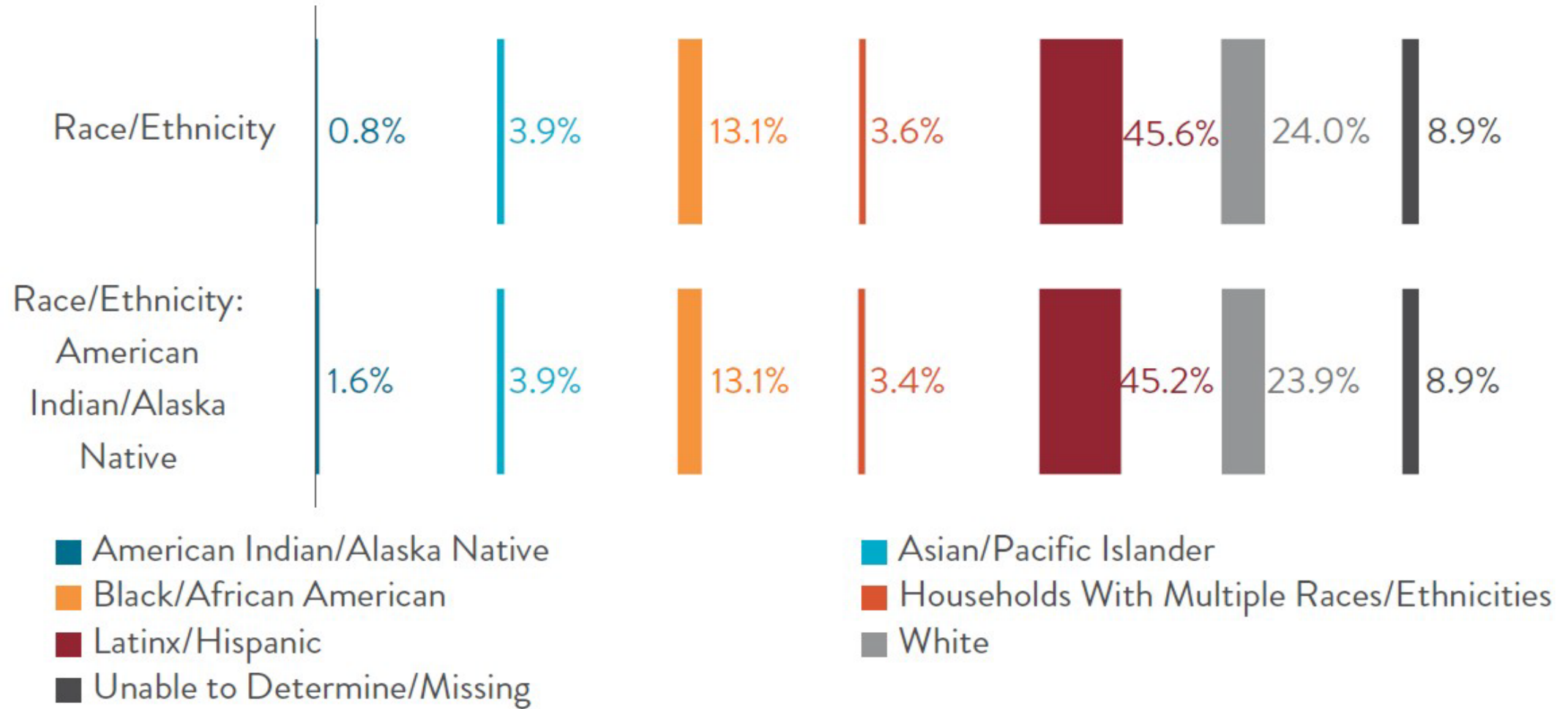
Map 1

Native Americans Entering Foster Care Referrals, Substantiations & Entries 2020



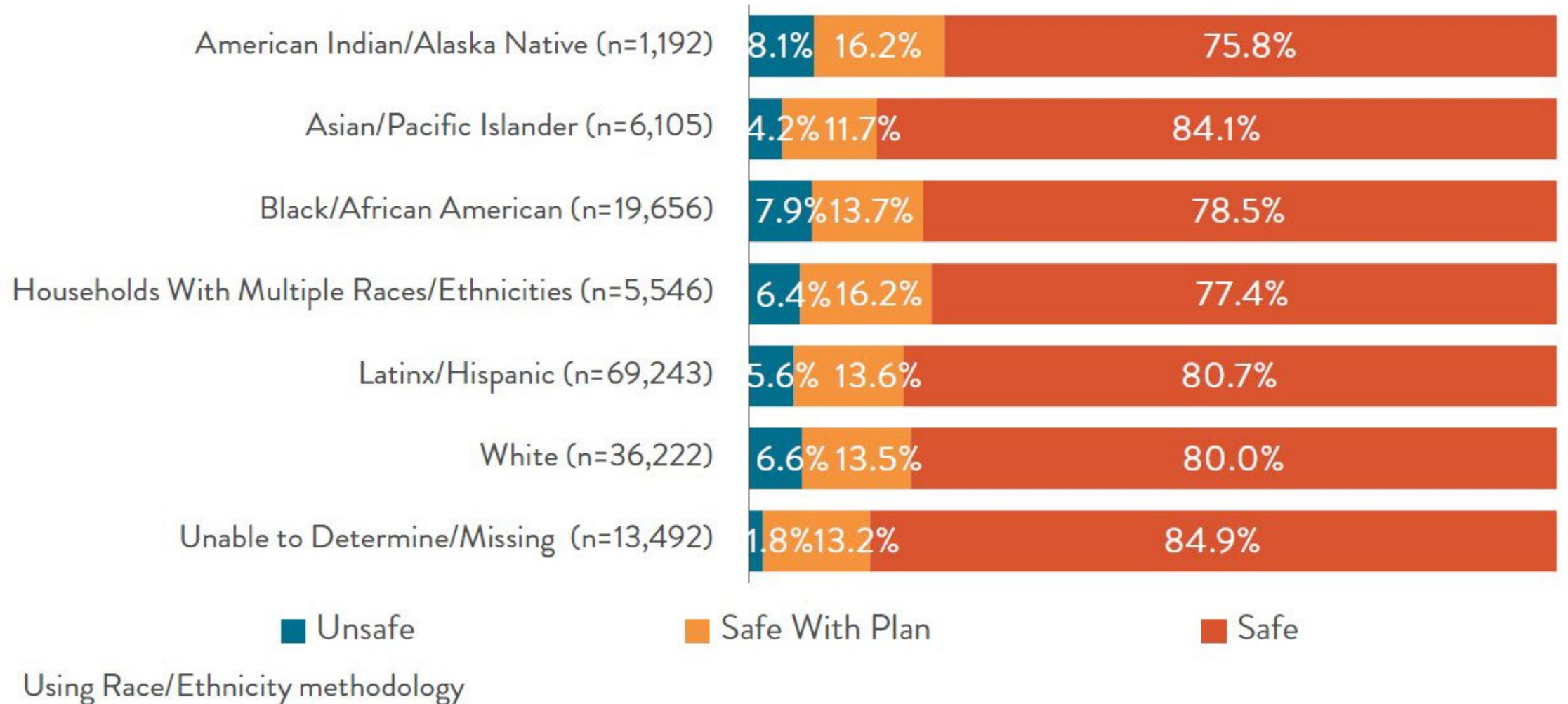
*See slide 52 for text description of graphic image.

RACE/ETHNICITY COMPARISON



*See slide 53 for text description of graphic image.

SAFETY DECISION BY RACE/ETHNICITY



*See slide 54-55 for text description of graphic image.

Why?

Pendulum of Federal Indian Policy

Era	Policy Trend	Global Trend
1880s – 1920s	Assimilation	Imperialist/racism
1930s – 1940s	Autonomy	Economic reform
1950s – 1960s	Assimilation	Cold war/individualism
1970s – early 1990s	Autonomy	Civil rights/liberation
Late 1990s – 2000s	Assimilation	Anti-multiculturalism

Boarding Schools

"It's cheaper to educate Indians than to kill them."

Commissioner of Indian Affairs
Thomas Morgan speaking at the
establishment of the Phoenix Indian
School in 1891

"Kill the Indian, save the man"

Philosophy of Colonel Richard Pratt



Indian Citizenship Act, 1924

- American Indians granted United States Citizenship.
- While all Native Americans were now citizens, not all states were prepared to allow them to vote. Western states engaged in all sorts of legal ruses to deny Indians the ballot. It was not until almost the middle of the 20th century that the last three states, Maine, Arizona and New Mexico, finally granted the right to vote to Indians in their states.



The Urban Indian Relocation Program

- Attempt to assimilate Indians into white American society - the Urban Indian Relocation program.
- The reservation economies during World War II deteriorated as the federal government slashed the
- Bureau of Indian Affairs (BIA) budget to meet wartime needs.
- Jobs were scarce and the average annual income for an American Indian male living on the reservation in 1949 was \$623, five times less than that of all males
- Between 1952 and 1960, an estimated 160,000 American Indians were relocated off of the reservation to live in urban cities
- Many who were relocated were part of the more than 30% of able-bodied males who joined the military during WWII.
- San Francisco, Oakland, Los Angeles, Denver, Salt Lake City, Chicago, Dallas, St. Louis, Cleveland, Cincinnati



Indian Adoption Project 1952-1968

- Indian children adopted to white families.” goal to take Native kids away from their biological parents.
- A government program designed to save the government money and dismantle tribes. All under the guise of integrating Native children more fully into American society
- The CWLA with funding from the BIA and US Children’s Bureau headed up the Indian Adoption Project
- Poverty of Native American family was recognized as a factor leading to neglect and abuse, thus justifying the removal of children or acting in “the best interests of the child.”
- The Child Welfare League of America’s Adoption Standards stated, “where there is a conflict between the interests of the child and the natural parents, the situation should be resolved in the child’s favor.” The child’s favor was interpreted as being best served by removal from the Native American family and culture
- “Authorization for discharge of an infant”



Practices During the Gold Rush

- Many Native American women during the California Gold Rush were forced into sexual slavery.
- Bounty hunting of Native Americans was also common in the latter half of the 19th century in California. Cash rewards were paid for each scalp, body, or head of a Native American man, woman, or child.
- Example bounties: \$25 for a male body part (scalp, hand, or entire body) and \$5 for a child or woman
 - 1852: State of California paid \$1.1 million to militias for killing Native Americans
 - 1855: Shasta City gave \$5 per severed head
 - 1856: State of California paid 25 cents per scalp
 - 1860: State of California paid \$5 per scalp
 - 1863: Honey Lake gave 25 cents per scalp



Historical Trauma

The American Indian legacy of genocide, removal, assimilation, termination

- Historical/Intergenerational trauma is the cumulative emotional and psychological wounding, over the lifespan and across generations, emanating from massive group trauma experiences - unresolved trauma and grief that continues to adversely affect the lives of survivors of such trauma and their descendants.
- Socioeconomic conditions, coupled with racism and oppression, complicate the historical trauma response and the risk factors for substance abuse, violence, suicide, mental illness, and other family problems.
- On the road to health, Indians have both harsh and complicated histories and harsh contemporary reality to address.



Why isn't it considered unconstitutional when the government provides more rights, protections, and services to Indians?

The rights, protections, and services provided by the federal government to Indians flow:

- from membership (citizenship) — that is, having a distinct *political status*—in a distinct government (that is, a tribe).
- *not* from ancestry, race, or culture.

What exactly does “political status” mean, and why does it matter?

- Political status is derived from historical relationships among tribes and between tribes and the federal government. It has to do with the existence of tribes as governments that can collaborate and negotiate with other governments. Political status today generally refers to the sovereign authority of **federally recognized tribes** to officially engage in a government-to-government relationship with the United States.
- Where authorized by state statute, tribes can also enter into agreements and compacts with states (for example, Title IV-E agreements and gaming compacts).
- Tribes have inherent sovereignty—the authority, as a government, to exist and self-govern. Inherent sovereignty arises from within and does not require recognition or approval by any other government to exist.

Does the United States engage in a government-to-government relationship with all tribes?

- No. This duty to engage as sovereigns, and many federal protections and benefits, apply only to “federally recognized” tribes and their members.
- Some states have a formal process for state recognition of non-federally recognized tribes. California has no such process. However, it has repeatedly acknowledged them, including by legislation (for example, WIC §306.6 provides for the participation of such tribes in child welfare proceedings).

Sovereignty Today

- Pursuant to federal case law, tribes are “domestic dependent nations” with quasi-sovereign status over their members and territory, meaning that they have internal rather than external sovereign powers (e.g., authority over their own domestic relations, membership, governance).
- Treaties are to be liberally construed in favor of the Indian parties, and all ambiguities are to be resolved in their favor
- Generally, states have no authority to regulate Indian affairs. . . Unless Congress expressly delegates this power to them.

→ Enter Public Law 280

Public Law 280

(1 of 2)

- Public Law 280 (PL 280), passed during the Indian reorganization-termination eras, requires five states (including California) to take over from the federal government extensive criminal and civil jurisdiction over tribal matters. Tribes were not given a say in this legislation.
- What is the practical effect of PL 280?
 - Example: The Indian Child Welfare Act generally reserves to tribes exclusive jurisdiction over child custody proceedings for Indian children who live on their reservation, but the Act contains an *exception for tribes in PL-280 states*. This deprives tribes of sole authority over a vitally important internal matter: the care of their own children. Case law has subsequently determined that these tribes retain jurisdiction over these proceedings concurrent with the state.

Public Law 280

(2 of 2)

PL 280

28 USC 1360(a): **[PL 280 states] have jurisdiction over civil causes of action** between Indians or to which Indians are parties **which arise in the areas of Indian country** [within] . . . the State **to the same extent that such State has jurisdiction over other civil causes of action**, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State.

ICWA

25 USC 1911(a): Exclusive jurisdiction. An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, **except where such jurisdiction is otherwise vested in the State by existing Federal law.** *[PL 280 was existing law when ICWA was passed.]*

Public Law 280: The Upshot

Due to PL 280, county welfare departments have the same obligations to protect Indian children, regardless of whether ICWA applies, or the child resides on rancheria land, as with any other child.

county welfare departments have the obligation to respond to all emergency calls.

“ . . . County welfare departments shall respond to any report of imminent danger to a child immediately and all other reports within 10 calendar days.” WIC §16501(f)

One important exception is a non-emergency child welfare case where the child is already a ward of a tribal court: In that instance, that tribal court retains *exclusive* jurisdiction regardless of where the child lives. In other words, a state court is unable to unilaterally take such a case away from a tribal court.

“Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.”
ICWA, 25 USC 1911(a)

ICWA

- In 1978 Congress passed the Indian Child Welfare Act (ICWA).
- It was intended as a federal mandate to those involved in the child custody system to work collaboratively with tribes to prevent the breakup of Indian families and tribes and to redress past wrongs of the American child custody system.
- Congress found “that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and Institutions” (25 USC §1901(4))
- Historical context- genocide, destroy, assimilate, remove identity and culture.



The Indian Child Welfare Act

A powerful and MULTIFACETED statute

- ICWA provisions address all of the following:
 - Tribal Rights and Opportunities
 - Minimum Federal Standards for State Court Proceedings
 - Indian Social and Cultural Considerations



California ICWA Laws

- **SB 678 (2006) CA ICWA**
 - ICWA applies to all Indian child custody cases
 - Inquiry in all cases
 - Sprit of ICWA
- **AB 3176 (2019)** Conforming CA law to amended 2016 federal ICWA regulations
 - Inquiry requirement clarifications
 - Reason to know presumption
 - Active efforts beginning at initial contact
 - Increased emphasis on tribal authority & opportunities
- **WIC §10553.1** CDSS authorized to enter into VI-E Agreements with Tribes
- **MMP, Div. 31 (2016)** ICWA integrated throughout the regulations
- **WIC §361.31(g)** re: use of tribal services for Indian child placement.
- **Health & Safety §1505** RFA Written Directive Tribally Approved Homes exempt from state licensing and approval requirements.
- **WIC §361.31(k)** retention of Indian child placement records in perpetuity.
- **WIC §10553.12 (SB 1460)** Tribal Background check option for tribes.
- **WIC 16519.5 and Health & Safety 1517** Integrating Indian Community Standards into the RFA home approval process for Indian children (Applies to counties & FFAs)

**Complexity +
Diversity
+Change +
Unfamiliarity
= Compliance
issues,
frustration**

Appeals

- CA Judicial Council analyzed July-Oct 2015
- 30% of all dependency appeals are ICWA Appeals; 85% involve Inquiry and Notice; 70% resulted in some form of remand for ICWA compliance.
- Indigenous Law and Policy Center, Michigan State analyzed 2017
- In 2017 there were 214 appealed ICWA cases, up 39 from the prior year. There were 34 reported ICWA cases. California led the states with 152 cases, 5 reported. Alaska was second with 6, 3 reported.

2017 Tribal Taskforce on ICWA Compliance

California Attorney General, Bureau of Children's Justice

- Investigations and lawsuit(s) against CA counties in northern CA

What is Tribal Consultation

- Tribal Consultation is an **enhanced form of communication that emphasizes trust, respect, and shared responsibility**. It is an open and free exchange of information and opinion among parties, which leads to mutual understanding and comprehension.
- Supports and recognizes Tribal sovereignty and the self-determination of Tribes.

Four Essential Elements

1. Consensus-based decision making
 2. Act with respect
 3. Know Native communities
 4. Sustain progress - the consultation process is cyclical needs flexibility
- National Indian Education Association (2017)

Definitions (1 of 2)

- Government-to-Government Relationship – The term was first used by Indian Tribes and the Federal Government and is grounded in federal treaties, statutes and executive orders. It is also used to describe the relationship between Indian Tribes and State Governments.
- Indian Tribe – A federally recognized American Indian Tribe, Alaska Native Tribe, Band, Nation, Pueblo, Village or Community with whom the Federal Government maintains an official government-to-government relationship, established by a federal treaty, statute, executive order, court order or a federal administrative action is considered a federally recognized Tribe. The Bureau of Indian Affairs (BIA) maintains and regularly publishes the [list of Federally Recognized Tribes](#).

Definitions (2 of 2)

- Sovereignty – The ultimate source of political power from which all specific political powers are derived.
- Tribal Government – A governing body of an American Indian or Alaska Native Tribe, Band, Nation, Pueblo, Village or Community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 USC 479a.
- Tribal Leader – A tribal president, governor, chairperson, and/or elected or appointed representative of an Indian Tribe.
- Tribal Self–Governance – The governmental actions of Indian Tribes exercising their sovereignty and self-determination.

Components of Meaningful Tribal Consultation

(1 of 2)

- Consultation is meaningful when it occurs at the earliest possible stage, prior to the development of a program, initiative, or policy to ensure that tribal views are integrated.
- Tribal Consultation is most effective when it is seen and understood as a process that requires continuous input and discussion.
- True consultation is based on open communication and coordination that actively seeks and considers the views of all participants, and then seeks agreement on how to proceed.

Components of Meaningful Tribal Consultation

(2 of 2)

- The process of meaningful consultation is equally as important as the product of consultation. If tribal input is not reflected in how education programs and services are administered to Native students, then we have missed a great opportunity in supporting our nation's most vulnerable youth.
- Establishing a minimum set of requirements and expectations with respect to consultation along with establishing measurable outcomes are necessities for meaningful consultation

Know the Native Communities (1 of 2)

- Identify and contact participants. Tailor communication strategies to ensure that the appropriate method is used for the intended audience. (For example, send printed notices via postal mail to tribal leaders to indicate a higher degree of formality.)
- Establish a minimum set of requirements and expectations with respect to consultation.
- Establish measurable outcomes for meaningful consultation.

Know the Native Communities (2 of 2)

- Ensure everyone involved understands the objectives of each meeting and the purpose of consultation.
- Establish dates for upcoming meetings, including tribal consultation meetings and information or input meetings that are open to the public.
- Establish deadlines for plan development and submission.
- Distribute and post information on proposed programs prior to the meeting.
- Plan presentations about existing programs so that tribes have clarity regarding how the programs operate in the local, district or state context.

Critical Components of the Consultation Process

- Create submission process for tribal input.
- Establish a notification system to make sure all parties are continually updated.
- Establish a plan to distribute and post a final copy of plans or applications.
- Establish a plan for subsequent years for meetings to review progress, make changes, and incorporate feedback.
- Distribute and post contact information for district personnel or members of committees.



AB 153 Addition to the System of Care Work

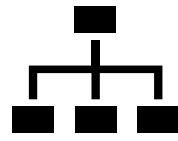
- AB 153 Language:
 - Processes, as developed through tribal consultation with the federally recognized tribes within each county, for engaging and coordinating with these tribes in the ongoing implementation of the memorandums of understanding described in this section.

Next Steps for County ILTs

Next Steps

- Invite federally recognized tribes to join the ILT
- Invite federally recognized tribes to review and provide feedback to the MOU
- Recognize the importance of having tribes participate in Child and Family Team Meetings and Interagency Placement Committee Meetings of their tribal children
- Put into place a Tribal Consultation Policy (TCP)

Consultation: Input and Discussion



- Is the proposed structure and process feasible?



- What are areas that you would like to adjust?



- Are there additional ways to achieve the new MOU component beyond a Legislative Committee?

Strong relationships are built on trust and honesty. As representatives of a professional, government agency, you represent history and a system



Upcoming Guidance

- ACL outlining the requirements of AB 153 will be coming soon
- Tribal Consultation Policy due date will be outlined in the ACL
- Technical Assistance regarding Formal Tribal Consultation provided by CDSS OTA

State Department Tribal Contacts

Stephanie Weldon, CDSS

Stephanie.weldon@dss.ca.gov

Andrea Zubiate, DHCS

andrea.zubiate@dhcs.ca.gov

Judy Delgado, CDE

JuDelgado@cde.ca.gov

Thank you!



Addendum A – Native American Entering Foster Care Referrals, Substantiations & Entries 2020

- Graphic image includes data:
 - 3523 children with allegations
 - 599 substantiated
 - 306 Entered into care
 - Approximately 51% of substantiated cases end up in foster care
 - Footnote: Agency: Child Welfare, Ages 0-17 Years, Children with Allegations, Substantiations, and Entries per 1,000 Child Population, Data Source: CWS/CMS 2020 Quarter 4 Extract.
[California Child Welfare Indicators Project](#)

Addendum B - RACE/ETHNICITY COMPARISON

Race/Ethnicity bar chart:

- American Indian/Alaska Native: 0.8%
- Asian/Pacific Islander 3.9%
- Black/African American 13.1%
- Households with Multiple Races/Ethnicity 3.6%
- Latinx/Hispanic 45.6%
- White 24%
- Unable to Determine/Missing 8.9%

Race/Ethnicity: American Indian/Alaska Native bar chart:

- American Indian/Alaska Native 1.6%
- Asian/Pacific Islander 3.9%
- Black/African American 13.1%
- Households with Multiple Races/Ethnicity 3.4%
- Latinx/Hispanic 45.2%
- White 23.9%
- Unable to Determine/Missing 8.9%

Addendum C - SAFETY DECISION BY RACE/ETHNICITY (1 of 2)

- American Indian/Alaska Native n=1,192
 - Unsafe 8.1%
 - Safe with a Plan 16.2%
 - Safe 75.8%
- Asian/Pacific Islander n=6,105
 - Unsafe 4.2%
 - Safe with a Plan 11.7%
 - Safe 84.1%
- Black/African American n=19,656
 - Unsafe 7.9%
 - Safe with a Plan 13.7%
 - Safe 78.5%
- Households with Multiple Races/Ethnicity n=5,546
 - Unsafe 6.4%
 - Safe with a Plan 16.2%
 - Safe 77.4%

Addendum C - SAFETY DECISION BY RACE/ETHNICITY (2 of 2)

- Latinx/Hispanic n=69,243
 - Unsafe 5.6%
 - Safe with a Plan 13.6%
 - Safe 80.7%
- White n=36,222
 - Unsafe 6.6%
 - Safe with a Plan 13.5%
 - Safe 80.0%
- Unable to Determine/Missing n=13,492
 - Unsafe 1.8%
 - Safe with a Plan 13.2%
 - Safe 84.9%