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# Beyond the Mandate

## Continuing the Conversation

Report of the Maine Wabanaki-State Child Welfare Truth & Reconciliation Commission

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Presented on June 14, 2015  
Hermon, Maine



**“I guess I just don’t want it to happen to anyone else.  
You know, this has been a long road.”**

**– Wabanaki person formerly in care**

**“It’s crazy the capacity you have to love when  
you’re not even expecting to ... ”**

**– Tribal child-welfare worker, Wabanaki foster parent**

**“ ... the life of an adoptee is a lifelong struggle.  
It’s not something that you ever get over.”**

**– Wabanaki adoptee**

**“You have to have joint experiences, you have to go through joint struggles, you have to go through joint triumphs and then, you know, it becomes more real.”**

**– Former DHHS administrator**

**“ ... of course, the word ‘genocide’ to me means killing people, but it means more than that: it means killing a culture, and I don’t think I ever thought of any of our practices as killing a culture.”**

**– Former DHHS caseworker**

**“We don’t know what we don’t know.”**

**– Former DHHS administrator**

# Beyond the Mandate Continuing the Conversation

Expanded Online Version

## Abbreviations

AAG	Assistant Attorney General
AG	Attorney General
ASFA	Adoption and Safe Families Act
DHHS	Department of Health and Human Services
DHS	Department of Human Services
ICWA	Indian Child Welfare Act
MACWIS	Maine's Automated Child Welfare Information System
MICSA	Maine Indian Claims Settlement Act
NICWA	National Indian Child Welfare Association
REACH	Maine-Wabanaki REACH
TPR	Termination of Parental Rights
TRC	Maine Wabanaki-State Child Welfare Truth & Reconciliation Commission
U.N.	United Nations

## About this e-Publication

**The Maine Wabanaki-State Child Welfare Truth & Reconciliation Commission (TRC)** addressed truths of Wabanaki experiences with child welfare to promote healing and change.

The TRC was a 501(c)(3) nonprofit.

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Originally published by the Maine Wabanaki-State Child Welfare Truth & Reconciliation Commission in June 2015.

Design and photography by Jenni Parmalee of Sheltering Tree, LLC, Rockport, Maine.

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## Letter from the Commissioners

**T**his report describes the process and findings, discoveries and recommendations of the Maine Wabanaki-State Child Welfare Truth & Reconciliation Commission, whose mandate was endorsed in February 2013. The governor of Maine and the five tribal chiefs signed as equals to authorize the Commission to investigate whether or not the removal of Wabanaki children from their communities has continued to be disproportionate to non-Native children and to make recommendations, as the Declaration of Intent exhorts us, that “promote individual, relational, systemic and cultural reconciliation.” This Commission is the first in the United States in which two parties agreed to come together to pursue answers to difficult questions, and it is one of the first in the world to examine issues of Native child welfare. While our commission does not involve an entire country as did the process brought to prominence by Nelson Mandela in South Africa, it nonetheless marks a historic moment, one we have been proud to steer and witness.

First, we are grateful to our signatories for their support of this undertaking. We thank the governor of Maine. And we thank the chiefs of the Houlton Band of Maliseets; the Aroostook Band of Micmacs; the Passamaquoddy governments of Sipayik (Pleasant

Point) and Motahkomikuk (Indian Township); and the Penobscot Nation, who represent the approximately 8,000 Native people in Maine known collectively as the Wabanaki.

We also need to extend our deepest gratitude to the hundreds of men and women who came forward to share their truths. We honor all who participated: Wabanaki elders, children once in care, foster and adoptive parents, tribal leaders, service providers, incarcerated people, attorneys and judges, caseworkers and administrators from the tribes and from the Department of Health and Human Services (DHHS), parents and grandparents. These brave people took part in an experience that was freighted with both hope and anxiety, and whose outcome could not be predicted.

What we learned in the last 27 months is sobering and powerful. Wabanaki children in Maine have entered foster care on average at 5.1 times the rate of non-Native children during the past 13 years. In addition, federal reviews in 2006 and 2009 indicate that sometimes up to half of all children coming into care do not have their Native heritage verified. The state thus must still make strides to ensure full compliance with the Indian Child Welfare Act (ICWA). This federal legislation, passed in 1978, created a higher standard

**“[H]istorically, we took care of children. ... [T]hat’s who we are ... And because of that willingness to take care of each other, that’s how we’ve survived.”**

**– Former tribal health director**

**“ ... [my daughter]’s fantastic and funny and ... worth changing my life for. As I have learned ... am I.”**

**– Wabanaki statement provider**

for removing Native children from their homes, in an effort to help Native people maintain critical cultural and linguistic ties to kin and tribe. ICWA can also be viewed as an effort to stem the displacement of Native children from their communities, in the recognition that every child’s separation from her culture engenders further loss for her people.

With that being said, progress in ICWA implementation in Maine has occurred, strong relationships have developed across the system, and many people, both Wabanaki and non-Native, professionals and families, have dedicated an enormous amount of time, energy and care to cases involving Wabanaki children. They have wrestled with intricate concerns about the safety of children, the role of culture and jurisdiction. Case-loads are high, the work is heart-wrenching and services are often understaffed and underfunded, difficulties Wabanaki and state workers share. In spite of these obstacles, many have tried to respect and implement not only the letter, but the spirit of the law. We thank all who patiently answered questions as we sorted our way through complex issues of child-welfare practice, legislation and history.

It is also clear that Wabanaki communities and people are resilient and family traditions are strong.

As one Wabanaki statement provider noted, “ ... [my daughter]’s fantastic and funny and ... worth changing my life for. As I have learned ... am I.” (5/7/14)

Another Wabanaki person commented, “[H]istorically, we took care of children. ... [T]hat’s who we are. ... And because of that willingness to take care of each other, that’s how we’ve survived.” (2/6/15) And this, from a Wabanaki social-services director: “It’s always going to be a battle. But we’ve been here a long time. Tribes have been here a long time. ... And we just have to keep doing our work, too.” (1/8/15)

It would be relatively straightforward to recommend some thoughtful, technical repairs to the systems; we do indeed have these suggestions to make. However, given the historic nature of this project and the fact that Native families and children form its focus, we have felt compelled to extend our argument and to press harder at what can and needs to be said.

To that end, we have chosen to present this narrative not only as the result of a completed process, but as an invitation to all communities and stakeholders to embark on a longer, more thorough engagement that will certainly include child welfare and will, more importantly, invoke what we saw to be the underlying conditions that complicate so much of the relationship

**“It’s always going to be a battle. But we’ve been here a long time. Tribes have been here a long time. ... And we just have to keep doing our work, too.”**

**– Wabanaki social-services director**

## **“Causing serious bodily or mental harm to members of the group” and “Forcibly transferring children of the group to another group”**

– U.N. Convention on Genocide, Article 2, Sections b and e

between the four tribes who now comprise the Wabanaki and the state of Maine.

From our perspective, to improve Native child welfare, Maine and the tribes must continue to confront:

1. Underlying racism still at work in state institutions and the public
2. Ongoing impact of historical trauma, also known as intergenerational trauma, on Wabanaki people that influences the well-being of individuals and communities
3. Differing interpretations of tribal sovereignty and jurisdiction that make encounters between the tribes and the state contentious

We further assert that these conditions and the fact of disproportionate entry into care can be held within the context of continued cultural genocide, as defined by the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the United Nations General Assembly in 1948. In particular, the convention notes that genocide means “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.” We posit that Article 2, Sections b and e –

“Causing serious bodily or mental harm to members of the group” and “Forcibly transferring children of the group to another group” – apply to what Wabanaki communities face here in Maine.

We realize that these are forceful words and that they may land in readers’ hearts and minds as blame. It is hard to fathom for many in Maine that genocide occurred here, much less that it continues to occur in a cultural form. We understand that people need time to think and learn about the history that lies behind these words, including the specifics of harms – such as the failure of national adoption projects to produce positive outcomes – to the more general – the presence and nature of historical trauma. But it is a conclusion that participants in this process drew as well. A former DHHS worker noted that an ICWA training helped him to see not only the individual Wabanaki child but to recognize that the child was connected to a larger, collective culture. This person grew aware that the child was “part of the tribe and ... for the welfare of that child to have a healthy, well-functioning tribal community, I could see that. ... As the presentation evolved, I started realizing, ‘Oh, my God! What this is saying is that I’ve been an agent – among other things – I’ve been an agent of genocide.’ And of course, the word ‘genocide’ to me means killing people, but it means more than that: it means killing a culture, and I don’t

**“ ... The tribe cannot afford to lose their children and I don’t mean just in terms of damage. I mean in terms of literally they cannot afford to lose their children.”**

– Non-Native tribal attorney



**“ ... I think by bringing it out and talking about it and taking ownership is the only way we can start healing.”**

– DHHS caseworker, Wabanaki person formerly in care

think I ever thought of any of our practices as killing a culture.” (10/14/14)

A non-Native tribal attorney described the situation even more bluntly. “ ... The tribe cannot afford to lose their children and I don’t mean just in terms of damage. I mean in terms of literally they cannot afford to lose their children. And so when we intervene in a state case or when a child is informed that they are Native American and they are brought back into the culture, that is really important for the tribe’s preservation, which is very different than on the state’s side. On the state side they don’t worry about whether they are going to actually lose children or whether they are going to be facing extinction at some point just by virtue of the numbers. [I]f blood quantum is the determining factor, eventually the math is that ... some of the tribes will become extinct.” (2/12/15)

Not everyone will share our interpretation. But it would violate the terms of our mandate should we fail to respond to what we had seen and how we came to understand it. Nor does silence serve to advance the relationships and engagement that make concrete progress possible. In addition, while many people, both Native and non-Native, expressed anger about the past and the present, we heard sentiments like these from providers as well: a tribal child-welfare worker said, “I

know that no one person is to blame for this and it is everybody’s job to figure out how to make it right so hopefully, that’s what comes of this. I’m hopeful for that.” (11/4/14)

One provider, who was both a child in care and is now a DHHS caseworker, said this, “I think if we can help educate the public not just here in Maine, but across the United States about the injustices that have been done and how we can work with the tribes and facilitate healing because we have generational trauma that has been swept under the rug. And I think there’s a lot of blame to go around. I think ... there’s been some tribes that in some aspects have swept it under the rug and the federal government continues to sweep it under the rug and a lot of states have. And I think by bringing it out and talking about it and taking ownership is the only way we can start healing.” (11/17/14)

As this provider suggests, it is also the Commission’s responsibility to encourage all of us to accept shared and greater accountability. Throughout the term of the mandate, we saw over and over that the well-being of Wabanaki children was linked to their cultural connectedness and that their heritage serves as a perhaps unparalleled source of strength and resiliency for individuals and communities. One Wabanaki person who had been in foster care put it this way:

**“I know that no one person is to blame for this and it is everybody’s job to figure out how to make it right so hopefully, that’s what comes of this. I’m hopeful for that.”**

– Tribal child-welfare worker, Wabanaki foster parent

**“They treated me as ... an outcast. Because I was pulled from the circle. ... [A]nd every time I came back instead of being in that circle, I was outside of it still.”**

– Wabanaki person formerly in care

every time he was sent away, “They treated me as ... an outcast. Because I was pulled from the circle. ... [A]nd every time I came back instead of being in that circle, I was outside of it still. And ... when I was sent back ... I was sent back farther from the circle.” (6/26/14)

This, too, we found to be true: providing and sustaining preventive support to Native families might be of the greatest use of all. One Wabanaki service provider commented, as did many, that tribal people view child rearing as the responsibility of an extended network of kin and connections. This person noted that the best way to help children is to “strengthen families as a whole and communities as a whole to be able to step up and care for kids when things aren’t optimal in their home lives so they don’t ever even need to enter the system.” (11/4/14)

Many of those who work in the state child-welfare system share this exact desire. When reflecting on the process of being involved with the Commission, a DHHS supervisor wrote, “This has been an amazing journey to bring truths to light. To bravely state fact, to move through and past pain toward healing. My vision for the future is a strong family system without the need for foster care.” (4/9/15)

Without the evocation of root issues and the naming of both past harms and hopes for what’s to come, practical suggestions for change may remedy certain problems while leaving the hardest ones unresolved. Not acknowledging these complexities hurts not only Wabanaki families and others directly involved in child welfare, but to some degree, all who call Maine home. It is tempting to invoke Dr. Martin Luther King, Jr.’s famous remark that injustice for some leads to no justice at all, but it is perhaps more important to cite a lesser used but no less pertinent quotation: “In the end, we will remember not the words of our enemies, but the silence of our friends.” We have heard the voices of the many who spoke with us and to remain quiet is to continue to perpetrate harms that must be known. Consider this report as a step toward refusing that silence and continuing this conversation, that will, we hope, like all the best communication, offer ample time for everyone to simply listen.

Sincerely,  
**Matthew Dunlap, gkisedtanamoogk,  
Gail Werrbach, Sandy White Hawk  
and Carol Wishcamper**

Commissioners  
Maine Wabanaki-State Child Welfare  
Truth & Reconciliation Commission  
June 2015

**“This has been an amazing journey to bring truths to light. To bravely state fact, to move through and past pain toward healing. My vision for the future is a strong family system without the need for foster care.”**

– DHHS supervisor

# Background to the Commission's Work

## History and Intent Behind the Indian Child Welfare Act

**I**CWA recognizes the importance for Native people in the United States to keep children who are removed from their homes with members of their families as a way to preserve tribal ties. As the National Indian Child Welfare Association (NICWA) notes in the words of the legislation itself, “the intent of Congress under ICWA was to ‘protect the best interests of Indian children and to promote the stability and security of Indian tribes and families’” (25 U.S.C. § 1902). ICWA sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe.

NICWA continues: “ICWA is an integral policy framework on which tribal child-welfare programs rely. It provides a structure and requirements for how public and private child-welfare agencies and state courts view and conduct their work to serve tribal children and families.”<sup>1</sup>

Historian Margaret Jacobs, in her 2014 book, “A Generation Removed,” an examination of adoption

projects that focused on Native children, here summarizes other aspects of the law: “ICWA embodied Indian self-determination through recognizing the jurisdiction and sovereignty of Indian tribes. Its primary provision affirmed tribes’ rights to take unprecedented sovereignty over most child-welfare matters involving Indian children, which the act defined capaciously as either a tribal member or a minor eligible for membership in a tribe. This rendering of the law meant that tribal courts held jurisdiction over not only children on tribal lands but also children who lived off the reservation. ICWA granted the right of the Indian custodian or tribe to intervene in the state court proceedings and to request transfer of child-welfare proceedings to the child’s tribal court under certain conditions.” A non-Native attorney who has worked for tribal people viewed ICWA like this: “Sadly ... a lot of lawyers ... seem to look at [ICWA] as either an impediment or a leverage and I don’t think that it ought to be viewed in either of those ways. I don’t think the Indian Child Welfare Act is just there to give one side in a lawsuit a leg up. I think there’s a larger purpose. I think, again, that it comes back to my belief that the ICWA is part of a larger movement towards tribal self-determination.” (9/11/14)

In essence, it is legislation that can be construed as a re-inforcement of the right of tribal people to decide what

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– National Indian Child Welfare Association (NICWA)

## “Kill the Indian ... and save the man.”

– Richard Henry Pratt (c. 1892), founder of the Carlisle Indian Industrial School

happens to their children and a federal awareness of the genocidal practices Native people have endured in this country. These range from acts of war, the dispossession of land and the purposeful spreading of illness, to the creation of boarding schools to which Native children were sent for more than 100 years. The intent of these schools was, in the words of Richard Henry Pratt, the founder of one of the most infamous institutions, the Carlisle Indian Industrial School, to “Kill the Indian in him, and save the man.” This strategy of removal continued throughout the 20th century in other forms as well, including adoption and forced sterilization movements that are well documented and not the purview of this report. But it is nonetheless necessary to sketch this background even in cursory form, as we found that almost every step of the Wabanaki present is interwoven with the weight and difficulty of the past.

### What Led to the Commission’s Creation

**A**dopting ICWA marked one step toward upholding tribal rights, but effective implementation was another, and many states, including Maine, struggled with that process in the years after the law’s passage. As a

Wabanaki expert witness put it, “It is painful to be Indian. It is painful to work the ICWA.” (1/20/15) In 1999, a federal pilot review found Maine wanting in several key areas and a collaborative effort called the ICWA Workgroup, comprised of Wabanaki and non-Native people, began to confront shortcomings. As both current and former DHHS and tribal child-welfare workers, they helped the state assess these issues and created trainings and other structures that encouraged Maine to address concerns.

But these members felt that problems still existed – federal reviews of DHHS in 2003 and 2009 indicated as such – and they came to envision a truth commission as a vehicle that could examine the problems that animated this apparent inability to fully implement ICWA. From 2008 to 2013, this group worked in partnership with the state to develop a declaration of intent; write a mandate that would eventually be signed by both Maine’s governor and the five tribal chiefs; and select the commissioners.

This collaborative, now called Maine-Wabanaki REACH, served as a vital partner as we reached out to Native and non-Native people who could help us create an accurate narrative. They also helped us present initial findings and recommendations across the state as we

## “It is painful to be Indian. It is painful to work the ICWA.”

– Wabanaki expert witness

## When asked why they were willing to share experiences that were often difficult, many, especially Wabanaki people, said, “So that this does not happen again.”

shared the results of our work this spring. However, we were independent of their oversight and developed our own methods and conclusions. While we have gratefully consulted Maine-Wabanaki REACH and many other stakeholders in this work, none of them has had a direct hand in the writing of this report or exercised editorial control over our findings. To clarify another issue, the Commission received no funding from the state of Maine or from the tribal governments; rather, we were generously funded by private donors and Maine-based and national foundations, named on [page 71](#).

### Our Goals and Process

**A**s the Commissioners, we have steered this truth-seeking process through its mandated course from February 2013 to June 2015. As instructed by our Declaration of Intent, we committed to uncovering the truth about child-welfare practice as it affected Maine’s Native people, creating opportunities to heal and learn from what we heard and discovered. We committed, again in the words of the Declaration, to working together, focusing our efforts on activities that will move us forward as equal partners invested in promoting best child-welfare practice for Wabanaki people of Maine.

More specifically, our directives encouraged us to:

1. Give voice to Wabanaki people with experience in child welfare.
2. Give voice to state and tribal child-welfare staff, care providers and the legal community in regard to their work with Wabanaki families.
3. Create and establish a more complete account of the history of the Wabanaki people in the state child-welfare system.
4. Work in collaboration with Maine-Wabanaki REACH to provide opportunities for healing and deeper understanding for Wabanaki people and state child-welfare staff.
5. Improve child-welfare practices and create sustainable changes in child welfare that strive for the best possible system.
6. Formulate recommendations to state and tribal governments and other entities to ensure that the lessons of the truth are not forgotten and to further the objectives of the Commission.
7. Promote individual, relational, systemic and cultural reconciliation.

## **“ ... I think about that little guy often. ... He’s not with us today. He got killed in Bangor on the street. Would things have been different?”**

**– Former tribal child-welfare worker**

When we began our outreach to communities in the fall of 2013, there was no way to know how or if we would have any success in achieving these objectives. What moves and inspires us is this: that within a short time frame, given limited resources and a small staff, we have gathered 159 statements from individuals and people who spoke jointly: 95 are from Native people and 64 are from non-Native people. They represent those who were in foster care and those who were adopted. They are tribal leaders and state officials. They are Wabanaki and non-Native foster and adoptive parents and Wabanaki elders. They are current and former DHHS and tribal child-welfare staff, ICWA workers and administrators. They are attorneys and judges, both tribal and state. They are service providers, guardians ad litem, grandparents, parents and incarcerated people. Members of all four tribes participated. Some 27 percent came forward anonymously. In addition, 78 people were part of 13 focus groups on a variety of topics. We also conducted informal interviews with approximately 15 people, including the Chief Justice of Maine as well as nuns and priests who served in Wabanaki communities.

More information can be found about the [statement and research process](#) (page 76) as well as the [archiving process](#) (page 80) in this expanded version of the report.

The vast majority (73 percent) have chosen to have their names attached to their statements and to have these statements made available to the public in our archive, which will be held by Bowdoin College. When asked why they were willing to share experiences that were often difficult, many, especially Wabanaki people, said, “So that this does not happen again.” Another statement provider, who worked for many

years in tribal-child welfare, recalled feeling haunted by a particular experience with a Wabanaki boy whose custody was contested by the state. “[O]ne of the reasons I think that I’m doing this, I think about that little guy often. ... He’s not with us today. He got killed in Bangor on the street. Would things have been different? That’s my thought. Maybe not. But we’ll never know that today ... I guess I wanted to do this for him. And for ... any other tribal children that could be with their families.” (11/21/13)

We and the staff and volunteers for the Commission have traveled thousands of miles to the villages and communities of Maine to hear people’s testimonies. We have spent time as well in Augusta, Portland and Bangor, trying to find out to the best of our abilities the answer to these essential questions:

*What has helped or hindered the effective implementation of ICWA in Maine?*

*What do we do with what we have learned?*

*Where do we head from here?*

The discussions we had with providers and communities, the testimony we gathered from Wabanaki and non-Native people, in connection to research conducted in the state archives and through a variety of other sources, allowed us to achieve in some measure – some smaller than others – each of the objectives of the mandate. Reconciliation, however, at any level remains an elusive although potent goal. We must also emphasize that what we have uncovered is incomplete and constrained by particular limitations.

**“... I guess I wanted to do this for him. And for ... any other tribal children that could be with their families.”**

**– Former tribal child-welfare worker**

## Conditions and Limitations of Our Process

**F**irst, we had only a short window of time in which to complete our work. To truly tell this history would and shall require years and the broad participation of many more Wabanaki and non-Native stakeholders.

Second, people volunteered to come forward and were often simply invited to tell us what they remembered, knew or had been through, at times guided by specific questions that connected to their professional or personal role. Many who participated appeared to feel a sharp sense of relief once they had shared their truths. In her work with Indigenous Peoples, Dr. Maria Yellow Horse Brave Heart, who first used the phrase historical trauma to describe the long-term social, psychic and physical impact of massive trauma on a people, suggests that it is confronting the experience that eventually allows people to heal from it.

Yet it was not an easy process; to some extent, everyone we spoke with carries memories that have marked their lives, particularly Wabanaki people formerly in care. Wabanaki whose grandparents had been in boarding schools and who spoke admiringly of their own upbringing still noted the lasting effects of language and cultural loss. Non-Native people carry trauma as well. Many were surprised at how much grief they still felt when thinking and speaking of times when they removed children from families or recalled cases where children had been hurt. We tried to provide the support we could, and we are in awe at the courage required to share these memories.

But for these and other reasons, we have chosen not to use people's names and to attach only the date a statement was provided when referring to material drawn from their testimony. We reference providers as, say, “a DHHS administrator” or a “Wabanaki foster parent” to preserve people's privacy and protect delicate boundaries as all participants explore what it means to speak about this aspect of their lives. While most providers chose to have their statement archived and many of these statements are non-anonymous, the consent that people signed did not specifically allow us to name them in this report. To further protect Wabanaki providers' identities, we have not demarcated their particular tribal affiliations, an uneasy compromise in that we recognize that each tribe has distinct cultural practices, traditions and language. We do, however, assert that all quotations can be attributed as we have indicated. And we urge people to spend time reading statements once they are archived: to quote from them piecemeal is in some way to violate the totality of a person's experience. Reading or listening to statements in their entirety brings alive the speakers' voices and also the vivid, interconnected web of issues we have named.

Further affecting our process was the fact we did not speak with Native people in any Wabanaki languages. Although providers were given a choice to speak in a Native language, almost all chose English. We are aware that had people spoken in Native languages, what they said and how they said it would have shaped what we heard very differently, providing another sense of values and alternate ways to hold powerful feelings. In the words of a Wabanaki chief, “One of the things I'm learning through the language classes ... is just how significant language is. It has very little to do with communicating and really has a lot more to do with

## “One of the things I’m learning through the language classes ... is just how significant language is.”

– Wabanaki chief

understanding the perspective of Indian people ... by how they communicated and how they saw the world ... it’s a constant educational experience. ... And that can be extremely helpful in combating the devastating effects of what has taken place.” (11/4/14)

It is also significant that there are people or groups of people whom we were unable to contact. These include Wabanaki who left or were adopted out of their communities and might not be aware of the Commission. It refers to Wabanaki who live in Canada and might not have heard about the initiative; this would most likely be true for Maliseet and Micmac people. We also did not speak with tribal law-enforcement staff and regret that we did not connect as much as we intended with Wabanaki youth and teachers. Some tribes participated more than others, but we made extensive efforts to speak with leadership and individual community members and respect the right of any group or person to choose not to be involved.

The research we have done drew on state-held materials and includes the following:

- In the Maine State Archives, the Commission’s research assistant reviewed 41 boxes of materials from the Indian Affairs archive and 39 boxes of materials from the State Child and Family Services archive. All prioritized archival boxes were reviewed. However, there remain large amounts of archival material that there was not time to assess.

- **Reports:** Archival research and state government documents research resulted in the identification of a number of reports as potentially relevant to the Commission’s mandate. These reports were predominantly state-generated documents. Federal documents; Maine governors’ task forces and working groups; and documents on state legislative committees were also consulted.
- **Statistics:** All materials reviewed within the Child and Family Services archive that included statistical information about the race/ethnicity of children in the child-welfare and adoption systems were photographed and entered into the document record. Additional statistical material was found in state-generated reports, through federally available data posted publicly online and through a data request to the state’s child-welfare information system (MACWIS). The data we obtained from the state, however, was not conclusive and in some cases incomplete.

While we also conducted research into state legislation impacting tribal people, we must note that we did not consult tribal records or materials and received overall few material contributions of letters or other documents. Nor did we have time to conduct an extensive literature review of materials about Wabanaki history or child welfare.

In addition, while many greeted our work with hope and even optimism, not everyone shared those feelings.



## **“The oppressed know the oppressor a lot better than the oppressor.”**

– Exchange between a Wabanaki person and a former DHHS supervisor

Some Wabanaki felt that their communities were not ready for the sharing of these painful truths and were worried about supports being in place for statement providers. Others expressed to us that the process was not driven by the communities at large, but was an initiative undertaken by a few. Several people were dismayed that we were not able to levy reparations or issue subpoenas as do many other truth commissions. Others, both Wabanaki and non-Native, spoke of their fear about sharing information that could damage their relationships with tribal and/or state child welfare. Finally, though some of us are Indigenous, none of us is Wabanaki and that, too, caused concern.

Another issue voiced by many Wabanaki people was that it was too soon to hope for reconciliation; some people wanted the process to move through an acknowledgment of harms first so that non-Native people could not rush to repair a problem and so dismiss Native experiences. One former DHHS supervisor put it this way: a friend of hers who was Wabanaki told her, “The oppressed know the oppressor a lot better than the oppressor.” (11/18/14)

Moving toward systemic reconciliation, people often told us, would have to happen in terms that made cultural and emotional sense first of all to Wabanaki people. In his 2013 book, “In the Light of Justice,” an analysis of the U.N. Declaration on the Rights of Indigenous Peoples, Walter R. Echo-Hawk outlines a process to “heal human suffering caused by a historical wrong” that includes a progression

through acknowledgment of injury, to sincere apology, to acceptance of that apology, forgiveness of the wrongdoers, to concrete acts of atonement with a final step that involves the healing of unresolved grief and “open wounds” so that there is a “cleansing reconciliation for all concerned.” He concludes his book: “This can be a historic time in the growth of the nation. We have been given a rare opportunity to make things right. We can seize the chance for redemption that was beyond the reach of our forbears, if we heed the wisdom of our ancestors and take the transformative steps that lead to reconciliation.”

We in Maine have many steps to take before we can come closer to achieving such a vision and this is only one possible outline such healing might follow. We must here acknowledge a discourse of general frustration bordering on despair when it comes to improving relations between the state and the tribes, a sentiment apparently shared by all parties. We point to the fractious, unsettled relationship over sovereignty, jurisdiction and self-determination and hundreds of years of difficult history that exist between the state and the tribes as a few of the sources of these sharp feelings. Few agree what should be done, mistrust is high, and the way forward is cloudy. Yet we were buoyed by the many individuals who clearly want relationships to improve and have committed themselves to doing the best work possible because they care about each other, children, Wabanaki people and change.

## What Happened and Why

**W**ith that said, we can now turn to a discussion of the history surrounding ICWA and what appears to have happened with its implementation in Maine. To make this complex subject as clear as possible, we are dividing our discussion into three segments.

First, we will provide an overview of the disproportions we discovered from approximately the 1960s to 2013, to create the general context into which ICWA was introduced and then unfolded. One of the features of the statements from older Wabanaki that struck us most was how often people wanted to start their accounts far in the past so we could better understand what was happening now. It is our hope that this section provides just that kind of framework for what is to come.

Second, we will examine what we learned about DHHS and tribal child-welfare practices after the passage of ICWA through 2013. This section will include discussion of: training and implementation; tribal-child welfare; more current issues with foster care; and what information we have about permanency guardianship and adoption. Throughout, we will link what we learned from the research with quotations from the statements

to present a brief picture of the challenges surrounding ICWA's implementation over the last 40 years.

Third, we will look at themes that emerged around tribal and state sovereignty and jurisdiction writ more largely. This includes a short account of the Maine Indian Claims Settlement Act (MICSA) of 1980 and its possible effect on Native child welfare, and an equally short discussion of blood quantum and census eligibility. In addition, this section examines the effect of the Adoption and Safe Families Act (ASFA) of 1997, which in some key areas may complicate the intention and implementation of ICWA. We finish this part of the report with a description of what we learned about tribal courts and their role in Native child welfare in the two communities where they exist.

In many respects, it is highly artificial to divide these aspects of Native child-welfare practice: in reality, they are intimately intertwined, with assistant attorneys general working with caseworkers with expert witnesses, tribal-child welfare and judges, to name a few of the many possible professional intersections. While we recognize these overlapping relationships, we also needed a way to describe this multi-layered system so that people new to this subject could readily grasp it.

**“If we’re not taking care of these little guys behind us, I think our future is going to be very uncertain.”**

– Former ICWA worker

**“The boarding schools that the government sanctioned, the mentality of taking children out of the home to enforce assimilation. People don’t remember that today, and that is why the law came into effect ... ”**

**– Tribal child-welfare worker**

In addition, this structure allows us to look at all of these elements in a slightly broader context and better sustain our argument on the important influence of institutional racism, historical trauma and the friction and differences over jurisdictions. Throughout each section, readers will be aware of these often intermingled themes as they weigh on and affect the struggles of systems and people facing a great challenge – the decision to remove a child from her home and all the consequences that cascade from such a choice. One thing is clear: no matter if the state or the tribes are involved in a removal, every person connected feels the burden of this experience.

In essence, what has happened in Maine is inseparable from why it happened. And what is at stake is not only better child welfare for Native children, but something larger that connects to the dark issue of cultural genocide. As a former ICWA worker said, “If we’re not taking care of these little guys behind us, I think our future is going to be very uncertain.” (10/16/14) Another provider, a tribal child-welfare worker, reflecting on whether or not ICWA did enough to protect the rights of Native families, responded this way: “I think it could be more clear in its writing and in its intent because people do have misconceptions about what it is and why it’s there and people have short memories. Peo-

ple don’t remember what happened as to how we lost our culture. The boarding schools that the government sanctioned, the mentality of taking children out of the home to enforce assimilation. People don’t remember that today, and that is why the law came into effect ... and that is why we want to keep the law because we don’t ever want to get back there. But as time goes on, people forget. That’s a scary thing.” (12/17/14) A tribal chief phrased the problem like this: “[I]f you have an entire generation of tribal members who grow up in a state of uncertainty concerning their rights ... that’s trauma. That’s traumatic. ... We have one generation after another growing up, ... living in doubt of the validity of their own culture and their own sense of being. That’s happening today, right now.” (12/15/14)

Perhaps one of the clearest ways to illustrate this doubt is to discuss a theme that arose with some frequency: the loss of language that resulted when generations of children were removed from their communities. A former ICWA worker said, “Now, as far as language goes, and language-learning within the community ... I believe this is about healing. It’s about ... healing and identity. ... I’m [a] second-generation non-speaker. My mother’s generation ... didn’t grow up with the language because it was ... not taught to her because ... my grandmother didn’t want her to ... go through what

**“We have one generation after another growing up, ... living in doubt of the validity of their own culture and their own sense of being. That’s happening today, right now.”**

**– Wabanaki chief**

**“I know when I went to school, they didn’t teach language like they do now. ... We had a whole generation where that was lost. And we don’t want that for our kids.”**

– Tribal child-welfare worker

my grandmother went through in the schools and the community. [T]o have ... what she felt was a better life, she didn’t teach her the language.” (10/16/14)

Another provider put it this way, “I know when I went to school, they didn’t teach language like they do now, and they are bringing that back in school, and they’re bringing back other forms of our artwork, things that they just didn’t teach when I was young. We had a whole generation where that was lost. And we don’t want that for our kids.” (12/17/14)

One of the providers quoted above recalled, “ ... I picture my Nana smuggling her babies and her siblings into the United States, and it would have probably been at the end of the residential school in Canada, collecting children, so because of those rules and standards, my grandmother felt it was important enough for her to leave her community behind. ... They had come here to hide, I guess. My mom was fluent in her language and her culture but being removed from their community and being scattered all over, she struggles now to speak. All [of] us kids barely understand our language and then my daughter behind me knows even less and, you know, it’s draining us. We’ll say, ‘We lost our language, we lost our language.’ No. Our language was stolen from us.” (10/16/14)

**“ ... All [of] us kids barely understand our language and then my daughter behind me knows even less and, you know, it’s draining us. We’ll say, ‘We lost our language, we lost our language.’ No. Our language was stolen from us.”**

– Former ICWA worker

## Overview of Disproportionality and Context in which ICWA Was Passed

**O**ur research revealed that the rate of removals of Wabanaki children from the 1970s on was exceptionally high, particularly in Aroostook County.

The American Indian Policy Review Commission of the United States Congress, noted in 1976 that in Aroostook County in 1972, one out of every 3.3 Native children was in state foster care.<sup>2</sup> More than half of all Native children in care statewide were from Aroostook County.

Our research staff reviewed historical reports on the numbers of Native children in Maine’s child-welfare system, as well as more current statistical data. We found that every report and source of data related to the numbers of Native children in Maine’s child-welfare system, from historical reports in the 1960s to data obtained from the state through 2013, indicate disproportionately high numbers of Native children in the state child-welfare system.<sup>3</sup>

Between 1961 and 1970, the state government produced annual reports on the demographics of children in

## **From 2000 to 2013, Wabanaki children in Maine have entered foster care on average at 5.1 times the rate of non-Native children.**

– TRC analysis of data provided by the State of Maine

the child-welfare system and based on the state’s own calculations, it was reported that between 10.6 and 12 percent of the American Indian child population in Maine was in the child-welfare system.<sup>4</sup>

The American Indian Policy Review Commission reported that Indian children in Maine were placed in foster care at a rate:

- 25.8 times higher than non-Indian children in 1972
- 20.4 times higher than non-Indian children in 1973
- 19 times higher than non-Indian children in 1975

For Aroostook County in 1972, the rate of removal for Indian children was 62.4 times higher than the state-wide rate for non-Indian children. The rates for Maine were the second highest in the nation at the time.

A 1984 report, based on 1982 data from Maine, placed Maine in the top 10 states in the country for the foster-care placement rate for Native children.<sup>5</sup> More recent statistical findings continue to indicate a disproportionately high representation of Native children taken into foster care. Based on our analysis of data provided by the state, from 2000 to 2013, Wabanaki children in Maine have entered foster care on average at 5.1 times the rate of non-Native children.<sup>6</sup>

We also learned that from 1960 to today, there has been very little change in terms of percentage of Native children in care. In 1960, approximately 4 percent of children in foster care in Maine were Native.<sup>7</sup> On average, from 2002 to 2014, 3.92 percent of children in DHHS custody were Native.<sup>8</sup>

These numbers are powerful, as is the archival research that reveals the presence of prejudice against Wabanaki people and families that in our view most likely helped shape the context into which ICWA eventually arrived.

Overall, the view of Wabanaki people and culture can be characterized as biased. For example, in 1976, the Maine governor urged one of the Passamaquoddy governors to subordinate his Wabanaki identity to his Maine and American identities.<sup>9</sup>

We also located state-generated archival materials from the 1940s, ‘50s and ‘60s, in which Wabanaki people were characterized as not caring for themselves, their homes or their land; they are here referred to as “needy Indians.”<sup>10</sup> In a 1952 Bangor Daily News article, the Penobscot governor confronted what he felt were pervasive stereotypes of Wabanaki people being alcoholics and lazy and noted that state leadership had called Native people “the largest parasite on the

## **Wabanaki tribes and lands will eventually disappear and ... “the ‘Indians themselves’ are looking forward to dissolution.”**

– Maine Commissioner of Health and Welfare, quoted in a 1954 newspaper article

## **... a report from the U.S. Commission on Civil Rights in 1974 ... notes that child-welfare removal of Native children may have resulted in a “massive deculturation.”**

state.”<sup>11</sup> In a newspaper article from 1954, the Maine Commissioner of Health and Welfare predicted that Wabanaki tribes and lands will eventually disappear and that “the ‘Indians themselves’ are looking forward to dissolution.”<sup>12</sup>

Elements of a narrative that challenged dominant beliefs about Wabanaki people were also identified in materials found in the Indian Affairs archive, including a report from the United States Commission on Civil Rights in 1974 that notes that child-welfare removal of Native children may have resulted in a “massive deculturation.”<sup>13</sup> Several sources throughout the 1960s remark that Wabanaki people are treated as second-class citizens by the state.<sup>14</sup> In 1980, two years after the passage of ICWA, a state task force criticized DHS practices for Native children in foster care, raising concerns about racial bias among caseworkers and asserting the state was not doing enough to maintain the children’s cultural ties.<sup>15</sup>

Statement providers recalled harsh examples of just what life could be like when they were in state care. One Wabanaki provider who was in a non-Native foster home in the early 1960s recalled being locked in an attic and not given enough food to eat day after day. This person was also punished by being put up to her

neck in a tub of cold water. This statement provider said that to this day, “I am scared of water. I don’t swim. And, if anybody was to walk by me with water on their hands and go like that (hand flicking motion), just joking around, I get very angry, very quickly. And, my kids found that out very young, you know, and I didn’t mean to do that to them, it’s just that it was a reaction to this fear.” (7/22/14)

Another provider in a non-Native home in the late 1970s said, “I have a hard time speaking unless I’m behind a computer screen. ... And I think some of that stems from one of my earliest memories. I had my mouth washed out with soap for speaking [a Wabanaki language]. To this day I don’t know what I said and I only barely remember the toothbrush and the soap. But I’ve heard my foster mother talk about it over the years. I think sometimes maybe that’s why I’m just afraid to let words out.” (3/17/14)

This provider added, “I did need to be taken away from there. But I was taken away from my culture as well. There was abuse of all types at the foster home. But the biggest thing is that I was not allowed to grow up with my culture, and I was made to feel ashamed of my culture. I was told very early on that my skin was light enough so that I could pass for white. And that I was

**“I have a hard time speaking unless I’m behind a computer screen. ... And I think some of that stems from one of my earliest memories. I had my mouth washed out with soap for speaking [a Wabanaki language].”**

– Wabanaki statement provider who was in a non-Native home in the late 1970s

**“[B]efore there was a formal child-welfare system ... when a kid needed something, you took care of them.”**

– Former tribal health director

really lucky because I never ever had to admit again that I was [Wabanaki].” (3/17/14)

People who were adopted out of their community faced grievous cultural loss and other harms as well. One woman with a Wabanaki father was adopted by a non-Native family in the 1960s and faced taunts about her identity from a young age. “You know, people called me ‘squaw.’ ... People would do the little woo, woo, woo, woo whenever they were around me. They ... had a whole list of names that they called me. And, even when I tried to talk to the teachers and say, you know, this really hurts me, being called a squaw, I was just told to stop being so sensitive and to ... get over it and just deal with it, and so there was never a feeling that it was wrong, that they were calling me those names. [I]n my adult life, I realize how wrong it was ... for my teachers to dismiss those cries.” (1/12/15) This person went on to add, “I’ve thought a lot about how my life would be if I had been raised within the culture, not just necessarily by my [Wabanaki] parent, but within the culture. If I had been born after 1978, if I had been allowed to be raised by someone, and I can’t let my mind go there very often because it’s not reality, but I do think about it from time to time.” (1/12/15)

While we do not have the data to speak conclusively about life for Wabanaki children on Wabanaki land, the statements we do have that evoke those experiences before ICWA speak frequently of the network of kinship that supported children and families. They describe an informal foster-care system and create an image of a group of people who, while embattled, looked after one another. A former tribal health director recalled how her grandmother remembered that non-Native families would leave children they could not care for at the edge of tribal lands, knowing Wabanaki people would take them in. This provider, raised in the 1970s, also noted, “[B]efore there was a formal child-welfare system ... when a kid needed something, you took care of them. And I know growing up, a number of families where children weren’t well taken care of, so elders would go in and say, ‘All right, this child is now mine. I’m going to take this child and raise him or her, and you’re done.’ ... It is, I think, what we’ve done culturally.”

This provider continued: “And ... at one point, there were five of us girls living together and my older brother lived with my grandmother. But there were five of us girls that lived with my mom, and she was a single parent. And at one point she had ... five other kids

**“There was abuse of all types at the foster home. But the biggest thing is that I was not allowed to grow up with my culture, and I was made to feel ashamed of my culture.”**

– Wabanaki statement provider, recalling growing up in a non-Native foster home

**“ ... A child was a child was a child. And if they were being abused or neglected was what you were looking for.”**

– Statement provider who worked for DHHS in Aroostook County in the 1970s

living with us. Because ... they had issues at home ... that needed to be resolved and they needed a safe place. So she would just take them in. ... [T]he rooms ... had literally wall to wall bunk beds.” This person’s mother would always take in people in need. This person added, “I think she would do that today. She’s adopted several children after we were all grown. She’s 76 years old and she’s raising her great grandson and he’s 12. So, you know, it’s just ... what I’ve tried to relate [to] my kids. ... This is what we do. This is what we’ve been taught. This is ... one of the ways we give back.” (2/6/15)

Yet this worldview contrasts quite dramatically with that of a provider who worked for DHHS in Aroostook County. This person reflected, “The first case that I ever had was this lady who was a Maliseet and over the years it just had never occurred to me that she was or wasn’t. Because that wasn’t the way we thought of things in 1972. We just had children who came to our attention because of abuse or neglect ... as I think I’ve sort of alluded to, through the early ‘70s, there was no distinction. A child was a child was a child. And if they were being abused or neglected was what you were looking for.” (11/18/14)

And it is also clear that when Wabanaki children were being abused, many suffered without telling anyone. We heard several accounts from Wabanaki people about abuse that occurred at the hands of non-Native clergy and of teachers in the 1960s and 1970s. While this information does not connect directly to ICWA, it does speak to the vulnerability of Wabanaki children and the difficulty in naming and surviving, in particular, sexual abuse.

### ICWA Issues from 1978 to 1999

**I**CWA, then, arrived in a charged social, political and cultural landscape in which racism against Wabanaki people and a lack of awareness of historical trauma were at play. Further influencing the situation was Maine’s involvement in a tense struggle with tribal people over land and sovereignty that resulted in the Maine Indian Claims Settlement Act of 1980, legislation we discuss later in the report. In this volatile arena, one might have expected ICWA to feature prominently in state records, if only to be presented with misgivings or concerns.

**“The first case that I ever had was this lady who was a Maliseet and over the years it just had never occurred to me that she was or wasn’t.”**

– Statement provider who worked for DHHS in Aroostook County in the 1970s



**“It never came up in the eight years that I was there; I do not recall a single conversation involving Indian children.”**

**– Former DHHS administrator**

Instead, it is striking how infrequently our archival research revealed mentions of ICWA from the 1970s through the 1990s. We only found scattered references to trainings and compliance concerns. While the statute is occasionally discussed in state child-welfare policy documents and in reports evaluating the child-welfare system in Maine, the overall impression is that ICWA was not a pressing issue, perhaps in part because of tensions around land claims or perhaps because Wabanaki people were seen as representing such a small portion of the population of Maine. It might also have been because Native child welfare was now seen, thanks to ICWA, as a tribal right and responsibility. But given that only two communities had tribal courts just beginning to develop in those years and the state was frequently involved in cases at all stages, this is a hard conclusion to sustain. In response to a question about what was understood about ICWA, a statement provider who worked for DHHS from 1979 to 1987 as an administrator answered: “It never came up in the eight years that I was there; I do not recall a single conversation involving Indian children.” (11/29/14)

Only a few references to ICWA were discovered in the archival materials, but several examples can illustrate the general theme that the act was not a major policy concern. For instance: from 1985 to 1995, ICWA was not included in a section of the state child-welfare plans titled “A brief history of significant events affecting

child welfare in Maine” in which federal and state laws were listed in a timeline.<sup>16</sup> In spite of well-documented need, ICWA training was not addressed in any of the 15 training-related documents (curriculum, training summaries, etc.) reviewed that ranged from 1986 to 1998.<sup>17</sup>

It seems highly likely that ICWA compliance must have been impacted by the absence of adequate ICWA training for caseworkers. In addition, as late as 1994, the information that had been provided by the department was incorrect and was causing confusion.<sup>18</sup> A note of frankness on this theme emerges in much testimony from DHHS workers. One DHHS supervisor said, “We’re not perfect ... But I remember trying to do all that stuff right.” (11/3/14) Later in this same statement, this provider commented, “There’s a learning curve. Shouldn’t probably take 18 years, but there’s a learning curve.” (11/3/14)

Another statement provider who was a supervisor at DHHS remarked on the following: “The training the people had gotten at first was here are the requirements of ICWA and you need to do these things. What had never taken place was an assessment of where our staff was, as to their understanding of Native cultures ... The historical context in which the families and the tribes of Maine are living ... there was none of that done. There was no assessment of our staff, where they

**“We’re not perfect ... But I remember trying to do all that stuff right.”**

– DHHS supervisor

were for acceptance or lack of prejudice. I frankly was horrified when I started becoming involved and dealing with staff ... and the prejudice and bigotry of some of our staff. Not all of them. A minority but they were there. And I would say the overwhelming majority – including myself! I have to tell you ... I had no idea for years, living here, that there were four tribes in Maine.” (11/18/14)

Another provider, a former DHHS administrator, recalled the early years after ICWA as a time when “the first response of child welfare was [to] petition to remove the child. These were usually immediate removals. I think in the time I worked between 1984 and 1987 or ‘8, I ... would be surprised if I did more than three cases that didn’t involve an immediate removal of the child from ... parental custody.

“You know, I do know there was a belief not among all, but among some caseworkers back in the ‘80s, that kinship care was risky business, because ... it was kind of ‘an apple doesn’t fall far from the tree’ mindset ... Kind of on the theory of well, this mom clearly didn’t get good parenting. And so it would be equally risky to place with grandmother.” (1/16/15) But given that ICWA places an emphasis on and indeed indicates a clear preference for kinship care, such a response

in the department would seem to impede effective implementation.

Interestingly, other providers also used the apple metaphor, including this guardian ad litem and parents’ attorney, who noted, “It’s taken me ages to ... readjust my orientation to the Department of Health and Human Services because I was caught up for so long in ... battling their perceptions of parents ... I mean, what you used to hear was, you talk about kinship placement and what you’d hear was ... ‘An apple doesn’t fall far from the tree.’ God knows how many times I heard that sentence ... the thought ... of placing a child within the family context was ... not quite unheard of, but, boy, it was not favored ... So the department has a history to overcome.” (6/27/14)

A former DHHS child protective worker and now a service provider remarked, “[At] one time, the state was ... number 49 – 48 or 49 – in kinship placements of children in foster care. It was ... horrendous. And, you know, you hear things like, “Yeah, the apple doesn’t fall far from the tree” and all this kind of garbage like that. And ... all these arguments that people would come up with, that would be opposed to kids living with extended family.” (10/14/15)

**“There’s a learning curve.  
Shouldn’t probably take 18 years,  
but there’s a learning curve.”**

– DHHS supervisor

**“I had no idea for years, living here, that there were four tribes in Maine.”**

– Former DHHS supervisor

## ICWA Issues from 1999 to the Present

**I**n 1999, as noted earlier, the Office of Child and Family Services participated in a federal pilot review, which found that the state needed to do better consulting all kinds of stakeholders, but “focus particularly on outreach to the tribes and improved implementation of ICWA.” A former DHHS administrator noted, “To be perfectly honest, I think what motivates ... departments to focus on policy requirements like ... a big requirement like enforcing the Indian Child Welfare Act, doesn’t necessarily get focused on until the feds come in and audit. It’s that sort of principle of what gets counted, what is a deficit that could result in the loss of federal funding. And ... big machinery like a public child-welfare agency, it’s [going to] focus on something when people are brought sharply to attention, if you will. And that’s usually the federal compliance reviews.” (1/16/15)

At that point, the ICWA Workgroup formed and meaningful action on the part of the state to address ICWA-related issues started as the group began to design and implement statewide ICWA training. After that training occurred, goals and objectives related to

ICWA training began to appear in DHHS’ Annual Progress Reviews in 2002 and 2003. In addition, Chief Brenda Commander, the tribal leader of the Mailseet Band in Houlton, took a stand in 1999 in opposition to DHHS. She refused to release children to DHHS staff that year when it was discovered that court orders had not been signed, bringing ICWA to the attention of the media.<sup>19</sup> Further pressure may have been brought to bear on Maine’s entire child-welfare system when Logan Marr died tragically at the hands of her foster mother in 2000. One former DHHS supervisor remarked on the effect that such an awful event can have on the culture of a child-welfare department. This person was excited when kinship care came to the forefront, “I think kinship care and the movement of kinship care ... offered a really good opportunity to engage all communities, including the Native community ... and it was consistent with ... my understanding of the culture of the community of extended families caring for each other. It became more socially and legally accepted.” But he went on to say, “The challenge ... in the child-welfare system in Maine ... is there was a real risk aversion ... but the definition of risk was ... very one-sided. The risk was, you don’t want to have a kid die, and ... you want to stay on safe ground.” (6/27/14)

**“ ... I do know there was a belief not among all, but among some caseworkers back in the ‘80s, that kinship care was risky business, because ... it was kind of ‘an apple doesn’t fall far from the tree’ mindset ... this mom clearly didn’t get good parenting. And so it would be equally risky to place with grandmother.”**

– Former DHHS administrator

**“I think kinship care and the movement of kinship care ... offered a really good opportunity to engage all communities, including the Native community ... ”**

– Former DHHS supervisor

There is the awareness as well, as this statement provider, a district and former tribal judge, remarked about the devastation removing a child can bring about. “It’s hard to imagine, being a parent and a grandparent, members of the Department of Human Services, coming into my home and removing something as ... precious as one of my children or ... grandchildren and then telling that child, ‘Look, you can’t live with mommy and daddy anymore. ... [Y]ou can’t play with your friends anymore ... you’ve got to go to a different school with strangers ... in a different community.’ ... [T]hat can be more damaging to the child than the reason that the department got involved in the first place.” (2/4/15)

Nonetheless, practices began to change. Many caseworkers report learning not just how to implement ICWA, but why it mattered. As one former DHHS caseworker said, “I think that [the training] can change people’s feelings ... through the mind, some people will be able to change their feelings about how hard to pursue something like finding a Native American family for this child, because maybe it’s even more important for this child than we realized, because of this history. But I think that was the implication of the presentation, at least as I saw it.” (10/14/14) ... However, one provider, a non-Native tribal attorney

remarked, “[T]here is a lot of training that we do one tree at a time as opposed to wishing that the whole forest could know what each of them is doing. And I’ve also noticed that there [are] a lot of individual differences with respect to Assistant Attorney Generals and judges ... and since there are those individual differences, it really shows a lack of uniformity which I think would be a good thing to address. So in terms of Maine’s policy I don’t think there really is one policy and that I think is the fairest way to put it.” (2/12/15)

In addition, the designation of an ICWA liaison at the state level has received praise from Native people. When asked to name a strength to ensure ICWA compliance, a Wabanaki social-services director responded that having “an ICWA liaison was probably the smartest move they could have made. And I am hopeful that that is an indicator that they know that work needs to be done.” (1/8/15)

In 2006, the state legislature formed a committee to study ICWA compliance and the ICWA Summit was held. The committee met only one time and concluded that ICWA compliance had “improved tremendously.” Yet according to our research and as testified to in the statements, certain themes are still present and include the following:

**“The challenge ... in the child-welfare system in Maine ... is there was a real risk aversion ... but the definition of risk was ... very one-sided.”**

– Former DHHS supervisor

**“I think that [the ICWA training] can change people’s feelings ... ”**

**– Former DHHS caseworker**

**1. DHHS needs to make greater efforts to engage in more effective consultation and collaboration with Wabanaki tribes in ways that respect tribal sovereignty**

The state’s perception is that the tribes are consulted, while the tribes apparently do not feel they are truly consulted. As a DHHS supervisor noted, “ ... staff sometimes forget that we have a lot of staff and tribal-child welfare don’t. ... I think we’ve done a lot of work trying to get state child-welfare workers to really view tribal child-welfare staff not as a service provider but as a peer child-welfare agency ... .When we started talking about it in regards to government to government kind of talk, that, I think, kind of put it in to perspective for people.” (9/17/14) In the words of another DHHS worker, “[I]t’s not about us just setting up the date and time and asking if you can show up. No. No, that’s about making decisions with the tribe making decisions as well, together as a partnership.” (11/3/14) A lawyer for one of the tribes said, “This has got to be a government to government discussion.” (11/3/14) A tribal child-welfare worker put it even more directly: “We are separate nations. We are separate sovereignties. [I]t’s like using ... the country of France’s whatever, that

one would be to England or whatever ... and use that to cover everybody else. You can’t. You can’t. You know, there’s separate pieces but to come with that mindset ... that you’re working with different sovereign nations that everything is going to be different. And to understand that and to ... grasp a hold of that concept. That this is a sovereign nation. Even though we’re in the state of Maine, separate that out.” (2/12/15)

**2. Although changes have been made in key areas of practice and engagement, more needs to be done to improve, in particular, initial identification of Wabanaki children**

DHHS reviews of ICWA cases involving children from Wabanaki tribes in 2009 and 2012 found that half the Native children in care were not asked at intake if they had Native ancestry.<sup>20</sup> A former DHHS administrator noted frankly, “We don’t do a good job with that.” (11/4/14) This person continued, “people with ... Native heritage aren’t just on the islands or in the reservation ... they’re everywhere. So we need to be open to that idea every time. And you can’t look at someone and know. And I think that’s what we assume. Because

**“[T]here is a lot of training that we do one tree at a time as opposed to wishing that the whole forest could know what each of them is doing.”**

**– Non-Native tribal attorney**

**“We are separate nations.  
We are separate sovereignties.”**

– Tribal child-welfare worker

I think that’s one of our weaknesses, too, is we assume. We look at someone, they look white, so they must be white. ... [I]t’s not even conscious effort. ... [W]e just move on to the next thing. And hopefully ... something that we can move past is assuming those kind of things.” (11/4/14)

Another provider, a non-Native tribal attorney, corroborated this comment: “When I was a state caseworker back in 1993 to 1995 ... part of my training was that there were two things that you asked every parent and that was typically paternity and whether there was any Native American heritage. It was one of the two questions that had to be addressed right out of the box and I received that training ... and that doesn’t seem to be at the top of the state caseworkers minds anymore. It’s interesting because sometimes the caseworkers will be surprised. It’s as though the parent or the tribe itself has to bring it up.” (2/12/15)

A former assistant attorney general said, “I think ... that the sooner that the tribe can become involved, the better. So when I was doing this ... we worked with our caseworkers to ask the question around the time that they were considering removal. [But] they need to ask it further – or earlier. So that if there’s a

child in trouble, is this child eligible for enrollment or enrolled and if so why not connect with those resources. I understand everyone’s strapped for resources, but it’s a different type of resource and why not connect with it as soon as possible?” (11/18/14) When asked how the state child-welfare system could improve in terms of ICWA, this person responded, “Earlier identification ... I think that again everyone [is] sort of struggling with managing at very high caseloads, etc., and they may overlook that. Not out of malice but out of ignorance.” (11/18/14)

This person also noted, “I was aware of cases that got to adoption clearance, the parental rights had been terminated ... and it’s time ... for the AG’s office to sign off that this is OK, and I’ve heard of people who said you never asked about ICWA. And that’s not good for anybody. You need to ask early. You need to make sure that the forms don’t let the case progress without making sure those questions are asked ... keeping the issue on the front burner is something that needs to happen. ... And you have hundreds of people in a system who are doing the best they can every day. You need to make sure they’ve got the awareness of what the problem is.” (11/18/14)

**“We look at someone, they look white, so they must be white. ... [I]t’s not even conscious effort. ... [W]e just move on to the next thing. And hopefully ... something that we can move past is assuming those kind of things.”**

– Former DHHS administrator

**“Earlier identification ... I think that again everyone [is] sort of struggling with managing at very high caseloads, etc., and they may overlook that. Not out of malice but out of ignorance.”**

– Former assistant attorney general

A tribal judge voiced several of the same concerns about initial identification and had something to add as well about improving the system. When asked what DHHS’ weakness was, this person said, “[I]dentifying Native children. I think the idea of saying that you are going to rely on self-report without any kind of follow-up is essentially no follow-up and it’s no system.

“If the idea that you’re going to walk into a household and ... look at a child and they go, ‘They don’t look Native to me.’ They don’t even bother to ask the question. ... One of the things that has been out there is a recommendation that the fed[eral] DHHS should modify their audit questions so that they have a series of 5, 6 questions that require the state to prove that they have asked the ICWA questions before they get their federal money. And that would get their attention, I am certain.” (12/5/14)

What this means, unfortunately, is that children who are eligible for ICWA are most likely in the state system and that children who could have access to family and to their heritage do not. We have no way of knowing how many children are affected. But this outcome appears to speak of

unexamined cultural biases and has the effect of pulling children from tribal connection and can be seen, in our view, as another indicator of cultural genocide.

### **3. DHHS staff turnover can be high, leading to unsatisfying outcomes and difficulty in building relationships**

Wabanaki families often report difficulties reaching caseworkers. A tribal social-services director described it this way, “They have an incredibly high turnover, which is, in this line of work, understandable ... caseworkers last an average of 18 months. ... [T]he state system, however, is set up in such a way that ... multiple case workers will be assigned to the life of a case. Which is ... an approach that they need to get ... away from. Because ... when we’re calling somebody and ... the next month it’s somebody else, and then three months later it’s somebody else. It just is crazy.” (1/18/15)

**“[I]dentifying Native children. I think the idea of saying that you are going to rely on self-report without any kind of follow-up is essentially no follow-up and it’s no system.”**

– Tribal judge

**“They have an incredibly high turnover, which is, in this line of work, understandable ... caseworkers last an average of 18 months.”**

– Tribal social-services director, speaking of DHHS staff

#### **4. Concerns around use and effectiveness of family-team meetings still exist**

On family team meetings, a core provision of practice in all child-protection cases, the DHHS administrator referenced above said, “We’re really looking at trying to improve our family team meetings and reworking the structure ... of them. Because I think we tell the parents that it’s their meeting ... but it’s not run like it’s their meeting. So ... we need to figure out whether or not it really is their meeting and be more open and honest about that. ... [M]y understanding is that we don’t do a very good job of inviting tribal support to those meetings. If we haven’t connected already with the tribes, we don’t by the time the team meetings happen. So we’re struggling with that. And we need to improve on that for everybody’s sake.” (11/4/14)

One of the problems with those meetings is that state counterparts may not realize the importance of many Native people being at the table. As this provider, a guardian ad litem, commented, “They bring in too many people that are just aunties and uncles and people that are curious. ... I’ve had team meetings where they’ve brought in people that

wouldn’t even recognize the child, and they are full of opinions about – you know, Native American ladies that have nothing else to do. ... They think they have to load them up with supporters. They don’t. Because, I guess there are these young parents, and you get to invite whoever you want. ... They bring in too many invitees who really aren’t contributing anything except moral support and they don’t need that really. I mean, they are given lawyers. The lawyers will come.” (12/15/14) In short, it appears that family team meetings may still be perceived from different cultural perspectives and are not used as effectively as they might be.

#### **5. Assumptions about culture and practice need to be challenged and changed**

A former DHHS administrator pointed to another key area where improvement is needed. One involves DHHS helping DHHS staff realize that “we just need some honesty [about mistakes] – openness to not being perfect. ... Instead we’re very reactive to the crises. So I see that as our biggest weakness, and I think one thing I hope that’s happened that’s changed is that staff don’t take

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**– Former DHHS administrator**

things personally anymore when a mistake was made. But I’m not sure that we’re completely there yet.” (11/4/14)

This provider also commented on what seems to be a tense relationship with tribal peers. “[M]y first two years I would walk in a meeting and ... I could feel the distrust and the hatred. And I don’t take that personally, but somebody in my position could, and it could have a major impact on the practices and the policies. So I just caution that a little bit. ... [W]e’re coming to the table. We want to do better. And we’re not saying that we’re doing everything perfectly. And I think I’m not sure there’s a lot of understanding around that.” (11/4/14)

A current DHHS administrator noted, “some of the barriers and I don’t know if this is really around the policy or not but I think, you know, some things that have happened, each and every time, each and every case, it feels like we have to start all over building that relationship, building the trust between our worker and their worker about – you know, are we all going to be truthful? Are we all going to ... agree to these things? ... So it feels like each and every time, if there is the slightest thing

that we disagree on, it’s an automatic assumption ... that we are violating the act or that we didn’t do this so it feels ... when things are going great, they’re going great. ... But just one tiny little thing can happen, and it really puts us a couple steps back so that’s really the frustrating part.” (10/14/14)

By and large, this was not the impression we gathered about professionals in the child-welfare system who more commonly reported responses like the following, from a state judge: “I feel really good about this process, and I can imagine some of the answers someone might have given 15 years ago would be a whole lot different ... but the state does not look on this as an act they have to accommodate; they look at it as a serious obligation that they have to fulfill, and I think that the state AGs are well-versed in ICWA. ... I think that the workers know whatever they have to know to be able to explore those issues and to make the necessary inquiries and to press for the answers. I think that there is what appears to be, from my perspective, a serious level of trust and goodwill between the department and all of the tribal groups so that there isn’t any parent concern about consent or anybody trying to skirt or superficially address

**“[M]y first two years I would walk in a meeting and ... I could feel the distrust and the hatred. And I don’t take that personally, but somebody in my position could, and it could have a major impact on the practices and the policies.”**

**– Former DHHS administrator**

**“... but the state does not look on this as an act they have to accommodate; they look at it as a serious obligation that they have to fulfill, and I think that the state AGs are well-versed in ICWA.”**

– State judge

ICWA. It’s being taken as seriously as it should.”  
(11/21/14)

Yet a non-Native tribal attorney commented, “I would say in terms of whenever I felt less positive about my work has been when caseworkers or judges ... a few parents’ attorneys, guardians ad litem and a few AAGs who act like it’s a pain to have to have ICWA involved. We have seen eye rolling. We have seen temple rubbing. I’m talking judges also here. We’ve seen negative body language, negative facial expressions.” (2/12/15)

Quietly, some state staff seem to feel that ICWA constitutes special treatment, extra work and an unreasonable extension of services that other minority groups, such as recent immigrants, do not receive. People may comply with the law and some in all areas of state government defend it vigorously. But it seems clear that despite advances on this front, more needs to be done to help leaders and staff in the child-welfare system confront unexamined beliefs and look more deeply at their notions of safety, parenting, privilege and poverty and understand the history that made a law like ICWA so important.

One DHHS supervisor who worked as a caseworker in the 1980s and 1990s, noted, “ ... [W]e didn’t send people back because they were safe. We sent them back once they thought people hit our perspective of middle class.” (11/14/14)

A former DHHS administrator reflected, “It’s easy for all of us to slip back in to the ease of what we know ... and it’s very comfortable to have the ‘other’ present as a way to make you feel separate and special ... [a]nd that is in both directions. That can go in both directions, so we really need to keep the contact, keep the humanity of our relationship. Not just the knowledge. ... [Y]ou can’t do that without contact, you have to have contact.”

This person continued: “You have to be in the same room! You have to have joint experiences, you have to go through joint struggles, you have to go through joint triumphs and then, you know, it becomes more real. Relationships become more real. But if you just stop and start, stop and start, you lose ground every time you stop – you do.”  
(11/18/14)

And a note of caution: when institutional racism and historical trauma are at work, building trust

**“ ... [W]e didn’t send people back because they were safe. We sent them back once they thought people hit our perspective of middle class.”**

– DHHS supervisor who worked as a caseworker in the 1980s and 1990s

**“[T]here’s a history with white people so as they come and approach you, you don’t just see them. You see way behind them and all the history that goes way back ... ”**

**– Tribal child-welfare worker**

happens very slowly if at all. Overall, we found that non-Native people are more likely to report trusting relationships with Native people than the other way around. A tribal child-welfare worker said, “[T]here’s a history with white people so as they come and approach you, you don’t just see them. You see way behind them and all the history that goes way back and you’re just saying OK, now who is this person and what this person is doing, what is going to come out of this person’s mouth before we can start trusting you.” (2/12/15)

A former tribal health director noted how little most non-Native people know about the lives and experiences of Wabanaki people. She said, “[P]eople don’t realize the average age of death for Indian Township is about 49 years of age. ... People don’t know about the level of disparities that people face. And ... the level of adverse child experience ... and you take a look at the research. That amount of trauma has taken its toll on the life span of [this tribe]. So case managers need to know that. Teachers need to know that. Anyone providing care to our community needs to know that.” (2/6/15)

There is ignorance and then there is open harassment. Native people around the state spoke

frequently of name-calling, bullying and being followed in stores to be sure they would not shoplift. Many people spoke of how the towns that border Wabanaki communities are some of the harshest in terms of racist attitudes. A non-Native foster parent said about a town in Aroostook County, “I think that there is a lot of prejudice in this town towards Native Americans. I remember growing up, being horrified when I would hear them say ‘those dirty, drunken Indians!’ How many years does it take to overcome something like that? ... I don’t think that there was a lot of good feeling when the nation was granted their land. ... You hear a lot of things said, ‘You know, we didn’t do it to them!’ And I believe there is a good deal of that left.” (10/14/14) This same provider recalled having to demand accountability when her foster daughter was, within the last few years, called a racist term for Native women at school.

Here is a particular telling example of the working of historical trauma from a former tribal health director: After the ice storm of 1998, the tribal community where this person worked decided to engage in disaster planning. “And then donations started pouring in from various places. And ... we got a donation of blankets ... a giant load of

**“[P]eople don’t realize the average age of death for Indian Township is about 49 years of age. ... People don’t know about the level of disparities that people face. And ... the level of adverse child experience ... ”**

**– Former tribal health director**

**“You hear a lot of things said, ‘You know, we didn’t do it to them!’ And I believe there is a good deal of that left.”**

– Non-Native foster parent, referring to a town in Aroostook County

blankets. And ... when it came to the blankets, we couldn’t give them away. Nobody would touch them. And even though it had been generations and generations before, people’s memory was ... the last time we got gifted with blankets, we also got gifted with smallpox. ... So even though ... no one here was a survivor of that, that memory has been passed on so adamantly about be careful what gifts come here, because they could hurt you. And people remember that piece.” (2/6/15)

A former DHHS administrator caught a glimpse of this impact as he noted in this anecdote: “I got invited to a smudging ceremony for a new building. And I thought I had arrived. I was the only non-Native that was invited and I thought, ‘I’m in, they like me, I’ve been accepted.’ And the next week we had a meeting of [tribal people]. ... And I’m sitting there, and I’m all enthusiastic as I can be, and I’m saying how good this will be and someone ... said, ‘We’ve heard this line for the last 300 years from you. And I’m not buying it.’ And, I thought, ‘Wow, I just went from being in to being held accountable for things that have been done for 300 years. And I realized she was absolutely right. And ... it was such a powerful learning that it was real for her

... that I’m sitting there as [a] white man making the same promises that someone probably made ... generations ago with whatever shiny trinket they were offering for something. And that was an incredibly lasting impression on me as I tried to work effectively with other people.” (6/27/14)

In short, cultural differences, old memories of trauma and many other factors continue to interfere with the building of positive relationships between non-Native and Wabanaki cultures. Many Wabanaki providers recounted negative experiences with state workers and their attitudes toward Wabanaki family practices. A non-Native attorney for a tribe noted, “[O]ftentimes non-Native social workers have misconceptions about parenting and about Natives’ parenting.” (11/3/14) A former tribal health director noted, “You know the one thing I know to be true is that every parent I came in contact with loved their children. They really did. They really loved their children. They may not have had the best environment, but they really did love them.” (2/6/15) Helping non-Native DHHS staff see and understand that connection still appears to be an important goal, though there are many, like this non-Native service provider with long

**“ ... when it came to the blankets, we couldn’t give them away. Nobody would touch them. And even though it had been generations and generations before, people’s memory was ... the last time we got gifted with blankets, we also got gifted with smallpox.”**

– Former tribal health director, about a donation of blankets after the ice storm of 1998

**“[O]ftentimes non-Native social workers have misconceptions about parenting and about Natives’ parenting.”**

– Non-Native tribal attorney

experience in foster care who commented, “ ... ICWA is what I believe in, totally believe, is what needs to happen ... kids need to know their culture ... and need to know their heritage and need to maintain those relationships and they need that connection. They need those relationships too.” (10/14/14)

Another statement provider, once a lawyer for a tribe, recalled telling those attending a team meeting, “[E]verybody’s got to start thinking about this [ICWA] as a resource as opposed to some procedural hurdle ... [I]t’s about ... making sure this resource is utilized ... when these kids age out of the system, that this is who they have at the end of the line. And ... stop thinking about this as something negative and start thinking about it as, my God, these kids all have this wonderful resource here, why wouldn’t you want to bring a tribe in.” (10/15/14)

There are indeed still challenges to work through and problems to be squarely faced, in terms of practice, policy, training and implementation. But changes, albeit slow ones, have indeed been made and the frankness of so many who spoke with us

and their desire to alter practice and beliefs are to be commended. It is important to remember at this juncture that the people who gave statements were by and large people who cared deeply about improving the system and were willing to testify to its flaws and their own.

### Tribal Child Welfare Since ICWA

**B**ut it is not only non-Native caseworkers or policymakers opening their perspectives or changing how they do their work that has made a difference, particularly since 1999. Many statements report that the tribes have become more vocal or have advocated more tenaciously for Wabanaki children in the past 15 years. Others comment that having ICWA workers in the tribes has created positive change. A Wabanaki chief remarked that within the last 10 years, “it’s gotten significantly better and again, we must recognize that there are challenges going forward and we’ll continue to work though those. ... But in the end I don’t know of one case in eight years ... where we’ve intervened where we haven’t been the authority on what matters. So there

**“And I’m sitting there, and I’m all enthusiastic as I can be, and I’m saying how good this will be and someone ... said, ‘We’ve heard this line for the last 300 years from you. And I’m not buying it.’”**

– Former DHHS administrator on his experience in a meeting with tribal people

**“[D]on’t marginalize us. We’re here, baby, we’re here ... we’re not going away, so deal with us in a business sense ... ”**

**– Tribal child-welfare worker**

has been a lot of progress. I think it directly correlates to the community’s growth.” (11/4/14)

“[D]on’t marginalize us,” one Wabanaki tribal child-welfare worker remarked. “We’re here, baby, we’re here ... we’re not going away, so deal with us in a business sense ... it’s not personal, but I’m coming at you if I need to come at you, I’m going to come at you ... it’s the right thing, you know, and do the right thing. That’s it. ... [B]e honest with yourself, be truthful. Even if you’re wrong, be truthful.” (2/12/14)

In general, it appears that the tribes assiduously follow cases from intake through foster care and, if necessary, into permanency guardianship and the very occasional termination of parental rights (TPR). One ICWA worker said, “TPRs are unnatural but sometimes they have to happen,” (8/6/14) though all four tribes oppose TPRs and prefer permanency guardianship and customary adoptions, which we will discuss in greater detail below.

As one social-services director noted, “ ... we fight. [These] children are our responsibility. They are our children. And that is something that is a primary focus for us, to make sure that any child ... regardless of

where that case is – we are still managing those cases. And when our orders are drafted, particularly and obviously with permanency guardianships, there is always language in there that whoever the guardian is, there has to be contact with the tribe, and ... we will make sure that that happens.” (1/8/15)

This person also pointed out that not understanding ICWA was “not a deterrent for us ... staff go into meetings and are very vocal. And [are] forceful if necessary, that this is the law, these are our kids. And this is ... even for team meetings when you work with other caseworkers and other providers, this is what you have to understand about tribal communities, these are tribal children.” (1/8/15)

A DHHS supervisor remarked, “The hard part ... was that ... the tribes were so busy. I mean it was so crazy. And ... some of us were able to connect and do that work as a partnership. And then some of us weren’t able to connect with our person. But ... the amount of stuff on your plate, on the tribe’s plate was just overwhelming.” (11/3/14)

A Wabanaki chief noted that problems exist with child-welfare practice in his tribe as well. This person said, “I

**“TPRs are unnatural but sometimes they have to happen.”**

**– ICWA worker**

**“The hard part ... was that ... the tribes were so busy. I mean it was so crazy.”**

– DHHS supervisor

think that the challenges for tribal-child welfare have been keeping good people. We have a high burnout rate. ... [O]ur workers feel everything ... they really become connected to those families.” (11/4/14) From this person’s perspective, effective child welfare revolves around the availability of sufficient resources: “I think the more people we have on staff, the less impact it has on them emotionally. I do think that as part of the process one of the challenges needs to be not just recognizing victims but often our own professionals become those victims emotionally because they’re just as tied to it. So the challenges for child welfare today are adequate staff and engagement and that’s resources.” (11/4/14)

Tribal child-welfare workers share with their DHHS counterparts heavy workloads and face similar misgivings from the families with whom they intersect. Another perspective a tribal child-welfare worker offered was: “I think that a lot of people think that there’s a lot of negativity attached to the department ... [But] we really tried to see ourselves as resources rather than as people who are coming to take kids away ... because that’s something we have to fight against all the time. And we do that by involvement with the community, getting to know people ... we are

community members as well. So it’s a balancing act. ... You need to know the fact that everyone is related to everyone. So it really is a balancing act of how to draw the lines and when. The boundaries.” (12/17/14)

A former tribal health director who also worked in tribal child welfare pointed out that “making sure staff had the supervision, and that the duties were separated” was a problem, a concern this person thought was “probably an issue in a lot of tribal communities, because they just don’t have the staff or the resources to ... separate everything. So people wear too many hats.” (2/6/15)

There are institutional barriers that stem from cultural barriers, as this former tribal child-welfare worker stated: “[W]hen I started in child welfare, the tribe had a code that reflected state law that basically is still in effect. It’s a tribal code, but the information in it came from the state. And, as a department ... we’ve changed that code to be culturally relevant for our needs. ... We don’t have much longer to go. [T]he ... department likes to do prevention more than taking children out of their homes. Because that’s not our purpose in life. Our purpose is to keep kids safe, but also keep families intact. So we’ve worked on that really hard. Like I say,

**“I think that the challenges for tribal-child welfare have been keeping good people. We have a high burnout rate. ... [O]ur workers feel everything ... they really become connected to those families.”**

– Wabanaki chief

**“ ... I am so fed up and tired of this system. I’m tired of kids hurting.”**

**– Wabanaki foster mother about challenges working with tribal child welfare**

we have almost accomplished that. It won’t give us a lot of strength with the state, but it will give us a lot of strength for ourselves.” (11/21/13)

The pressures, in short are many, and they are felt by parents as well. Sometimes, tribal-child welfare also comes in for criticism: This Wabanaki foster mother said, “They need to have some sort of follow up. They need to call back. They need to return calls the same day. When I call child welfare ... I always leave the date and the time and everything when I’m calling ... I’m thorough. It could be worry and maybe it isn’t about something intense. But get back to me. Let me know. I’m taking the time to reach out to you to tell you private information. You get back to me and tell me something about this case ... I am so fed up and tired of this system. I’m tired of kids hurting.” (3/5/14) This statement provider’s community appeared to have a long history of trouble in maintaining a strong tribal child-welfare office.

Many ICWA and tribal child-welfare workers are aware of such concerns. Again, the metaphor of hats returned. “I think one of the biggest things that we’re seeing with this department ... is funding. Like I said I have to

wear many hats, but my main focus – what I got hired for – is ICWA, and ... if I’m off doing something else, I’m not on task with the child welfare.” (8/6/14)

A Wabanaki chief remarked, “There’s no money for ICWA. And ... we have to decide between ... a new roof and giving [the ICWA worker] more money, and ... the new roof really affects more people – well, it’s a hard choice. They’re both important, but ... I don’t want to make those decisions. Because if I make them then people look at me and say, you know, ‘Hey, he’s the one that didn’t fund ICWA.’ When actually it’s not me, it’s the federal government. Because ICWA used to be funded by the federal government. And now it’s not. And I think it’s causing hardships right now. So we could go back to ICWA being all gone and all the Native children going out again if it’s not funded again. That’s one huge thing that I see.” (10/30/14)

An attorney for one of the tribes pointed out much the same problem: “[ICWA] doesn’t provide any funding ... it doesn’t provide any resources, it doesn’t provide ... with the sort of things ... you would want to have to be making sort of sound decisions. Tribes kind of have to come up with that on their own and get funding where

**“[T]he ... department likes to do prevention more than taking children out of their homes. Because that’s not our purpose in life. Our purpose is to keep kids safe, but also keep families intact.”**

**– Former tribal child-welfare worker**



**“I think one of the biggest things that we’re seeing with this department ... is funding. Like I said I have to wear many hats, but my main focus – what I got hired for – is ICWA ... ”**

– ICWA worker

they get it ... I mean the federal government may in fact provide funding for some of this stuff.” (11/3/14)

The overall impression we gleaned from tribal child-welfare staff is that they have to be vigilant in protecting the children both in their own communities and in particular when dealing with the state system, either with DHHS or with the courts, to ensure that every element of ICWA is attended to.

Again, as with the state system, people carry stiff caseloads and the emotional weight of their work is heavy. Funding is a perennial issue, too. It is also important to note that some Native foster parents report poor relations with tribal child-welfare staff and would like to see this office be much more responsive. People in certain communities also reported that appointments to these positions were influenced by tribal politics, and they were eager to put in place a system that was more equitable.

## Issues with Foster Care

**W**e have pointed out the issues that can arise at intake and with identification, as well as the larger cultural context in which ICWA has been administered. We turn now to what we know about Native children once they enter foster care.

Data we obtained from the state indicated that between 2002 and 2014, 401 Native children entered foster care in Maine.<sup>21</sup> This averages out to 30.8 Native children entering foster care annually. However, given that Native ancestry may not be ascertained at intake, there are most likely more ICWA-eligible children in the state system than this.

DHHS reviews of ICWA cases involving children from Wabanaki tribes have found that half of Native children were placed in Native foster homes that may or may not include one of their family members. The other half were in non-Native placements.<sup>22</sup>

One of the most common recommendations we heard to improve ICWA compliance is the creation of more

**“There’s no money for ICWA. And ... we have to decide between ... a new roof and giving [the ICWA worker] more money, and ... the new roof really affects more people – well, it’s a hard choice.”**

– Wabanaki chief

## **“When I found out that I was Native, I wanted a Native home. That’s it, plain and simple.”**

– Wabanaki statement provider

Native foster homes and the reasons seem clear enough. One statement provider declared: “When I found out that I was Native, I wanted a Native home. That’s it, plain and simple.” (5/1/14) When an ICWA worker was asked what could be changed, this person answered, “... [C]reating more therapeutic homes. Non-Native and Native. [O]ne of the biggest issues ... with our department is we’ve got a couple cases where kids have had to go to crisis units because there’s no therapeutic foster placements.” (8/6/14) Yet many obstacles to the creation of any kind of Native foster home exist.

The state appears to have resisted the tribes’ desire to determine their own standards for Native foster homes and it was not until 1999 that the state legislature passed a law that allowed licenses to be granted simply because of the background work that the tribes themselves had engaged in. Even afterwards, one DHHS administrator pointed out, “[I]n the districts a lot of people didn’t really know that or understand that and thought that if a home was put forth they still had to do the whole licensing process and the home study process again, which was not the case.” (9/17/14) Another statement provider, a lawyer for a tribe, also noted that in doing assessments for foster homes, the tribes must rely on state-generated data instead of on their own databases. (11/3/14)

Economic and technical complications exist as well. As a tribal judge noted, “[T]he tribal department of social services began to discuss with DHHS on what was called a IV-E agreement and IV-E ... is an act that provides the funding to care for children taken into foster care, particularly special-needs children taken into foster care and in order to take care of those children, the [community] needs access to those funds. The agreement was negotiated about five years ago. Everyone said that it made sense and in fact, I think you find under the Land Claims Settlement Act, and the federal treaty which adopted or incorporated the Land Claims Settlement Act, the state is required to pass those funds on to the Native children. In fact the agreement has never been fully executed. We have heard from the Department of Health and Human Services that they are prepared to move forward. They have told us, for what it’s worth, that it’s been hung up in the attorney general’s office and that they can’t ... seem to get beyond that and that’s both in the previous administration, the Baldacci administration and in the current administration.” (12/5/14)

A tribal chief also pointed out that there is, from his perspective, still discrimination on the part of the state when it comes to licensing Wabanaki homes: “If the tribe could make their own regulations ... and ...

## **“... [C]reating more therapeutic homes. Non-native and Native. [O]ne of the biggest issues ... with our department is we’ve got a couple cases where kids have had to go to crisis units because there’s no therapeutic foster placements.”**

– ICWA worker, when asked what could be changed

**“ ... IV-E ... is an act that provides the funding to care for children taken into foster care, particularly special-needs children ... and ... to take care of those children, the [community] needs access to those funds.”**

– Tribal judge

say ‘Hey, you know what, this guy might have done this five years ago, 10 years ago, but guess what, he’s a different person today.’ The state doesn’t recognize that. So if somebody did something 10 or five years ago, they still have that black mark. Whereas the Native communities are a lot more forgiving. So if somebody did it – people change. Year-to-year, day-to-day, month-to-month – however, you want to look at it – people change. So I think that if we did have that, then there would be more families that would qualify. Because we have some really good families that have made mistakes in the past, and that have totally changed their life around.” (10/30/14)

Despite these complications, many Native foster parents simply take in children in an informal way, as has been done for generations. But if dollars need to follow that child, especially if that child has special needs, then foster parents have to apply through the state system. Accessing services for children seems to provoke as much frustration as becoming a licensed provider. There are emotional binds as well, as is often the case with any foster care. One tribal child-welfare worker discussed what it was like to foster an infant. “She didn’t make eye contact when I first got her and she wouldn’t hold my finger, and I was really scared.

Now you wouldn’t know she was [a] skinny baby that couldn’t hold your finger or that she wouldn’t make eye contact because I forced the eye contact because I was like, ‘Oh no, she needs to bond,’ and so and then there’s the part of me that’s afraid that she’ll go back to her parents and there’s the part of me that’s afraid that she will never go back to her parents because – how will she feel?” The provider continued: “She will have someone there who knows what it’s like and she’ll have someone there who can help her through that, and we do, we do love her. I mean, how can you not love a perfect little baby?” (11/4/14)

No matter how difficult being separated from parents may be, contact with Wabanaki culture and land seem to be of paramount importance to many children who grew up in Native homes in their communities. Comments like the one below appear to speak to the exact intent of ICWA and provide a bracing reminder of the power of tribal identity and connection. A tribal service provider said, “I knew I was a [Wabanaki] girl, I know I am a [Wabanaki] woman. This island is my home. There is no question about that. I’ve never, I’ve never ... not known where I belong in this universe. I’ve never had a question of that so even when I wasn’t sure how my mom was doing ... I knew I was going to be OK. I always knew there were going to be people,

**“If the tribe could make their own regulations ... and ... say ‘Hey, you know what, this guy might have done this five years ago, 10 years ago, but guess what, he’s a different person today.’ The state doesn’t recognize that. ... [T]hey still have that black mark.”**

– Wabanaki chief on licensing of tribal homes

**“She didn’t make eye contact when I first got her and she wouldn’t hold my finger, and I was really scared. Now you wouldn’t know she was [a] skinny baby that couldn’t hold your finger ... ”**

**– Tribal child-welfare worker about fostering an infant**

a community that loved me, where I belonged, where I was known, acknowledged, accepted. I just can’t fathom that there are children who don’t have that experience, who don’t have healthy relationships with their parents but then also have nothing else outside of that, totally lost outside of that. It breaks my heart that that is the reality for so many children.” (11/4/14)

## **Non-Native Foster Homes**

**E**ven as recently as 2012, it appears that half of Wabanaki children in Maine in care were placed in non-Native homes.<sup>23</sup> There seem to be several reasons for this. One, the lack of Native foster placements coupled with an increasing need for therapeutic foster care, most of which is not available with Native people. Two, “[G]eneral society thinks we side with the Native person regardless but that’s not true. We’ve placed children with non-Indian grandparents because they were extended family and I think people need to know that tribes do that. They don’t just place a child with an Indian person because that’s an Indian person. If it’s not a good place for the child, you don’t put the child there so I just wanted that to be in the record.” (12/17/14)

But the challenge in a non-Native foster home is maintaining the connection for the child to family and culture. A lawyer for a tribe described the situation like this: “So our conversations with state workers are really around those two goals, meaning how are we going to best maintain the connection between the tribe and this child, and is this a home that’s safe and appropriate ... [O]bviously ... we’d like all the children to be with the parent. We don’t want to break up the Indian family. That’s what ICWA’s charged us to preserve, but there are times when hard decisions need to be made about removal or placement so that the parents can do what they need to do to ensure long term integrity and stability of the Indian home, the Indian family.” (11/3/14)

This, too, can happen, as a former DHHS administrator noted: “... so when it came to the very, very small subset of Native children, if they were identified as Native, trying to find appropriate resources because if we had a non-Native family that was culturally sensitive and ... were a good fit, and we used them repeatedly, that in and of itself presented a perception of a threat to the tribal community in that we weren’t developing appropriate resources for Native children.” (6/27/14)

**“I knew I was a [Wabanaki] girl, I know I am a [Wabanaki] woman. This island is my home. There is no question about that. I’ve never, I’ve never ... not known where I belong in this universe.”**

**– Tribal service provider**

**“Even small connections matter. Get kids back to the tribes for parties, for relationships.”**

– Former ICWA worker

Some providers note that a strong connection largely depends on the foster parents and their willingness to incorporate cultural activities and trips back to Wabanaki communities. Traveling great distances also represents a challenge to people. DHHS and the tribes are often faced with difficult choices such as whether or not to separate siblings, choose proximity to tribal communities over best fit with a family and other complex factors that go into making what is already a stressful situation for children and families more bearable.

But making that effort to keep children connected matters enormously. A former ICWA worker said, “Even small connections matter. Get kids back to the tribes for parties, for relationships.” (10/16/14) Practices for maintaining and encouraging those links apparently also vary tribe-to-tribe. Some statement providers say that certain tribes are diligent about following through in informing people about events; others appear harder to be in touch with. Newsletters are pointed out as important resources for parents and service providers. A DHHS supervisor noted that a tribe she had worked with had “a placement form ... it speaks to what it would require a foster parent to do and some of those things are to make sure that you bring that child to ...

two ceremonies on the reservations per year, things that they need to do to continue to keep them in touch with their heritage and their culture which I had never seen ... before ... and I really liked that and they had their caseworker come down and meet with my worker and the foster parent and the foster parent had to sign off on it. ... (12/15/14) A non-Native foster parent praised the tribal child-welfare staff she worked with saying, “I love working with those ladies. ... [T]hey’ve just been good to work with. They’ve been fair. I feel I have a real good working relationship with them.” (10/14/14) This provider also reported saying to her foster children, “[Y]ou can be proud. You can be proud of who you are. You know, you’re Native American.” (10/14/14)

Still, despite best intentions, none of these options is equivalent to living in a Wabanaki home with one’s kin nearby. And some foster parents may not have the resources to fully embrace what it might mean to care for a Wabanaki child’s cultural needs. In short, systems are not uniform and clear, frequent communication is needed to ensure that children have access to everything from drumming to language, celebrations to time simply spent in the community. One district judge noted, “ ... some of the foster parents from my limited interactions with them, I would have questioned

**“[G]eneral society thinks we side with the Native person regardless but that’s not true. We’ve placed children with non-Indian grandparents because they were extended family ... ”**

– Tribal child-welfare worker

**“[Y]ou can be proud. You can be proud of who you are. You know, you’re Native American.”**

– Non-Native foster parent on what she said to her foster children

whether they understood the gravity of what they’ve been entrusted with and whether they were going to be able to truly convey that gift to the child in their care. So, that’s been a challenge.” This person continued, “We all enjoy the benefits of American history but we don’t bear its burdens equally and for a child to be able to realize these gifts he or she has to have access to them ... in a way that they can really be conveyed and that means ... space and time and place and again, they have to be there with people who can convey it to them. It isn’t enough to honor it in the abstract ... ” (11/21/14)

To underscore the importance of cultural connection, we need to remark on the many comments we heard from statement providers about the difficulties they experienced a generation ago. Many of these providers did not have any reinforcement of their heritage, though many, in spite of obstacles, persisted in speaking a Native language or finding their way to their culture.

But the following quotation seems more representative of what has happened than not. A Wabanaki boy loved spending time with his grandfather, but the visits just “stopped, because ... they said ... of my behavior at

home. They would not allow me to go have visits with him anymore. And they never allowed me any other opportunity to learn customs. I remember talking with different foster homes and my caseworkers about wanting to go to different outings and wanting to be able to learn ... basket weaving was the one thing I really ... wanted to do. One of my foster parents, she was taking a basket making class, and I told them that I want to go learn how to make traditional baskets, and ... the standard answer was they would look into it. I was never allowed to go to powwows. There [were] never any trips to the reservation. I asked if we could go and they said, ‘We can’t.’ ... They said ... it was too far for them to travel. My caseworker didn’t have the time to do that. So it was not actually until ... 2011 that I was ... on the reservation. It was ... just amazing.” (11/17/14)

**“ ... some of the foster parents from my limited interactions with them, I would have questioned whether they understood the gravity of what they’ve been entrusted with and whether they were going to be able to truly convey that gift to the child in their care.”**

– District judge

**“I’ve seen some Native American kids be in foster care for 4 or 5 years and I’m thinking if they were non-Native they would [be] out of foster care by now.”**

**– Non-Native service provider**

## **Permanency Guardianship and Adoption**

**P**ermanency guardianship and adoption form other components of the child-welfare system and come into play after a child has been in foster care for a period of time. While data from DHHS suggests that from 2002 to 2013, Wabanaki children stay for less time in foster care than other groups of children, testimony from statement providers points in another direction.<sup>24</sup> A non-Native service provider commented, “I’ve seen some Native American kids be in foster care for 4 or 5 years and I’m thinking if they were non-Native they would [be] out of foster care by now. ... I wish that there would be more emphasis on finding permanency for Native American kids. It’s damaging when these kids have been in foster care for so long ... We’re working with several kids right now that are falling apart because they know their background, they know their heritage. We keep them involved, there is a connection there but they don’t think they have a future. Without that future there they can’t function in the present. [T]hat is just one of the reasons I’m willing to speak today. We definitely need

more work to find permanency options for these kids. It’d be interesting for me to know, do Native American kids stay in foster care longer than non Native kids? My experience is that is what’s happening.” (10/14/14)

A DHHS administrator said, “We have kids who are in homes for years and years and years and don’t get permanency and I worry about those kids. The longer they are in care, the worse they do. They don’t turn out well without a family and so that’s the struggle for me. Those kids who stay in care for a long time, and we know that doesn’t work well.” (10/14/14) As another DHHS administrator noted, “The state does not make a good parent.” (9/17/14)

While further study will have to go into understanding these discrepancies, Wabanaki children quite frequently end up in permanency guardianships. Data from 2006 to 2013, the only years for which we were able to obtain data, suggest that Native children are 1.78 times more likely to be in permanency guardianship than children overall.<sup>25</sup> Permanency guardianship is a legal status that keeps the door open to reunification to parents, with parents making a required appearance once a year at court. This status of not-quite adoption serves as a

**“There [were] never any trips to the reservation. I asked if we could go, and they said, ‘We can’t.’ ... [I]t was too far for them to travel. My caseworker didn’t have the time to do that. So it was not actually until ... 2011 that I was ... on the reservation. It was ... just amazing.”**

**– Wabanaki person formerly in care**

## **“The state does not make a good parent.”**

– DHHS administrator

compromise, although we are aware, too, of a growing movement to bring back the traditional practice of customary adoptions. In a customary adoption, relationship bonds between a child and new caregiver are forged through custom and ceremony – and without severing the legal connection between child and parent, as in conventional adoptions.

But simply ending a parent’s rights to connect to a child is not something that tribes support. As a tribal child-welfare worker remarked, “[I]t’s not our philosophy. That’s where us and the state of Maine differ. Even when we’ve ceased with the parents. ... There’s two different things. We still help families retain their relationships. We still provide supervised visits, an opportunity to keep that connection to who they are, where they came from. That’s important to them. We try to do that in the safest way possible. ... We want to keep our members connected. ... We don’t want our kids being adopted out. They lose more of who they are, where they came from, and in a lot of cases, we’re trying so hard to get our culture back and to bring that back, we don’t want our kids disconnected from that. ... The federal government says we have to have [adoption] in our toolbox but, except in an extreme case, I couldn’t see us actually ever using it.” (12/17/14)

The 2009 federal review found that Maine met ASFA standards for terminating parental rights in 87.5 percent of cases.<sup>26</sup> A social-services director noted, “The state’s time frames are very different from a tribe’s time frames. So time frames are key. The state typically ... I want to say families have a year. We will fight that. We do not agree with that and we will challenge it. We certainly give families – unless it’s a situation again where there is some severe abuse ... you typically give a family over a year, well over a year to reunify.” And when asked if the tribe had been successful with this strategy, the provider commented, “I would have to say yes.”

This person continued, “The tribe’s view has always been ... only in rare instances are we going to terminate parental rights. Because the reality is regardless of that piece of paper, they are a part of the community. These kids know that they don’t stop being the parent. So we tend more to use guardianship and permanency placement and things like that, as an alternative.” (1/8/15)

If adoptions are not a frequent or over-represented recourse, there are still lingering feelings on the part of non-Native service providers.

## **“The federal government says we have to have [adoption] in our toolbox but, except in an extreme case, I couldn’t see us actually ever using it.”**

– Tribal child-welfare worker



**“The tribe’s view has always been ... only in rare instances are we going to terminate parental rights. Because the reality is regardless of that piece of paper, they are a part of the community.”**

**– Wabanaki social-services director**

One person remarked, “[A]s an adoption caseworker ... my goal is to try and find permanency for kids that have been abused and neglected, and I do believe that the department many years ago did take kids off the reservation and took them away from their culture and heritage, and strongly support kids being placed with Native American families. And so I think that’s really important and it’s our role to help in the healing of that because we created some of that.

“However, if the tribe does not have a family that’s eligible to take the children, and they are placed in a white foster home for a couple years, I found it challenging that these kids cannot be adopted and achieve permanence. ... Because I do believe they should be in Native American [homes.] But if the tribe isn’t able to help us, and weren’t able to locate a Native American, how can [we] resolve permanency? ...

“But a lot of times kids are now bonded to this family, want the same last name, you know, and need that permanency, I think. And if – is there some way the tribe would allow them to sign a cultural heritage statement that they would raise these children knowing their Native American culture, maybe ... the family would agree to follow-ups every year to see that they’re

doing more outreach between the tribes and DHHS and the family to make sure. ... But not hold a kid up from permanency just because they’re Native American ... we have families that want these kids. So that’s my struggle.” (11/3/14)

No matter how permanency is resolved, it appears that many Native children have been caught in a variety of difficult situations. Some feel connected to their Native culture and yearn for more contact. Others feel connected to adoptive parents and at more distance from their Native heritage. Some children rotate between the worlds, homes and identities for years. It has, apparently, created a sense of near-perpetual anxiety for many of the children involved.

This provider said, “that’s the biggest thing for me is the loss of identity. How people going from one world to another ... they don’t belong in either. They don’t feel like they belong in either. My foster mother told me that I was at her house because nobody on the reservation wanted me and that I was there on the goodness of her heart. And that she would save me from being [Wabanaki]. So, I think the only one who is going to save me is myself.” (3/17/14)

**“[A]s an adoption caseworker ... my goal is to try and find permanency for kids that have been abused and neglected, and I do believe that the department many years ago did take kids off the reservation and took them away from their culture and heritage ... ”**

**– Non-Native service provider**

**“ ... that’s the biggest thing for me is the loss of identity. How people going from one world to another ... they don’t belong in either. They don’t feel like they belong in either.”**

– Wabanaki statement provider about non-Native foster care

## Legislative and Legal Practices and Themes

**T**he previous sections argue that the state engaged with ICWA slowly and that such reluctance may have filtered into elements of state child welfare ranging from intake to negotiating permanency. The evidence suggests as well that Wabanaki sovereignty and culture have not, for many years, if at all, been taken into full consideration and that children and families suffered because of these struggles. It further suggests that many people, Wabanaki and non-Native, have made concerted efforts to shift practice, policy and belief, even if underlying causes continue to thwart full implementation. The fact remains that Native children are still over-represented in the state system. Throughout, we have attempted to use examples from statement providers and the data we were able to obtain to draw awareness to what we see as root causes behind these disproportionalities: institutional racism and the stark impact of historical trauma that creates conditions certainly of mental harm and do indeed result in the transfer of children from one group to another. Sadly, these conclusions indicate

the continuing occurrence of cultural genocide against Wabanaki communities.

What, then, can we learn from examining the themes that arise from the legislative and legal aspects of this account? How are both legal history and contemporary interpretation of federal law impacting child welfare and what are the roles that the state and the tribes are playing? Here we examine a third underlying feature animating this fraught landscape: the disputes around sovereignty and jurisdiction that create tensions we see today. A non-Native lawyer remarked on the significance of this theme: “I think that tribes should exert their jurisdiction actively, aggressively. I think jurisdiction is like a vacuum. If you don’t use it, somebody else fills it. So I just feel strongly that the tribe should be very assertive about the rights [that] have been recognized by the Indian Child Welfare Act because it is in that large a context.” (9/11/14)

The first part of an answer to these questions lies with a necessarily incomplete analysis of the looming presence of the Maine Indian Claims Settlement Act (MICSA) of 1980. The second lies with an equally abbreviated account of the Adoption and Safe Families Act (ASFA)

**“My foster mother told me that I was at her house because nobody on the reservation wanted me and that I was there on the goodness of her heart. And that she would save me from being [Wabanaki]. So, I think the only one who is going to save me is myself.”**

– Wabanaki statement provider, about non-Native foster care

**“I think that tribes should exert their jurisdiction actively, aggressively. I think jurisdiction is like a vacuum. If you don’t use it, somebody else fills it.”**

– Non-Native lawyer

of 1997 and its complex interaction with ICWA. Finally, we will discuss what we learned about tribal courts and the heightened advocacy in which many tribal people have engaged in legal and judicial arenas where issues of jurisdiction play out with powerful consequence.

In sum, anyone involved with the legal element of Native child welfare in Maine is dealing with an intricate system with many rules, disagreements about practice and intent and insufficient resources that, most simply, exhaust all involved – DHHS caseworkers; attorneys; tribal child-welfare staff; foster parents; and most of all Wabanaki families. One Wabanaki provider, referring to the difficulty of navigating the legal system said, “[L]ive a day in my life and then you’ll know the real ... deal here.” (12/13/13)

## ICWA and Native Child Welfare in Maine in the Context of MICSA

To summarize, however briefly, MICSA was the result of an out-of-court settlement that ended in awarding \$81.5 million to the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseets. The tribes reacquired 300,000 acres of land – almost all went to the Passamaquoddy and Penobscot – and the Houlton Band of Maliseets received federal recognition and a small portion of that money. In addition the tribes had to “give back some of the powers of self government that recently had been recognized in the courts.”<sup>27</sup>

A report by the Maine Indian Tribal-State Commission notes that the “basic principle of the settlement is that all Indians and Indian lands in Maine are subject to the same laws to the same extent as other persons and lands in Maine, except that the Passamaquoddy Tribe and the Penobscot Indian Nation are accorded certain rights of self-rule.” Maliseet people who were not part of the Houlton Band were not part of MICSA, nor were the Aroostook Band of Micmacs, who did

**“[L]ive a day in my life and then you’ll know the real ... deal here.”**

– Wabanaki statement provider, about difficulty navigating the legal system

**“The state has tried to turn us into a town and has divorce[d] us from our identity as a Native government.”**

– Tribal attorney

not receive federal recognition until 1991. In short, precise boundaries of self-government, sovereignty and jurisdiction were left undefined, a situation that has since created legal, social, economic and racial friction. Maine has few financial responsibilities for Native people in the state, but continues, according to the testimony we gathered, to undermine tribal self-regulation. As a tribal attorney noted in an interview, “The state has tried to turn us into a town and has divorce[d] us from our identity as a Native government.” Discovering how that government functions is a process: “The state had taken care of our needs for so long. How do we take care of ourselves? There is an evolution of learning governance. We have to figure out what works for us culturally, intellectually, spiritually. It doesn’t have to be government as it looks to outside people. And people need to come together, reasonable people, need to come together to the table.” (2/6/15)

Further complicating this scenario, as noted above, neither the Micmac community nor Maliseet people who were not in the Houlton Band were included in the act. They did not receive land nor were tribal courts for these communities developed. For that reason, among others, these communities had far more contact

with state child-welfare services and courts, leading, we suspect, to an uneven implementation of laws regarding Native people in Maine. This situation may well have created conditions, both legal and most likely cultural, that might explain why the scale of child-welfare interventions appears to have been more extreme in Aroostook County, where most Maliseet and Micmac people live.

We also suggest that given how controversial MICSA was and how it inflamed tensions that were already high between the state and the tribes,<sup>28</sup> it is plausible that implementing ICWA in such a context might well have been problematic. Another way to state these themes is that it seems as if the state was operating inside a discourse that tried at once to lessen the tribes’ political significance while also trying to contain their power, a contradiction that speaks to fears of “nations within a nation,” which is apparently central to the struggle between these governments. A tribal judge specifically remarked upon that particular fear. “I’d recommend that the feds sign a new treaty with the [Wabanaki] and get rid of the Land Claims Settlement Act. ... My perspective is that ... until [MICSA] is revisited and perhaps reframed to some degree that that mindset is going to continue in the AG’s office ... to believe

**“There is an evolution of learning governance. We have to figure out what works for us culturally, intellectually, spiritually. It doesn’t have to be government as it looks to outside people. And people need to come together, reasonable people, need to come together to the table.”**

– Tribal attorney

**“I’d recommend that the feds sign a new treaty with the [Wabanaki] and get rid of the Land Claims Settlement Act.”**

– Tribal judge

that the nation is not a nation, that it is a municipality and it’s still under their authority. And as long as that continues, there are going to be problems.” (12/5/14)

Another facet of MICSA that bears on this account is that ICWA was specifically designated as federal legislation that would take precedence over state law. As part of the Maine Implementing Act of 1981, ICWA was again specified as applying to the Maine tribes.

However, Maine legislators did not make appropriate adjustments to state law to change the language to reflect the standards of ICWA. To remedy this, state legislation had to be passed to bring Maine law into compliance with ICWA. In short, though subject to ICWA, Maine still had to pass legislation as late as 1999 to ensure that the federal law applied.<sup>29</sup> This then became the legal backdrop and created the jurisdictional ambience and ambivalence that could well have influenced policymakers and caseworkers administering child welfare to tribal people.

A tribal chief characterized these jurisdictional disputes this way: “[Y]ou have on the one side a kind of thirst of control for all issues within Maine’s borders without an understanding of the unique political landscape that

exists in Maine’s tribal people and tribal governments. You have jurisdictional confrontations and challenges that stem from an agenda on one side that may not be totally in line with the cultural values of the tribe in terms of the environment and land and how we govern that and develop. ... So, I think the tribal-state relationship is in some cases 100 years behind other states ... and I think that the respect for the tribal sovereignty and authority is just not where we’d like it to be at this point.”

This person added: “I will say through all of that that we’re committed to continuing to educate, to continue to exercise diplomacy, to work with those that are in that mindset to find solutions to very complicated issues ... [W]hat often happens is how [MICSA] gets interpreted and how state legislature sees the world through that document and how state courts have seen the world through that document, is miles away from what the tribe understood they were getting.” (11/4/14)

Another Wabanaki chief spoke even more bluntly: “We don’t really have a relationship with the state of Maine, you know ... We don’t participate in anything that they do. ... [T]hey don’t respect our sovereignty. They don’t respect any of the tribes’ sovereignty. So it’s really hard

**“ ... I think the tribal-state relationship is in some cases 100 years behind other states ... and I think that the respect for the tribal sovereignty and authority is just not where we’d like it to be at this point.”**

– Wabanaki chief

**“ ... it’s really hard to deal with somebody when they don’t respect you. That’s the hardest part.”**

– Wabanaki chief

to deal with somebody when they don’t respect you. That’s the hardest part.” (10/30/14)

A Wabanaki attorney made this haunting comment about his interactions with the state around jurisdictional issues: With lawyers, “there is usually give and take, collegial feelings. But there is hatred here. It is hard to put into words. There is an unreasonableness when dealing with tribal issues. [They] lose all rationality.” This person remarks on having tried “to understand this fear of authority,” but it is “[h]ard not to think there is some racism. Does it go back to the colonial days? An underlying fear of Native people?” (2/6/15)

## **Blood Quantum and Concerns about Census Eligibility**

**A**nother concern that connects to sovereignty is the intertwined issues of blood quantum – the amount of Native blood one must have to qualify as a member of the tribe – and census eligibility – being able to appear on the tribes’ census rolls. While these both have practical implications – whether or not a child is ICWA eligible or falls under the jurisdiction of the state – the very idea of calculating such a number strikes some Native people as abhorrent and as an indication of interference by the state in tribal affairs and self-determination. Some tribes in Maine name a percentage and some simply use lineal descent, but no matter the tribe, the idea behind the process, that one had to prove one’s affiliation with a tribe by blood, has created complications for families trying to obtain services for children and trying to keep children connected to their tribe.

As one Wabanaki provider noted, in reference to a question about what services she could obtain for her

**With lawyers, “there is usually give and take, collegial feelings. But there is hatred here. It is hard to put into words. There is an unreasonableness when dealing with tribal issues. [They] lose all rationality.”**

– Wabanaki attorney

**“Those are our kids. You know? You live here, you grew up here, and you don’t meet the census criteria, and you’re placed somewhere else.”**

– Tribal social-services director

children, she answered that she couldn’t because she wasn’t “in the service area ... I would prefer to do that. But ... they’re [her children] not on the census. I am, but they’re not. Which is a whole other TRC we could have – [a] TRC on blood quantum.” (5/7/14) A former tribal health director, when asked to discuss a less positive interaction with the state, responded, “I get particularly troubled when I hear about ... descendants, ... those kids that don’t meet the blood quantum requirements to be tribal members, and when they have issues with their family, the state is called to come in because it’s their jurisdiction, and ... from the tribal process that [is] an incredible disservice.” (2/6/15) This person continued: “So we’ve lost a lot of descendants into the state system and I guess the biggest challenge is there isn’t enough coordination between the two systems, so once it’s in the state system, they’re almost lost to the tribe, and they’re lost to those parents. And it doesn’t feel like we can advocate enough for them.” Finishing her statement, this person noted, “It’s such ... a disservice to even ... throw that out to the tribes. Because the people didn’t know what implications it was going to have later on. And how could they? ... It’s ... a system that was forced on us ... it’s not who we are.” (2/6/15)

The issue of who belongs to the tribes, who, in essence are the descendants is a concern that surfaced in many statements. A tribal judge said, “So if they were 1/4, we’d absolutely take them but I think what we’d find is that ... the nation takes the broadest possible perspective on the exercise of sovereign rights and particularly under ... ICWA. If they are an Indian child as defined by the act, we will take jurisdiction. And we’ll go from there.” (12/5/14)

A tribal social-services director said, echoing a worry that we have already remarked on, “There are children in the system that are tribal members that we don’t know about. There are children that have been adopted that we don’t know about. Even though we’re a small state, it happens. It happens. It does happen. The children that are – and when I say children, for me any child that has a tie to this community. They don’t need to be on census. Those are our kids. You know? You live here, you grew up here, and you don’t meet the census criteria, and you’re placed somewhere else. This is their home.” (1/8/15)

Many providers also discussed the labyrinthine policies that determine eligibility, especially for Maliseet and

**“So we’ve lost a lot of descendants into the state system and I guess the biggest challenge is there isn’t enough coordination between the two systems, so once it’s in the state system, they’re almost lost to the tribe, and they’re lost to those parents.”**

– Former tribal health director

**“But if dad was not registered, we couldn’t put ICWA laws down. ... Yes, he might be tribal, but he’s not federally recognized.”**

– Non-Native lawyer

Micmac people who may have multiple allegiances to family and kin networks in Canada. As a non-Native lawyer for one of those tribes remarked, “But if dad was not registered, we couldn’t put ICWA laws down. To my understanding we wouldn’t have been able to. Yes, he might be tribal, but he’s not federally recognized.” One irony that emerged is that the U.S./Canada border is one that many tribal people do not recognize, though for some its existence determines whom they can claim as family, where they can go and what services they receive.

These rules create pressure for both state and tribal staff as eligibility can take time to determine. A tribal child-welfare worker said, “The only challenge is sometimes to get the family history because sometimes the child themselves might not show up on our census so we need the parents, the grandparents’ names. We need that family history because we can look up those other members and if we can’t do it here than we send it to our trust office, which works very closely with child welfare in identifying the family memberships and whether a child is eligible. And a lot of people don’t understand that just because a child is not on our census, if they are eligible to be than ICWA still applies

and so that is a challenge. And we do everything we can to verify those family relationships and sometimes time is just not on our side.” (12/17/14)

While blood quantum and problems around eligibility existed before the passage of MICSA, the theme of uncertain jurisdiction is strongly echoed here and it is easy to imagine that MICSA created an even more complex legal landscape, which the intricate rules around blood quantum or descent could hardly have helped. As one provider, a non-Native tribal attorney, commented, “[W]hat’s really sad about jurisdiction issues is that it’s confusing for the kids, it’s confusing for the parents and it really takes away from what we’re supposed to be doing there, which is just to protect the kids. ... [R]egardless of who has jurisdiction, we’re both well meaning, sovereign territories, the state of Maine and [the tribe,] and we should be able to act to protect the kids.” (2/12/15)

**“[R]egardless of who has jurisdiction, we’re both well meaning, sovereign territories, the state of Maine and [the tribe,] and we should be able to act to protect the kids.”**

– Non-Native tribal attorney



## ASFA brought a “huge sea change.”

– Former DHHS administrator

### ICWA and Native Child Welfare in Maine in the Context of ASFA

Passed in response to national concerns about the length of time children were in foster care, ASFA marked another shift in the way Native child welfare was managed in Maine. The 1997 act signaled a change in federal policy and focused more on trying to keep families together. Many studies indicated that if children were placed with kin, they experienced better outcomes and the best solutions of all came about with reunification with parents.

In some respects, this legislation mirrors the similar emphasis in ICWA, which notes the critical role that kinship care plays in Native communities, which in turn mirrors a cultural belief that many Indigenous people have held for thousands of years. But ASFA also contains elements that run counter to ICWA’s intent by promoting speedy termination of parental rights for families who could not quickly resolve issues. Thus it could seem designed to promote adoptions: there are financial incentives for reaching certain benchmarks in numbers of completed adoptions, which implies as well

a willingness to terminate parental rights. Furthermore, not complying with provisions can mean loss of Title IV-E funds.

Many statement providers noted how ASFA altered the way they did their work, which one person, a former DHHS administrator, characterized as a “huge sea change.” (1/16/15) A DHHS supervisor said, “... I terminated 33 kids when I was a caseworker and that’s what you got more of the kudos for than you did reunification in the ‘80s and ‘90s ... and that was the mindset of child welfare. You know, it’s horrible to think about.” (11/14/14)

A former adoption caseworker commented, with what will by now be a familiar metaphor, “[W]e kind of had the philosophy the apple doesn’t fall far from the tree when I first started. And now we’re doing a much more thorough exam of family members and what is acceptable. You know, [because] maybe they did have some issues, but they’re in a better place now.” (11/3/14)

One provider, a former supervisor in Aroostook County said, “I don’t think we gave up on them easily but there was a lot of pressure that kids did not remain in foster

**“ ... I terminated 33 kids when I was a caseworker and that’s what you got more of the kudos for than you did reunification in the ‘80s and ‘90s ... and that was the mindset of child welfare. You know, it’s horrible to think about.”**

– DHHS supervisor

**“What I found curious about the ... Adoption and Safe Families Act ... is that there’s no reference at all in the act to ICWA ... ”**

– District and former tribal court judge

care and then when we had the ASFA, which was ‘97 or so, I mean then there was really [a] federal push and losing money and everything else if you didn’t get a child moved through the system expeditiously.” (11/18/14) ICWA carries no such financial repercussions and it should be flagged that Maine overall has complied more quickly with ASFA than with ICWA.

A 1999 federal review commented that the department was “making great strides in implementing provisions” of ASFA. Reviewers noted that agency staff and the courts have “embraced the intent and philosophy of ASFA and are working diligently to move children through the system.”<sup>30</sup> To this end, time frames were implemented in an attempt to find permanent placement more quickly. Services for reunification were not to exceed 15 months and a termination of parental rights would be filed if a child were left in foster care for 15 of the previous 22 months.

A district and former tribal court judge commented, “What I found curious about the ... Adoption and Safe Families Act ... is that there’s no reference at all in the act to ICWA, which is kind of mind-boggling really if you think about it. I don’t [know] what Congress were thinking or what they weren’t thinking ... but

it’s like they didn’t even think about tribal sovereignty when they ... passed that ... act. But ... that act does not amend the Indian Child Welfare Act, so ... it has the same force and effect now, in my view. And to my knowledge there’s no court that has said otherwise.” (2/4/15)

Another district judge offered this perspective, “[I] think that there are components of just simple empathy, care and understanding that could change the orientation toward what we do with this particular subset of children who are involved in court proceedings, but that’s not ... something that you can get by changing a statute.” (11/21/14)

Yet another district judge remarked, “[T]here’s an incentive at times ... to make sure that they adhere to that act. And from the court’s perspective, they have to file within certain dates, but we don’t necessarily have to grant within certain dates. And so, to the extent that we can ... we make sure that ICWA is competitive and I think that’s really, for ... many judges ICWA ... is something that people try very hard to adhere to. Even if ... we have to find some creative ways to do that and still comply with the Adoption and Safe Families Act.” (2/4/15) But our understanding of ICWA is more in

**“[I] think that there are components of just simple empathy, care and understanding that could change the orientation toward what we do with this particular subset of children ... ”**

– District judge

**“It should be black and white that the tribe wants their child back, like a third parent. And the tribe doesn’t need to be rehabilitated or reunified. They just need to be notified.”**

– Non-Native tribal attorney

line with what this statement provider, a non-Native tribal attorney, had to say about its importance. “I think it really boils down to whether the state of Maine trusts the tribe. Like I said before the tribe does a great job. They have their own tribal court, their own tribal welfare program, child-welfare program and there’s, you know, similar requirement for rehabilitation, reunification, access to the same services. Why the state of Maine would want to interpret ICWA that [way and] didn’t just relinquish jurisdiction to the tribe every time is a real question for me. And it shouldn’t be a matter of trust or interpretation. It should be black and white that the tribe wants their child back, like a third parent. And the tribe doesn’t need to be rehabilitated or reunified. They just need to be notified.” (2/12/15)

The impression we gathered is that ASFA as a piece of legislation was easier to implement than ICWA. Some of these reasons may well be practical: it affects far more children, comes with financial penalties when compliance is lacking and, as such, systems inside child-welfare are primed to respond to it. Its emphasis on kinship care, which it shares with ICWA is somewhat undercut by the worry that many DHHS workers have had about the advisability and safety of kinship care and by a shortened timeline for the termination of

parental rights, a tool of child-welfare practice that for the most part Wabanaki tribes reject.

ASFA, for reasons that are most likely cultural and economic, has had an easier path than ICWA. In fact, Maine is now proud to be one of the states with the highest percentage of in-family placements.<sup>31</sup>

## Tribes and Courts

**A**nd, as with the emergence of ICWA into greater prominence after 1999 and the change in DHHS response to kinship care, there has been a relatively recent shift in the narrative of how tribal people and the state interact legally. What appears to have made a difference are tribal advocacy and the creation of established judicial and legal relationships with the state. A vocal and vigilant tribal court, engaged tribal advocates and an energized response from Native communities to argue for jurisdiction have, over time, influenced how child-welfare cases have been handled, especially in Passamaquoddy and Penobscot communities. A judge in the tribal court said, “[E]verything important with

**“[E]verything important with the tribe begins with jurisdiction, and I don’t even like to use that term because it implies that the tribe does not have inherent right to speak and act for itself.”**

– Tribal court judge

## **Local and tribal courts “work very well together. ... I don’t see any problems, and that’s really quite a statement.”**

– Tribal court judge

the tribe begins with jurisdiction, and I don’t even like to use that term because it implies that the tribe does not have inherent right to speak and act for itself. But we are stuck with the realities of what the states and the court have done so that I think that a strong tribal court system, irrespective of who’s the judge, is absolutely necessary to protect children and tribal members. Period. And I think that the tribal court has obtained a level of legitimacy today but can only keep it if jurisdiction is maintained.” (9/11/14)

The tribes of Aroostook County, for various reasons, do not have tribal courts and deal with child-welfare cases through the state. Yet some testimony notes that within the last 10 years, there are some positive relationships to point to in Aroostook County, thanks to the establishment of relationships between attorneys for the tribes, ICWA workers and assistant attorneys general. An interview with state lawyers indicated there is a much less contentious relationship since 2000. This interview also indicated that judges in Aroostook take ICWA very seriously but that there was stress and tension when this person started in 2000. However, putting language in the petition that the ICWA director recommends removal has made a big difference in how cases are received. This person also noted that in

2000 there were 25 ICWA cases in Aroostook County and in 2013 there were three. (1/26/15)

A tribal judge noted that local and tribal courts “work very well together. I don’t see any problems. I don’t see any problems, and that’s really quite a statement. I’m talking notice. Notice and transfer. I really don’t see a conflict there. ... I’ve had cases transferred to the tribal court from all over the state so I’m hopeful that most state court judges get it.” (9/11/14)

Established in the late 1970s and early 1980s, the tribal courts for the Penobscot and Passamaquoddy communities have become places, according to much of the testimony we gathered, that can help create more positive outcomes for Wabanaki families. It was not always the case. As the tribal judge cited above remarked, “The tribal court was initially ... very poorly respected by not only tribal members at the time but more importantly, by the state. The state judiciary and the state bar. It was a joke. It was considered a joke and, as a result, it has taken years to, in my opinion, obtain the legitimacy through education and, frankly, through a will not to give up that has allowed the court to expand.” (9/11/14)

## **“It’s just implicit and is the reason for the law, and so it’s kind of interesting that you tell people ICWA doesn’t apply in tribal courts. Why? Because you don’t need to protect Indian families in tribal courts.”**

– Formal tribal attorney

**“[M]ost of the placements we do here are with a family member ... [that’s] a huge benefit to the child.”**

– Tribal court judge

Another provider, a former tribal attorney, when asked if ICWA did enough to protect the rights of Native children put it this way, “[I]deally the tribal court is the way to go, I think ... ICWA is there because of the pejorative view that the state workers have. It’s just implicit and is the reason for the law, and so it’s kind of interesting that you tell people ICWA doesn’t apply in tribal courts. Why? Because you don’t need to protect Indian families in tribal courts.” (10/15/14)

Here is an extensive quotation from a judge in a tribal court that illustrates some of the deep benefits that some people experience within the tribal court. “We’ve taken a number of child custody matters where we have one parent that’s Native and the other that’s non-Native and initially, we’ve had experiences where the non-Native parent is anxious about coming to the tribal court ... [B]ut we have the ability to really be pretty intensive about the services that we provide here and we’ve ended up having non-Native parents actually saying that they want to stay here, that they don’t want to go anywhere else because they find that this court is particularly attentive to trying to make sure the children get the services. ... Our experience has been that we have had a number of times where non-Native parents have said, ‘No, we want to stay here.’

“And ... in the state court system ... while they are mandated to do a kinship placement and kinship investigation, I think that’s less likely to occur if it’s in the state court system than if it’s here. [M]ost of the placements we do here are with a family member ... [that’s] a huge benefit to the child. I think probably the other difference here is ... we don’t carry the same dockets that the state does and we can be pretty intensive about making sure that we’re watching and making sure we know what is happening with a child ... [T]he studies that I’ve read show that it is better for a child to be in their home as long as they are not being physically, sexually, or emotionally abused – and get services provided to them ... [T]o pull them out into a culture that is entirely foreign to them has got to be incredibly dislocating.” (12/5/14)

Another tribal judge pointed out that the tribal court can often extend the timeline on termination. This person says, “The self-worth of parents, their sense of self is not destroyed in the way it is as a parent in state court. That’s what I see. ... I think that the tribe recognizes that ... the value of a person is still present even if they have a substance abuse issue or they’ve slipped ... in terms of their wellness regarding substance abuse. But, everybody has a certain dignity

**“The self-worth of parents, their sense of self is not destroyed in the way it is as a parent in state court.”**

– Tribal court judge

**“You cannot take the state protective custody laws and put the blinders on ... and apply those standards and those traditions and those cultural mores in that setting. It’s just ... not a good fit.”**

– Former tribal judge

that gets recognized by everyone and the value of that person isn’t lost because of substance abuse. They are not discounted as someone less than who they should be. So, I just think that the tribe’s concept of people is so much healthier than in state court.” (9/11/14)

More generally, a former tribal judge who is non-Native pointed out how important it is that the values of the tribal court reflect actual tribal values. This person noted as well “[T]he [tribe] welcomed me ... I was an outsider, but they really wanted the court to be independent, to apply the law, not to get caught up in the allegiances or the hostilities. ... And they united on that, their wanting someone from the outside. They empowered me. [I]t’s a nation that operates more like a family. ... And that goes right to what ICWA is all about. You cannot take the state protective custody laws and put the blinders on ... and apply those standards and those traditions and those cultural mores in that setting. It’s just ... not a good fit.” (8/21/14)

But there are also issues with tribal courts that come down to practical matters of funding. As a tribal court judge said, “[I]t’s hard to put that jurisdiction into effect if you don’t have the money to do so and that’s why I think a lot of the child-welfare matters stay outside of tribal court, just because of the lack of funds.” (9/11/14)

**“[I]t’s hard to put that jurisdiction into effect if you don’t have the money to do so and that’s why I think a lot of the child-welfare matters stay outside of tribal court, just because of the lack of funds.”**

– Tribal court judge

As we have mentioned, tribes in Aroostook County do not have tribal courts, though there has been much discussion about implementing them. The Houlton Band of Maliseets has attempted to use the Penobscot Nation court, but that effort seems to have ended because of a lack of resources.

Yet even so, powerful advocacy and continued education on the part of Wabanaki and non-Native lawyers and judges appear to create better outcomes for Wabanaki families, especially in a robust tribal court. However, it is important to note that there are members of the Wabanaki community who do not feel this way and wish for a more proactive court.

To summarize, when tribal courts are active, well-established and built from within tribal values, traditions and sensibilities, they serve as venues not only of judgment but of possibly greater healing for individuals, families and communities. While expensive to start, they are indeed perceived by many as a valuable resource for tribal people and a powerful venue for cultural regeneration.

# Findings and Recommendations

## Introduction

**F**ive hundred years ago, Wabanaki first encountered the settlers who would eventually take and rule the land, decimating peoples and cultures. Where there were once almost 30 tribes who lived in this territory, there are now four. But in spite of the population depletion of 96 percent of the Indigenous Peoples of the U.S.,<sup>32</sup> Wabanaki families are still here, their traditions and languages resurging. Maine might indeed be a place where a true acknowledgment of the harms Native communities here have endured and authentic recognition of their history and current experience could unfold in respectful and meaningful ways.

We invite readers to reflect on how they might recognize and understand this history and consider how they might play a part in living more peacefully, more honorably with Wabanaki families and with our past.

Before we discuss the distillation of our findings and recommendations, we would like to close with the words of a Wabanaki chief who takes just such a view of how we might move forward. “Rather than pounding on the podium,” he said, “and demanding

our rights, we can speak to the world and demand that we all adhere to our responsibilities as human beings to not destroy the environment. We can be invigorated by our desire and our responsibility to provide a voice ... to those yet to come. We have an equal responsibility to those other living beings within our life cycle. So the challenges that we faced have actually helped us whereas we could constantly ... clamor for our rights and/or benefits, it’s actually caused us to recognize the strength in truth. And the truth as we know it is valid because we are finding that there are many people who agree with us. So it doesn’t have to be adverse. If it is adverse for us and competing jurisdictions, it’s equally adverse within those jurisdictions.” (12/15/14) Ultimately, as the chief appears to imply, our responsibility to each other, the land and those children yet to be born may outweigh even sharply contested and hard-won boundaries. Nonetheless, we still have an obligation to assess what we know right now about ICWA and Native child welfare in Maine.

**“We can be invigorated by our desire and our responsibility to provide a voice ... to those yet to come. We have an equal responsibility to those other living beings within our life cycle.”**

– Wabanaki chief

## Findings

- 1 Native children in Maine have entered foster care at disproportionate rates since before the passage of ICWA until 2013. Within the last 13 years, it has been 5.1 times more likely that a Native child would enter care than a non-Native child. Once in foster care, it appears that Native children are less likely to be adopted than children overall, and more likely to enter permanency guardianship.
- 2 Identifying Wabanaki children at intake continues to be a problem, with data indicating that in up to 53 percent of the cases in 2006 and 2009, children's Native ancestry was not verified. The result is that Wabanaki children who are ICWA eligible are more than likely to be in the state system. The numbers are unknown.
- 3 We interpret this information within a web of interconnected causes, including the presence of institutional racism in state systems and the public; the effects of historical trauma; and a long history of contested sovereignties and jurisdictions between the state and the tribes.
- 4 Furthermore, we assert that these findings can be viewed as evidence of cultural genocide, held within the 1948 U.N. Convention's definition of genocide, Article 2, Sections b and e. These reference an intent to destroy through "causing serious bodily or mental harm to members of the group" and "forcibly transferring children of the group to another group." Given the long history of practices that have removed Native children from their families, ranging from boarding schools to adoption movements, it is critically important to note this connection.
- 5 Yet we found steady resistance to the idea that Native people have experienced or continue to experience cultural genocide. Testimony and research that reveal ICWA's slow integration into the child-welfare system, the state's earlier reluctance to embrace kinship care, discrimination against Wabanaki people, the impact of historical trauma and reactions against tribal self-determination suggest, however, that cultural genocide is ongoing.
- 6 Both Wabanaki and non-Native people want children to be safe and recognize that at times they need to be removed from their immediate families. But some state staff has appeared to view ICWA as an attempt to value Native culture over safety, and it is clear that more needs to be done to educate the state about the history that led to ICWA's passage.
- 7 With that being said, many in the state child-welfare system care passionately about ICWA and Wabanaki families and have worked very hard to implement it well. Compliance and training in ICWA have improved, especially since 1999, but work remains to make that awareness uniform at cultural and systemic levels.



## Findings

- 8 The Adoption and Safe Families Act of 1997 (ASFA) further complicates the implementation of ICWA as it metes out penalties, affects more people and is more widely used by caseworkers. Unlike ICWA, state systems are set up to meet ASFA's deadlines.
- 9 More Native foster homes, especially therapeutic ones, are needed: more Wabanaki children who are with kin and in Wabanaki homes would seem to lead to more positive outcomes. But funding is a serious issue, as is creating the tribes' own child-welfare databases.
- 10 Foster parents need more support and better communication with the tribes. Foster care in non-Native homes before ICWA appears to have left many scars on Wabanaki people and that legacy has most likely created intergenerational harm. Foster care still produces tensions around permanency; cultural connection; and adequate communication between the state, families and tribes.
- 11 Complications around IV-E funds exist, which create difficulties for tribes providing services to children.
- 12 Tribal definitions of who belongs to their tribes do not always match the state's definitions, and there are many concerns about blood quantum and how it fractures identities and affects eligibility for services.
- 13 The existence of tribal courts and tribal advocacy from many offices in tribal governments create significant positive outcomes for Wabanaki families, but those who do not feel served by these courts also need processes and procedures to ensure that their views are addressed.
- 14 Many tribal people report finding significant strength in returning to traditions, language, arts and other parts of their culture.
- 15 Strong relationships do exist between people who work for the tribes and those who work for the state, and they have positively influenced the delivery of services to Native children. However, they take years to cultivate. High turnover makes it hard to sustain these ties. In addition, non-Native people are more likely to report that these relationships are trusting than the other way around.
- 16 Many people, Wabanaki and non-Native, carry trauma from the experiences they have been through and support must be made available for them.

# Recommendations

- 1 Respect tribal sovereignty and commit to resolve and uphold federal, state and tribal jurisdictions and protocols at both state and local levels.
- 2 Honor Wabanaki choices to support healing as the tribes see fit and celebrate the cultural resurgence of the tribes within the Wabanaki confederacy so that both individuals and communities may be strengthened.  
  
Among the suggestions we have heard: the creation of longhouses, language centers and classes, places in which rituals of birth, coming of age, and death may be celebrated, food and economic sovereignty, healing circles, and traditional health and wellness modalities. Other suggestions included welcome home ceremonies for people who are returning to their territory after time away.
- 3 Develop DHHS, legal and judicial trainings that go beyond the basics of checklists and toolkits to recognize bias and build cultural awareness at all levels of leadership and accountability in ways that frame ICWA within historical context.
- 4 With the counsel of the tribes, develop a policy to monitor regular compliance with ICWA, the selection of ICWA liaisons and the eventual provision of a supervisory-level staff member responsible for ICWA in each DHHS district office.
- 5 Create better and more consistent supports for non-Native foster and adoptive families so that Wabanaki children have the strongest possible ties to their culture.
- 6 Explore the creation of more Native foster homes in general and additional Native therapeutic homes in particular.
- 7 Resolve as quickly as possible issues with IV-E funds.
- 8 Fund the renewal of the ICWA Workgroup and involve them in designing and implementing training so that all levels of leadership are involved; their work may well include training people on the new Bureau of Indian Affairs regulations being developed on ICWA.

**One adoptee noted a desire for any “type of ongoing support for those that are finding their way back. Finding your way back is the easy part. The real work begins once you find your way back.”**

– Wabanaki statement provider, adopted into a non-Native home

## Recommendations

- 9** Explore the expansion of tribal courts to include the Maliseet and Micmac communities, should these communities express a desire to do so, and explore as well what funding possibilities exist for this initiative. Also hear concerns from those who do not feel well represented by tribal courts.
- 10** Resolve problems surrounding blood quantum, census eligibility and the provision of services for children, as these issues are often contested or unclear.
- 11** Support the work of Maine-Wabanaki REACH in both Wabanaki and non-Native communities to foster truth, healing and change.
- 12** Reinstate the Maine governor’s executive order of 2011 that recognizes “the special relationship between the State of Maine and the sovereign Native American Tribes located within the State of Maine.” This executive order also recognizes that the “unique relationship between the State of Maine and the individual Tribes is a relationship between equals.”
- 13** Create ways for people to continue to add to the archive at Bowdoin College and look beyond the mandate to keep these truth-telling conversations flowing at every level: in tribal communities, among the general public and within agencies that work with Wabanaki people.
- 14** Develop ways to expand on the work of Chapter 403 of the Public Laws of Maine of 2001, “An Act to Require Teaching of Maine Native American History and Culture in Maine’s Schools,” also known as LD 291, so there is an enlarged understanding of bias and genocidal practices in the greater community and Wabanaki-state relations are held in a broader framework.

**“Whether we’re talking about educational outcomes, whether we’re talking about economic success ... getting that cultural base connection we’re finding is equaling success in all those other areas.”**

– Wabanaki chief

## Letter from the Executive Director

**A**s executive director of the Commission, it would be easy – and true – to say that it has been my privilege to be included in this groundbreaking process. But this experience has also made me look far more sharply at privilege, the word at the core of that first sentence. Much of this work has revolved around this very idea – who has it, how it affects those who do not possess it, and how it functions in social, economic and political settings. My time with the Commission has provided ample opportunity to examine both my own and that which operates in so much of the world affecting Wabanaki families on a daily basis.

The cumulative power of what we have learned from all we've done and all the people we have met has indelibly influenced many of us who participated. It has forced us to reckon with what has happened and continues to happen to the Indigenous Peoples of this territory and how all of us, Native and non-Native, can respond.

What we have accomplished during our short mandate just begins to ask serious questions and offer suggestions about the welfare of Wabanaki children in Maine and the underlying issues that complicate and impede it. But it would not even have begun if people had not bravely come forward to speak with strangers about their lives. A young Tlingit activist said once, “The

shortest distance between two people is a story,” but taking that first step constitutes an act of faith. Without our participants, Wabanaki and non-Native alike, we would have failed. Because of them, we have set in motion, we hope, a conversation that can, in time, serve as the groundwork for more truth, healing and change.

I need to pause as well to thank those who provided guidance and carried the work through day after day. That includes the five Commissioners who brought their multiple talents to this process and wove through that intermingling of skills a net that held us firmly and steadily as we proceeded. I thank them all for their time, energy and focus, with a special nod to Carol Wishcamper for serving as co-chair: without Carol's generous, inspired guidance, we could not have accomplished what we did. But I must also congratulate the Commission's staff. Rachel George, the research coordinator, almost single-handedly gathered the statements that form the heart of this process and oversaw many aspects of the research and archiving process with incredible care and attention to both the details and the people involved. Erika Bjorum, the research assistant, spent hours culling and analyzing archival material with an elegance that has helped us relate this account with precision and accuracy. Maureen Harris managed our office with the deepest professionalism, thoughtfulness and a big heart.

Jenni Parmalee is a gifted designer, communicator and colleague. With enthusiasm and expertise, Kim Crichton helped us raise the funds that allowed us to operate. A bow, too, to Jeffrey Hotchkiss, volunteer extraordinaire, for monitoring all matters Facebook. You are all remarkable people, blessed with grace, warmth and intelligence that has transformed our work and helped to make it whole. You have left your powerful mark on this process and on me. Enormous thanks as well to the interns, statement gatherers, transcribers and other volunteers who gave so much of their time and energy to the Commission: your generosity has moved me and made a heartfelt impact.

**T**hese feelings are mirrored as I reflect on the contributions of our colleagues in Maine-Wabanaki REACH. Esther Attean and Penthea Burns, the organization's co-directors, are visionary leaders whose dedication to the very idea of this Commission propelled this movement forward. Their engagement and passion and the contributions of all the community organizers with whom we were privileged to serve provided the support we often needed as we made our way into the marrow of this complex issue. I have nothing but gratitude for all you did and all you have taught. And we must also single out Denise Yarmal-Altwater, whose courage in sharing her story helped spark hope in so many people.

Critical thanks are due to others who helped lay the foundation for the Commission and who otherwise contributed. We thank all the signatories: Chief Clayton Cleaves, Chief Brenda Commander, Chief Kirk Francis, Chief Rich Getchell, Chief Joe Socobasin and Governor Paul LePage for agreeing to sign and authorize the mandate. We are grateful as well to the selection committee who chose our panel of exceptional commissioners.

Thanks are due to the current tribal leadership: Chief Commander and Chief Francis, but also Chief Fred Moore, Chief Billy Nicholas and Chief Edward Peter-Paul for their participation and support as well as all the Wabanaki community members who welcomed us to their homes and land.

We are equally grateful to the Office of Child and Family Services for their gracious consultation with us and their interest and cooperation in our work and to all other stakeholders who gave us their time, advice and support.

Deep appreciation also goes out to Eduardo González and the International Center for Transitional Justice as well as the Maine Indian Tribal-State Commission for the long-term guidance that provided an irreplaceable foundation for the work.

**“The shortest distance between two people is a story.”**

– Young Tlingit activist

Most of all, thank you to the statement providers and those who participated in focus groups. Simply thinking of the faces of all who spoke with us – the men and women we met in homes, churches and classrooms, in cities and villages across the state – produces in me something close to astonishment. And it is their collective presence that gives me the courage to say that I hope and I believe this process will be one small part of making a difference in helping Wabanaki people and the state work together to resolve their long-standing differences.

**A**nd it is not because the Commission represents a first-in-the-nation event. Or that it started to create an account of an important issue backed by statistics and testimony. It is because I am still stunned that, despite all the misgivings, the limitations and the brutal facts of history, when we asked people to share, so many were willing. Despite all that hurt, so many were willing to help us, to speak, to go on record about what they knew, saw and had lived through.

And what now, beyond those initial conversations? What now, beyond the mandate? How do we carry it forward? Because, I believe, none of us is exempt from that responsibility. Since this issue connects so intimately to what many of us hold dearest, we cannot pretend that what happens to any child in this state

does not in some way matter to all of us who love our families. Because if one group of children can be removed at disproportionate rates and unexamined racism is still at work, are we not all compelled to try and remedy these harms and create more equitable conditions? Are we not all responsible in some way for making sure that every child has what she needs to thrive?

Greater equity might emerge when we develop long, honest, transparent relationships with one another other. Greater equity might emerge when we respect myriad forms of love and culture. Greater equity might emerge when we encourage each other not to judge too quickly and we pause to learn and to listen. If we want Maine to be a better home for all people, then we must be prepared to commit to both action and reflection that truly honor the history and the present of the Wabanaki, the people of the dawn, the people who were here first.

With gratitude to all who shared their voices, time and wisdom and with hope for the unfolding path,

**Charlotte Bacon**

Executive Director  
Maine Wabanaki-State Child Welfare  
Truth & Reconciliation Commission  
June 2015

**“And what now, beyond those initial conversations? What now, beyond the mandate? How do we carry it forward? Because, I believe, none of us is exempt from that responsibility.”**

– Charlotte Bacon

## Thanks to Our Donors



We would like to express our deep appreciation to the following funders whose faith in this initiative made this historic process possible:

Andrus Family Fund  
Anonymous (2)  
The Bay & Paul Foundations  
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Samuel L. Cohen Foundation  
Ewell Fund  
W.K. Kellogg Foundation  
Emanuel & Pauline A. Lerner Foundation  
Margot and Roger Milliken  
Elmina B. Sewall Foundation  
Doree Taylor Charitable Foundation

We would also like to thank all of the many individuals, church groups and schools who donated funds. Your contributions were essential to our ability to fulfill our mandate.

**T**hanks also the sponsors of “Genocide and ME: Shining the Light of Truth,” held in Portland on Nov. 20, 2014, which the TRC co-presented with the Immigrant Legal Advocacy Project, Maine-Wabanaki REACH and United to End Genocide.

This special evening was supported by the Andrus Family Fund; Sam L. Cohen Foundation; Episcopal Diocese of Maine; Holocaust and Human Rights Center of Maine; Justice for Women Lecture Series; W.K. Kellogg Foundation; Emanuel & Pauline A. Lerner Foundation; Maine Community Foundation and the associated Broad Reach Fund and People of Color Fund; Maine Council of Churches; Maine Humanities Council; NAACP; Religious Coalition Against Discrimination (RCAD); Salt Institute for Documentary Studies; Doree Taylor Charitable Foundation; University of Southern Maine (USM) Muskie School of Public Service; USM Multicultural Student Affairs; and an anonymous donor.

## Commissioners

### Matthew Dunlap

**M**atthew Dunlap, Maine's 49th secretary of state, is the first person to serve non-consecutive terms in that office since 1880. He previously spent three terms as Maine's 47th secretary of state. During his previous tenure, he was president of the National Association of Secretaries of State and was named Maine's Public Administrator of the Year in 2008.

He represented Old Town and the Indian Island Voting District for four terms in the Maine House of Representatives and spent three terms as house chair of the Joint Standing Committee on Inland Fisheries and Wildlife as well as house chair of the Government Oversight Committee.

A founder of the Maine Youth Fish and Game Association, he is an award-winning monthly columnist for the Northwoods Sporting Journal and is active in many civic endeavors, including board positions with the Windover Art Center, University of Maine "M" Club, Russian-American Rule of Law Consortium and Sportsman's Alliance of Maine.

He was raised in Bar Harbor and holds degrees from the University of Maine. He lives in Old Town with his wife, State Representative Michelle Dunphy, District 116, and their daughter Emily.

### gkisedtanamoogk Co-Chair

**g**kisedtanamoogk is Wampanoag from the community of Mashpee located on Massachusetts' Cape Cod. He is family member of Nkeketonseonqikom, the Longhouse of the Otter, and is married with three children.

gkisedtanamoogk's interests pertain to the social, political, legal and spiritual life of Wabanaki Nations. gkisedtanamoogk has been an adjunct instructor with the Native American Studies and the Peace and Reconciliation Programs on the Orono campus of the University of Maine since 2005.

gkisedtanamoogk engages in many activities of advocacy and interest to Indigenous Peoples, including cross-border issues, the Wabanaki Confederacy and building cross-cultural relationships.

### Dr. Gail Werrbach

**D**r. Gail Werrbach has been a faculty member at the University of Maine School of Social Work for the past 25 years. She is currently director and associate professor at the school. Her research interests and publications are in the areas of child mental health, community mental health training, Indian child welfare services and international social work.



Gail has received and administered four Indian Child Welfare training grants that provided support for Native American social work students. She was co-principal evaluator of a five-year project for the Passamaquoddy Tribe at Indian Township. She also has been the principal investigator for two international social work initiatives.

Gail is married, has one son and lives in Bangor, where she sings in a community chorus.

## Sandy White Hawk

**S**andy White Hawk is a Sicangu Lakota adoptee from the Rosebud Reservation in South Dakota. Sandy is the founder and director of First Nations Repatriation Institute (FNRI), which serves as a resource for adoptees/fostered individuals and birth relatives. FNRI uses the lived experience of adoptees/fostered individuals to enhance the knowledge and skills of social worker, adoption and legal practitioners.

Sandy organizes Truth, Healing & Reconciliation Community Forums that bring together adoptees/fostered individuals and their families with adoption/social work, mental health and legal professionals with the goal to learn from the lived experience of adoptees/fostered individuals. She has also initiated and facilitates an ongoing support group for adoptees/fostered individuals and birth relatives in Minneapolis.

She was an honorary witness to the Truth and

Reconciliation Commission on residential schools in Canada.

Sandy is an Indian Child Welfare consultant who received the Women in Wellbriety Dana Tiger Award for Creating Change in Nations from the 100 Women in Wellbriety and the Outstanding Native Women Award from the University of Minnesota. She was named one of the “50 Visionaries Who are Changing Your World” by the Utne Reader and the “50 Most Influential and Cool People” of Madison, Wis., in Madison Magazine.

## Carol Wishcamper Co-Chair

**C**arol Wishcamper has an organizational development consulting practice, working primarily with nonprofit organizations in Maine.

Formerly, she served as chair of the Maine State Board of Education and was a member of numerous gubernatorial and legislative study commissions. She represented the board on the New England Association of Schools and Colleges and as the regional representative to the National Association of State Boards of Education.

Carol also has been chair of the Maine Center for Educational Services and the Maine Chapter of the Nature Conservancy, where she co-chaired the St. John River Campaign.

## Staff

### Charlotte Bacon Executive Director

**C**harlotte first trained with the TRC as a statement gatherer, joining the team in Sipayik in November 2013 and in Motahkomikuk in February 2014. It has been an honor for her to serve as executive director for the Commission, helping as many people as possible learn about and understand the TRC's truth-sharing mandate and the experiences of the Wabanaki people.

As part of her role, Charlotte coordinated events and media with TRC colleagues at REACH, and managed the TRC's day-to-day activities.

Her background is in writing and teaching: she has published five works of fiction, has written for The New York Times and was a tenured professor of English at the University of New Hampshire. But it is her commitment to telling and listening to stories, and working with students of all ages that drew her to work with the TRC.

A graduate of Harvard University and Columbia University, she has lived and worked in villages in India, Indonesia and Bhutan.

### Erika Bjorum Research Assistant

**E**rika first connected with the effort to create the TRC in 2011 through a collaboratively developed research project for her Master of Social Work program at the University of Southern Maine. The findings from that project have been published in the Journal of Public Child Welfare.

Erika has experience working in Native communities in northern Minnesota and southeast Alaska, and has a varied background as a community organizer, sled dog handler and farm worker.

Prior to joining the TRC, Erika was practicing clinical social work, with a focus on understanding the impact of trauma on mental health and well-being.

She is honored to have been part of the transformational healing and change-making work of the TRC, and to lend her research skills to contribute to a greater understanding of the shared and unique stories of child welfare in Wabanaki communities in Maine.

## Rachel George Research Coordinator

**R**achel is a young Indigenous scholar from Vancouver, British Columbia. As a member of the Ahousaht First Nation, she has grown into an advocate for Indigenous rights. She has a genuine and enthusiastic commitment to strengthening the voices of Indigenous Peoples, and seeking methods of redress that are complementary to Indigenous needs and rights.

Rachel completed her Master of Arts in genocide studies at the University of Amsterdam in July 2013. Her studies were primarily focused on transitional justice and, more specifically, the Truth and Reconciliation Commission of Canada and its efforts at reconciliation for Indigenous Peoples. Within this work, she examined the strength and feasibility of Canada's latest endeavor in reconciliation and drew attention to where the Canadian TRC has been benefiting Indigenous Peoples, and where it has become a manifestation of affirmative repair.

She is a determined and dedicated individual with a passion for improving the lives of Indigenous Peoples and contributing to work that will give a voice to Indigenous communities, facilitate healing and strengthen relationships within these communities.

## Maureen Harris Project Support Specialist

**M**aureen A. Harris managed the office while providing a depth of administrative, communications, event management and logistical support to the executive director, commissioners, staff and committees. She joined the TRC in May 2013.

With a Bachelor of Science degree, summa cum laude, in business management from Granite State College, she has owned a business and worked as a travel agent and real estate developer. She served several times on a regional school board in New Hampshire before moving to Maine in 2001.

She joined the TRC to help acknowledge the wounds suffered by Maine's Native Americans and foster health, prosperity and respect for all, including future generations.

## Statement Gathering and Research Process

When the Commission's research coordinator was hired in August 2013, she began to develop consent forms that allowed statement providers many choices about how to participate in the process. There was a desire on the part of all involved to give as much latitude and control to participants, in recognition of the many times that Native people in particular have wrestled with issues of intellectual property, the arrival of research teams on Native land, and other ways in which the dominant culture has behaved without respect for Native ways and appropriated Native knowledge. The Commission saw from the beginning that these statements belonged to those who provided them and took many steps to ensure that people understood how much control they had.

For example, even the terms "statement provider" and "statement gatherer" were arrived at instead of "statement giver" and "statement taker" to acknowledge the power of nomenclature and mitigate the fear that the Commission was simply going to acquire these experiences only to have them never been seen again. Providers were also able to decide if they wanted to remain anonymous. They could choose as well to have their statement transferred to the eventual choice for the archive or not.

One important result to note is that the vast majority of participants decided to have their names attached to their statements, as referenced earlier. But there is a significant proportion of people, both Wabanaki and

not, who chose anonymity. The reasons given for that choice were also strikingly similar. People often stated that they were frightened of retribution, of speaking out about family members or about systems that would penalize them. We often heard, "I am worried that people will know it was me." The experiences that they had to share – of pain or injustice; rules about foster care that seemed unfair; systems that seemed not to work in their favor – were ones that at some level caused fear.

People could speak for as long as they liked and were able to choose to redact or add to their statement. They were also free to remove their statement altogether. So far, six people have rescinded their statements and 11 people have revisited their statements and added to them. We recorded the statements, using audio or video as the provider chose, using iPads.

Once the consent forms were created, statement gatherers were recruited and trained from around the state to work with Wabanaki and non-Native providers. While dozens attended the trainings that were held, approximately 10 actively volunteered. All of these were non-Native. At first, we were surprised that Native people were as eager to speak with non-Native people as they were; but many people said that they wanted people outside their communities to know what had happened and they wanted to share these truths anonymously, something that would be hard to do if the statement gatherer was part of the statement provider's community. It is also important to note that the statement gatherers have been very helpful in terms

of assisting in this process, but the vast majority of statements were gathered by the Commission's research coordinator, who made admirable and repeated efforts to connect with all participants in this process and without whom most of these statements would not have been gathered.

That outreach continued into the fall and winter of 2014, and we continued to gather individual statements from Native and non-Native people as time and weather allowed. We also made the announcement of our outreach to almost every group of people we were trying to connect with on our website, under the header of Days of Reflection, Prayer and Meditation, an effort that Maine-Wabanaki REACH also engaged in.

## Outreach into Wabanaki Communities

**W**ith the support of our colleagues in Maine-Wabanaki REACH, we went as guests into Native communities to meet with people who might be interested in speaking with us. As we continued our outreach, we found that we needed simply to meet with people socially, have a chance to talk and share food. We recognized the weight of what we were asking: for people to discuss intimate details and memories of their experiences about their families, communities and colleagues. We encouraged providers to bring a support person with them and many efforts were made both by the community organizers and by the Commission staff to ensure that people had adequate care should the process of sharing their experience prove traumatizing.

## Individual Statements

The Commission's research coordinator spent many hours working with Wabanaki community organizers to connect with people who were preparing to share their testimony. We had first expected that people would come forward at times that the Commission was scheduled to be in their communities, but discovered that people were often more comfortable meeting in their own homes at times that worked best for them. We also discovered that people often wanted to have a Commissioner present to witness their experience and whenever that was possible, we made sure to comply with that request.

We began our outreach into Wabanaki communities in November of 2013 with a visit to Sipayik. We continued this outreach into the other Native communities of Maine: the Passamaquoddy who reside at Motahkomikuk, the Penobscot on Indian Island, and the Maliseet and Micmac communities in Houlton and Presque Isle respectively throughout the winter and spring of that year. We also visited Wabanaki Health and Wellness, a community center for Native people in the Bangor area. We connected as well with Wabanaki people who are incarcerated, and one of them gave a statement and three participated in a focus group. As the process wound down, we also returned to all Native communities to connect with providers, thank them for their participation, and present them with our initial findings and recommendations. In June 2015, we sent a transcript of statements to all providers, along with a letter that acknowledges their courage in coming forward and our gratitude for their participation.

## Focus Groups

After several months of individual statement gathering, we implemented the use of focus groups, with questions that the research coordinator developed.

In June 2014, we held our first focus group, for Passamaquoddy elders in Sipayik, and found it to be a successful process. We discovered that people often felt more at ease discussing issues in groups; the largest group had 11 people in it. The consent process was often lengthy as the group needed to reach consensus on what consent they offered, and the research coordinator often returned to the group several times to be sure that people were comfortable with what consent the group had chosen. Below is a list of where and when these groups were offered or held.

### Sipayik

- June 18, 2014 - Elders' Focus Group - Background History
- Oct. 28, 2014 - Experiences in care (no one participated)
- Nov. 13, 2014 - Experiences as Foster/Adoptive and Kinship Parents

### Motahkomikuk

- June 20, 2014 - Elder's Focus Group - Background History
- Oct. 29, 2014 - Experiences in care (one participant)

- Nov. 12, 2014 - Experiences as Foster/Adoptive and Kinship Parents

### Wabanaki Health and Wellness, Bangor

- June 26, 2014 - Identity and Belonging
- July 30, 2014 - Background History

### Penobscot

- Nov. 4, 2014 - Elders' Focus Group - Background History

### Maine Correctional Center

- April 17, 2015 - Justice and Reconciliation

No focus groups were held with the Micmac or Maliseet communities, although we tried several times to organize a focus group with elders in the Micmac community.

## Outreach into Non-Native Communities

In March 2014, community organizers with Maine-Wabanaki REACH began to contact members of the non-Native community who lived in northern and southern Maine. These included men and women who were current and former foster and adoptive parents; current and former DHHS workers; and service providers. As with Wabanaki people, most participants chose to make

their statements public and non-anonymous, and to have them transferred to the archive. Yet there is also a significant number who chose to remain anonymous. Again, as with Wabanaki community members, we found that having a Commissioner present during the statement gathering could be very helpful and, where possible, we tried to do so. Throughout the winter and spring, we held statement-gathering sessions in Augusta, Bangor, Caribou, Machias and Portland.

### **Individual Statements**

With the help of Maine-Wabanaki REACH, many individual statements were given in churches and university classrooms. Given that most of these statement providers held or had held professional roles in DHHS or the legal system, it seemed useful to develop lists of questions that would allow the person to specifically address their field and concerns about ICWA, training and interactions with Wabanaki families.

### **Focus Groups**

As with the Wabanaki communities, focus groups yielded powerful information and the following were held. Again, the research coordinator created questions that could guide the conversation.

#### **Sherman, Aroostook County**

- Jan. 5, 2015 - Experiences as Foster and Adoptive Families, Aroostook County

#### **Old Town, Penobscot County**

- Jan. 12, 2015 - Experiences as Foster and Adoptive Families, Penobscot County

#### **Maine-Wabanaki REACH**

- Nov. 14, 2014 - ICWA Work Group (early years)
- Nov. 17, 2014 - Community Organizing Experiences

### **Interviews**

In addition, we interviewed people on the telephone or in person who chose not to provide a full statement to the Commission, a group that included the chief justice of Maine; a lawyer for the Penobscot Nation; former DHHS administrators; assistant attorneys general; and several nuns and priests who taught or worked with Wabanaki people, in particular the Passamaquoddy.

### **Transcriptions**

These statements were then transcribed by a variety of professionals and a team of trained volunteers. The statements were then re-read and re-formatted by the research staff so that they were consistently presented with correct spelling.

## Archiving Process

One of the central components of the last year's work included finding a suitable home for the Commission's materials, a place that would house the physical statements and provide an appropriate online presence as well. In consultation with colleagues from Maine-Wabanaki REACH and the members of an archiving committee, we reached out to 11 museums, universities and other institutions across Maine, in Washington, D.C., as well as Canada. Ultimately, many Wabanaki people expressed a desire to have the material stay in Maine and people felt that Bowdoin College would serve as a respectful home for this process. We anticipate that the records will be made available online within the next year. While this report marks the formal end of the Commission, we recognize that many more people may well want to share their truths and that this conversation in many respects is just beginning. We view this archive as open and active, and have developed a process with Maine-Wabanaki REACH and Bowdoin College for individuals to continue adding their truths.

Both paper copies and online facsimiles will be able to be consulted and, within several months, audio and/or video versions will be available as well.

As we have indicated earlier, we urge people who are interested to consult the statements themselves. The transcriptions, audio and/or video capture nuances it is impossible to fully render in quotation and reveal the warmth and courage of the many people who participated. They represent vital, vivid pieces of history that can continue to influence what happens here in Maine and, we hope, in other places where issues of Native child welfare remain hard to resolve.



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**“[I]f blood quantum is the determining factor, eventually the math is that ... some of the tribes will become extinct.”**

**– Non-Native tribal attorney**

**“ ... it comes back to my belief that the ICWA is part of a larger movement towards tribal self-determination.”**

**– Attorney for Native people**

**“[I] think that there are components of just simple empathy, care and understanding that could change the orientation toward what we do with this particular subset of children who are involved in court proceedings, but that’s not ... something that you can get by changing a statute.”**

**– District judge**



**“[T]he biggest thing for me is the loss of identity. How people going from one world to another ... they don’t belong in either.”**

**– Wabanaki person formerly in care**

**“[H]istorically, we took care of children. ... [T]hat’s who we are ... that’s how we’ve survived.”**

**– Former tribal health director**

**“[I]t was like the trees that they are familiar seeing, the river they are familiar seeing – everything changes.”**

**– Tribal service provider, about Native foster youth**

Maine Wabanaki-State Child Welfare  
Truth & Reconciliation  
Commission



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