

ICWA Court Proposal

(Provided by Yellowstone County Deputy Attorney Corbit Harrington)

Since 2009, The number of Child Abuse and Neglect Cases filed (or reopened) in District Court have increased as follows:

2009	1006	
2010	1030	difference 24
2011	1208	difference 178
2012	1494	difference 286
2013	1527	difference 33
2014	1609	difference 82
2015	2321	difference 712

The Counties contributing the most to the increase last year are:

Yellowstone County	289
Flathead	56
Cascade	43
Missoula	53
Broadwater LC	31

The following Districts reporting the following number of Child Abuse and Neglect Cases filed (or reopened) in 2015:

Dist 1	141
Dist 2	107
Dist 3	23
Dist 4	215
Dist 5	24
Dist 6	16
Dist 7	37
Dist 8	386
Dist 9	114
Dist 10	61
Dist 11	146
Dist 12	85
Dist 13	512
Dist 14	10

Dist 15	81
Dist 16	63
Dist 17	63
Dist 18	71
Dist 19	35
Dist 20	69
Dist 21	25
Dist 22	81

In Yellowstone County, the State filed 452 petitions with each petition representing one child. Of the 452 children, 196 (43.6%) were Indian Children subject to the Indian Child Welfare Act. Of the 512 cases listed as being opened in Yellowstone County, 60 cases were “reopened.” 256 cases were non-ICWA.

Three Deputy County Attorneys along with the assistance of the Assistant Attorneys General manage the 452 cases. That averages out at 113 cases / attorney.

The Federal Department of the Interior created new guidelines for the Federal Indian Child Welfare Act last year. The first guidelines were passed in 1979. The new guidelines are only the second in the regulation’s history. The current applicable federal and state laws governing child abuse and neglect cases involving Indian Children are far more complicated, and the cases tend to be more litigious and involve longer term placements. An even higher percentage of Indian Child cases are still active after termination of parental rights but prior to adoption or final resolution to the cases.

Prosecutors handling these cases could better manage the cases if they had a unified policy and procedures, if they were under one unified management, and if they represented the interests of the State of Montana and the Department. It seems assistant attorneys general would best be qualified to specialize in the applicable federal and state law. They would be in the strongest position to influence judges to follow certain policies and procedures in a more uniform fashion. The AG’s supervision in Helena can work more closely with the Department’s supervision in Helena. They are best equipped to effectuate legislative change.

In addition to the five assistant AG's currently hired to assist in general caseloads. I would recommend the hiring 11 additional assistant AG's to primarily handle ICWA cases, and I would suggest the following placements:

<u>Center</u>	<u>Judicial Districts</u>	<u>No. New AG's</u>	<u>2015 TOT</u>	<u>Est#/AG</u>
Kalispell	Dists 19,11,20	2 New Assist AG	335	72
Missoula	Dists 4,21,3	1 New Assist AG	263	113
Butte	Dists 2,5,18	1 New Assist AG	202	86
Helena	Dists 1,9	1 New Assist AG	255	109
Great Falls	Dists 8,12	2 New Assist AG	471	101
Billings	Dists 13,22,6	2 New Assist AG	609	131
Havre	Dists 14,10,12	1 New Assist AG	156	67
Miles City	Dists 16,7,17,15	1 New Assist AG	244	105

ICWA courts could be developed with current judges with certain judges opting to facilitate these courts. By necessity, the courts should be set on certain days to best accommodate the parties and participants from the tribes. Focus should be on fostering relationships between social workers, parties, and tribal ICWA supervisors and tribal leaders. These relationships can best benefit the location of ICWA-compliant placements for the children. Transfers of jurisdiction can be processed faster. Specialization can mean more accountability for the Department meeting deadlines, complying with ICWA provisions, and creating more timely and tailored treatment plans. Specialization can also mean more accountability of parents. Specialization should assist in the Department following statutory timelines, determining ICWA eligibility, locating putative fathers, and processing licensing and background checks. The creation of these courts will also relieve overburdened county prosecutors who are carrying in excess of 180 to 210 cases per prosecutor. That should lead to more efficient handling of non-ICWA cases.

Other options being considered involve directing resources to programs that randomly select children from the pool of children to receive special privileges and benefits in pilot programs. We have an easily identified population who has displayed a disproportionate need to receive special attention and legally-required procedures and policies that need to be followed. The focus of this administration must be on assisting Montana's most vulnerable citizens. No children are more vulnerable to disparate treatment and historical cultural decimation than Montana's Indian

population. The law in their case does not need to be changed. It needs to be adequately enforced.