



Dept of Children, Youth, & Families

2021-23 First Supplemental Budget Session

Policy Level - IC - ICWA Notice Reason to Know

Agency Recommendation Summary

The Department of Children, Youth, and Families (DCYF) requests \$20,088,000 (\$16,071,000 GF-State) and 65 full time equivalents (FTEs) in the 2022 Supplemental Budget to respond to recent Washington State Supreme Court decisions. In 2020 and 2021, the Washington State Supreme Court issued decisions with significant impacts on how DCYF is how required to apply the Indian Child Welfare Act (ICWA) and the Washington State Child Welfare Act (WICWA.) In the decision, *In re Dependency of Z.J.G. and M.E.J.G.* the court expanded the application of when there is “reason to know” that a child is an Indian Child. Subsequently, the court issued *In re Dependency of G.J.A., A.R.A, S.S.A. and V.A.* which clarified the “active efforts” DCYF must make and the need to provide culturally appropriate services. Taken together these decisions require significant changes to policy and practice.

Fiscal Summary

Fiscal Summary <i>Dollars in Thousands</i>	Fiscal Years		Biennial	Fiscal Years		Biennial
	2022	2023	2021-23	2024	2025	2023-25
Staffing						
FTEs	16.6	65.0	40.8	65.0	65.0	65.0
Operating Expenditures						
Fund 001 - 1	\$767	\$3,068	\$3,835	\$2,913	\$2,913	\$5,826
Fund 001 - A	\$168	\$673	\$841	\$639	\$639	\$1,278
Fund 001 - A	\$1,105	\$1,977	\$3,082	\$1,745	\$1,745	\$3,490
Fund 001 - 1	\$4,422	\$7,908	\$12,330	\$6,980	\$6,980	\$13,960
Total Expenditures	\$6,462	\$13,626	\$20,088	\$12,277	\$12,277	\$24,554
Revenue						
001 - 0393	\$168	\$673	\$841	\$639	\$639	\$1,278
001 - 0393	\$1,105	\$1,977	\$3,082	\$1,745	\$1,745	\$3,490
Total Revenue	\$1,273	\$2,650	\$3,923	\$2,384	\$2,384	\$4,768

Decision Package Description

On September 3, 2020, the Washington State Supreme Court issued an opinion in *In re Dependency of Z.J.G. and M.E.J.G.* holding that a court has a “reason to know” that a child is or may be an Indian Child when a participant in the child custody proceeding indicates that the child has tribal heritage. The Supreme Court’s opinion clarifies that if there is any indication from any participant that a child has tribal heritage the protections under the federal Indian Child Welfare Act (ICWA) and the Washington State Indian Child Welfare Act (WICWA) must be applied. This expansion in “reason to know” will increase the number of child welfare cases in which these protections apply. Additionally, DCYF must improve its systems to provide conduct outreach to tribes in cases in which there is “reason to know,” train staff and put appropriate IT systems in place.

Subsequently, on June 24, 2021 the court issued an opinion in *In re Dependency of G.J.A., A.R.A., S.S.A., and V.A.*, clarifying what “active efforts” the department must make in order to prevent the break-up of the Indian family. It also specified that services provided to prevent out of home placement and the termination of parental rights must be culturally appropriate to the child’s tribal heritage. In order to meet this higher standard for “active efforts” in these cases DCYF will need to increase staff to provide collaborative case planning and implementation, train staff, monitor and promote policy compliance, and expand contracts with tribes to provide culturally appropriate services to Native families in the expanded number of cases in which ICWA and WICWA apply.

Prior to the court’s opinion *In re Dependency of Z.J.G. and M.E.J.G.*, ICWA and WICWA applied to only about 5.25% of all cases. DCYF estimates that these requirements now apply to 26.4% of all cases. Additionally, the decision *In re Dependency of G.J.A.* will require additional staff time and departmental resources to provide active efforts throughout the life of a child custody proceeding. This will require DCYF to meet additional needs for: 1. “active efforts” case management to prevent the break-up of the Indian family; 2. Tribal outreach in cases in which we have reason to know; 3. licensing and home studies for cases in which ICWA applies; 4. legal obligations; 5. Administrative needs and IT changes and staff training, and 6. increased resources to contract with tribes to provide culturally appropriate services.

Case management, active efforts and policy compliance: In order to comply with the Supreme Court requirements to make active efforts in more cases per year, DCYF will require additional staffing to provide case management services. In addition, the current workload weighting for ICWA cases is out of date and needs to be updated to comply with the U.S. Bureau of Indian Affairs regulations and the G.J.A. court opinion. The current DCYF weighting is 1.3 because these cases require an average of 30% more time to complete the additional requirements to comply with ICWA and WICWA. However, this weighting needs to be increased to 1.7 to meet the higher standard for “active efforts.”

DCYF anticipates a significant increase in the workload for field staff. However, DCYF is currently unable to develop an accurate estimate of the true need. It is as yet unclear how changes to policies and procedures may impact the ability of tribes to respond to inquiry and legal notice allowing the agency to determine how long ICWA will apply in those cases. It is also unclear under what circumstances courts will deem that the agency has fulfilled its obligations to do due diligence to identify and work with all of the tribes of which there is reason to know the child may be an Indian child and at what point the court may determine ICWA no longer applies because no tribe has responded to regarding the child's membership or eligibility for membership. DCYF requests an additional 30 caseworkers (based on case count per region) to absorb the additional case management workload, and \$500,000 to contract for a workload study to clarify the true impact of these decisions on caseworker workload and case ratios. Additionally, in order to meet the higher standard for "active efforts" in up to 26.4% of cases, DCYF has a need for nine "active efforts" specialists based on case count per region, one ICWA Compliance Manager to ensure compliance with state and federal law, and a Local Indian Child Welfare Advisory Committee Coordinator to ensure that Indian children and their families are receiving culturally appropriate services.

Tribal Outreach: Under federal ICWA regulations, DCYF must use "due diligence" to "identify and work with all of the tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership)." When caseworkers have an initial visit with a parent(s) after report of child abuse and neglect is screened in for a response, caseworkers inquire about Native American ancestry. If either parent (or family member) reports "yes" to Tribal affiliation, caseworkers must send a referral to the Native American Inquiry Request (NAIR) unit within 10 working days. NAIR also completes a comprehensive family ancestry chart and sends a Tribal Outreach Letter to all identified federally recognized tribes as a courtesy to provide information that a possible tribal member has an open case with DCYF.

Needed changes to the tribal outreach process will effectively double the NAIR unit workload requiring seven additional social workers. In the event a child is removed from their parental home and the case requires court involvement, the NAIR unit will need to assist the Attorney General's Office (AGO) in preparing legal notice with the following documents: Family Ancestry Chart, Tribal Response to Legal Notification forms and a compiled list of current ICWA Designated Agent and address for each tribe requiring a legal notice. The NAIR unit will also need to track and monitor each tribal response, and complete follow up efforts at two intervals with any tribe that has not responded to legal notification. DCYF will also need to hire a NAIR unit liaison for the Office of Tribal Relations.

Licensing and Home Studies:

DCYF has a need to ensure that foster care applicants have a necessary level of cultural competence. This will require additional work with tribal partners to embed an understanding of native/tribal culture and care implications into the home study assessment in situations where the child is an Indian child. The current kinship home study practice is to limit the development of a home study to one per child. The Licensing Division will need to change this practice to complete multiple home studies per in order to make sure that the child is placed with a culturally competent caregiver including other family members, as some may not affiliate themselves with the child's tribe and culture. The Licensing Division anticipates an increase of approximately 100 home studies a year, which will require the work of three additional FTE focused on the regions/areas where we have the highest level of native child intakes.

In addition, Child Placing Agencies (CPAs) that the department contracts with will also need to transition to new practices. This will require consistent licensing technical assistance and support with the home study process, licensing processes, recruitment and retention and staff/provider training. Foster care group providers will also need to transition to a new practice, which will require consistent licensing technical assistance and support with updating policies and procedures, hiring practices, ongoing practice and staff hiring and training. DCYF anticipates a need for an additional two FTEs on the regional licensing team to focus on providing specialized support to CPAs and congregate care providers.

Legal Obligations: The ZJG decision greatly expands the group of children covered by ICWA, and therefore, the number of dependencies, Title 13 guardianship, and termination of parental rights cases in which ICWA's additional legal requirements apply has expanded. Because these

additional legal requirements apply in more cases, the associated legal services workload by the AGO as counsel for DCYF in these cases, has also increased. Additionally, DCYF negotiates Memoranda of Agreement (MOA) or Memoranda of Understanding (MOU) with individual tribes, which outline how the two governments will work child welfare cases when one of the tribe's children is involved. These address jurisdictional issues, how to conduct CPS responses, filing the dependency petition, etc. DCYF anticipates an increase in the number of tribes seeking to renegotiate MOAs and MOUs, and is receiving requests from out of state tribes to engage in these agreements. DCYF will have increased AGO costs associated with legal review of these agreements. DCYF also anticipates increased AGO costs to provide legal notice. There will be an increased cost due to an increased number of cases requiring legal notice. Additionally, there are currently two areas of the state in which legal notices are sent by field staff. DCYF is also engaging the AGO to provide legal notice on its behalf in all cases.

Further, the expanded application of ICWA also increases the need for contracted, statutorily required Qualified Expert Witnesses (QEWS) to adjudicate these proceedings. QEWS review the case file, and interview parties in the case, and provide court testimony. The agency will need to hire a statewide Qualified Expert Witnesses Coordinator to ensure an adequate pool of expert witnesses.

Administrative, Staff training and IT needs: In order to incorporate changes resulting from these court decisions, DCYF is reviewing its ICW policies and procedures. DCYF anticipates this review and update of policies will effectively double the workload for policy managers. This will require the Administrative Services Division to hire two additional policy managers. Additionally, the increased volume of cases in which a child may be an Indian child will also increase the volume of case materials and information that will need to undergo public disclosure review in order to be disclosed to QEWS, tribal governments and other parties. DCYF will require five additional staff to conduct public disclosure review. DCYF will also see an increase in discovery related to litigation at a time when discovery workload is at an all-time high. The Administrative Services Division will need to hire a Discovery Program Specialist to address this need. DCYF also has a legal necessity for a position to serve as the Civil Rights Coordinator assigned to Tribal Affairs as well as perform legal coordination with the AGO.

The Court's decisions will require DCYF to make changes to policy and practice that will require additional training of staff. DCYF will need to contract with the UW Alliance for Child Welfare Excellence for \$500,000 to make major revisions to the current ICWA training and review and revise the CORE training for workforce and caregivers. The agency will need to train all Child Protective Services, Family Assessment Response, Family Voluntary Services, Family Reconciliation Services, and Child and Family Welfare Services caseworkers, Permanency Outcomes Facilitators and supervisors, and Qualified Expert Witnesses at time of hire and annually thereafter. DCYF will also need to incorporate historical trauma and working with tribal governments into its training materials.

The Court's decision also creates an increased need for tracking and follow-up when legal notice is sent to tribes. However, neither the AGO nor DCYF have a statewide system to track tribal responses to legal notice. DCYF needs to develop a data and tracking process, link DCYF data to AGO data and make the necessary changes to the FamLink system. Additionally, changes are needed to the FamLink system to ensure ICWA determination is tracked properly.

Contracted Services and Service Agreements with Tribes: In order to provide culturally appropriate practice and appropriate services as a part of DCYF's active efforts, DCYF needs to expand contracted services with tribes, especially in rural areas. In addition, many tribes need additional capacity to process and respond to legal notices from the state. DCYF estimates a need for a 10% increase in Washington State ICWA Agreements and the need for a Tribal Contract Specialist to increase contracts to tribal service providers.

DCYF will also need to work with tribal governments and tribal organizations across the state to identify "service deserts" in these contracted services, especially in rural areas, develop an agreed upon definition of what meets the standard of culturally relevant services and a "road map" to bringing these contracted services into compliance. DCYF will need \$120,000 to hire a contractor/project manager to facilitate this process and develop a plan for these service lines.

Assumptions and Calculations

Expansion, Reduction, Elimination or Alteration of a current program or service:

The following will have an effective date of April 1, 2022 with a total SFY22 cost of \$20,088,000 and \$24,554,000 each year thereafter.

Case management, active efforts and policy compliance: 41 FTEs;

Total expenditures for this section for FY22 are \$1,905,000; for FY23 and after, expenditures are \$4,991,000.

Notification to Tribes - 8 FTEs;

Total expenditures for this section for FY22 are \$298,000; for FY23 and after, expenditures are \$980,000.

Licensing and Home Studies - 5 FTEs;

Total expenditures for this section for FY22 are \$199,000; for FY23 and after, expenditures are \$662,000.

Legal Obligations - 1 FTE and AGO costs:

Total expenditures for this section for FY22 are \$4,568,000; for FY23 and after, expenditures are \$4,739,000.

Administrative, Staff training and IT needs - 9 FTEs and Contracted Training:

Total expenditures for this section for FY22 are \$872,000; for FY23 and after, expenditures are \$1,073,000.

Contracted Services and Service Agreements - 1 FTE and Contracted Project Management:

Total expenditures for this section for FY22 are \$463,000; for FY23 and after, expenditures are \$543,000.

Detailed Assumptions and Calculations:

Additional details provided in backup files and calculations.

Workforce Assumptions:

Case management, active efforts and policy compliance: 41 FTEs:

Due to the anticipated significant increase in workload for field staff, five Social Services Specialists 3 (SSS3) per region (30 total) are requested.

Based on case count by region, nine Active Efforts Specialists will need to be hired to support case workers to meet the higher standard for providing active efforts under Supreme Court decision. Additionally, a WMS2 position will need to be hired as a Compliance Manager to ensure compliance with federal law, as well as a Social and Health Provider Consultant 3 to act as Local Indian Child Welfare Advisory Committee Coordinator to ensure that Indian children and their families are receiving culturally appropriate services.

Notification to Tribes: 8 FTEs

Based upon a doubling of the NAIR unit workload, an additional six Social Services Specialists 3 (SSS3) are needed to provide tribal outreach, prepare documentation for the AGO to send legal notice and track tribal responses with one Social Service Specialist 5 (SSS5) as the supervisor. Additionally, the Office of Tribal Relations will need to hire a NAIR unit/AGO Liaison (SSS3).

Licensing and Home Studies: 5 FTEs

Licensing Division anticipates an increase of approximately 100 home studies a year, which will require an additional three Social Service Specialists focused on the regions / areas with the highest level of native child intakes to handle the increased workload.

Increased technical assistance and support for foster care group providers will require two additional Social and Health Provider Consultation 2 to update policies and procedures, hiring practices, ongoing practice, and staff hiring and training.

Legal Obligations: 1 FTE

The expanded application of ICWA will increase the number of contracted QEWs which are statutorily required in order to adjudicate proceedings. This increase will require the hiring of a statewide QEW Coordinator (Social and Health Provider Consultant) to ensure an adequate pool of expert witnesses.

Administrative, Staff training and IT needs: 9 FTEs

50 policies will have to be updated, effectively doubling the workload, and require hiring two WMS2 FTEs to work as policy managers.

The increased volume of cases will also increase the volume of case materials and information that need to undergo public disclosure review in order to be disclosed to QEWs and in response to records requests from tribes, DCYF will require a Management Analyst 3 to serve as Public Disclosure Administrative Coordinator, a Forms and Records Analyst Supervisor to serve as a Public Disclosure Supervisor, and three Form and Records Analyst 3 to serve as Public Disclosure Program Specialists.

With an increase in discovery related to litigation, in addition to the current discovery workload, DCYF will need to hire a Forms and Records Analyst 3 to serve as a Discovery Program Specialist.

DCYF has a legal necessity for a WMS2 to serve as Civil Rights Coordinator for Tribal Affairs as well as legal coordination with the AGO.

Due to changes to internal systems to ensure ICWA determination is tracked properly, DCYF IT will require 0.25 IT Application Developer Senior / Specialist as a one-time cost to make the necessary modifications.

Service Agreements with Tribes: 1 FTE

In order to develop and manage an increased number of service agreements with Tribal Governments, DCYF will need to hire a Tribal Contracts Specialist.

How is your proposal impacting equity in the state?

These policy changes and investments are needed, not only to respond with the State Supreme Court decisions but also to address the 12 “areas needing improvement” identified in the 2019 Statewide ICW Case Review Report.

Strategic and Performance Outcomes

Strategic Framework:

This request is in support of the Governor’s Results Washington goal area of an:

- Efficient, Effective, and Accountable Government

This request is in support of the DCYF Strategic and Racial Equity Plan priorities of:

- Eliminate racial disproportionality and advance racial equity
- Safely reduce the number/rate of children in out-of-home care
- Improve quality and intention of our practice
- Improve quality and availability of provider services

Performance Outcomes:

- DCYF compliance with ICWA and WICWA will improve
- DCYF staff will implement the revised ICW Policies and Procedures effectively and consistently across the state
- The continued availability of sending Inquiry to WA State federally recognized tribes provides collaboration with WA State Tribal Partners per agreements made within Tribal-State 10.03 Plans and allows for early intervention in tribal cases, which potentially could prevent and/or reduce the number of cases that will rise to the level of court involvement.
- The availability of an adequate number of qualified QEWs will decrease the need for court continuances and lead to quicker permanency outcomes, which will eliminate the ongoing costs for foster care, caseworker and AAG time, service delivery...
- The availability of an adequate number of qualified QEWs may reduce the number of Indian children placed in out-of-home care when testifying with knowledge and experience to the ICWA standard of “the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.”
- The availability of Active Efforts Specialists in the field will improve compliance with ICWA/WICWA’s requirement that DCYF “shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful”, which will decrease the number of Indian children placed in out-of-home care, and when an out-of-home dependency is ordered, will increase the likelihood of timely permanency.
- Managing the legal notice process will provide all potential tribes the earliest possible opportunity to take jurisdiction of or intervene in a child custody proceeding, which potentially could reduce the number of cases heard in state court, or if the case remains in state court, will increase the likelihood of timely permanency when an Indian child’s tribe is involved.
- Revision of the ICW Case Review Tool and comprehensive training of lead reviewers to the intent of the review items/questions will provide an accurate assessment of current practice, which will inform areas of focus for practice improvement.

Other Collateral Connections

Puget Sound Recovery:

Not Applicable

State Workforce Impacts:

This decision package requests FTEs.

Intergovernmental:

Tribes will see an increase in the number of requests to provide Qualified Expert Witness (QEW) to provide testimony and the number of Legal Notice that tribes will be asked to respond to will increase. The tribes will support these impacts, however, not all will be able or willing to respond to both the inquiry letters and legal notice that they receive from DCYF. DCYF’s inquiry process will not be impacted as inquiry letters are always sent to all tribes that a family has stated affiliation with, with the new interpretation of Reason to Know, DCYF will now also send

Legal Notice to all tribes.

The **Courts** will also be impacted as the need for QEW and responses to Legal Notice may delay or cause hearings to be continued. The courts will be asked to determine on the record whether there is Reason to Know that a child(ren) are an Indian Child and ICWA applies, this could result in delays of permanency. There will be an increase in the number of Voluntary Placement Agreements (VPA) that will require a hearing for the parents/caretakers to sign the agreement in the presence of a judge. **AGO's** will be impacted by more ICWA cases that will result in more expert witness contracts with individuals to provide QEW testimony, providing legal advice to DCYF HQ as the ICW policies and procedures are revised to comply with Z.J.G. Opinion. Cost of sending legal notice by certified mail.

Legal or Administrative Mandates:

This is a result of the Washington State Supreme Court Z.J.G opinion that changes the way DCYF must interpret, "Reason to Know" a child is or may be an Indian Child. The new application of Reason to Know greatly expands the number of children that the Indian Child Welfare Act (ICWA) will apply to, and will have the following impacts to DCYF:

- Increased number of cases covered by ICWA and WICWA
- Qualified Expert Witness testimony will be necessary for more case, increased cost of contracted experts/DCYF staff testifying as QEW more often.
- Cost of sending Legal Notice by certified mail to more tribes due to expanded definition of Reason to know.
Potential impact to licensing home study process trying to expedite a home as part of a tribe's placement preference
Cost of process mapping contract & contract with Addie/ plus .5 FTE for consultation with tribes
- When the tribe/tribal heritage is not known, could have the potential to delay permanency until court willing to rule on the record that ICWA doesn't apply to the case. Case would remain an ICWA case longer. DCYF would have to show due diligence efforts were made to determine membership status.
- Cost of training staff to new policy as a result of Reason to Know
- Need for more FTE's as ICWA cases are weighted at 1.3 and with new Reason to Know definition there will be more ICWA cases. Increased number of VPA's needing to be signed in court as ICWA will apply to more cases. There is not a cost to a VPA but it does take more time and could increase number of FTE's needed.

This is also a result of the Washington State Supreme Court G.A.J. opinion that clarifies the standard for making "active efforts" to prevent the break-up of the Indian family and clarifies that services must be culturally relevant to the Indian child.

- Increased caseload impacts
- Need for expanded ICWA contracts with providers for culturally appropriate services to comply with "active efforts"
- Need for policy compliance management in order to make system improvements to prevent future lawsuits
- Need for increased contracts with tribes to provide culturally appropriate services

Stakeholder Response:

The following stakeholders may be impacted:

1. Tribes (although they are not stakeholders, they are govt's)- support
2. The UW Alliance whom provides staff training- support
3. DCYF contracted providers- some may support and some may oppose as more cultural components and training may be necessary.

Casey Family Programs- support

Changes from Current Law:

DCYF does not believe changes in statute are required at this time. However, it may be advisable to develop a definition of "culturally

appropriate services" and have this added to RCW and WAC, possibly in 2023. However, such a definition would need to be developed in consultation with tribal governments through DCYF's tribal consultation policy. These conversations are ongoing with the Tribal Policy Advisory Committee and the state-tribal work group, however there is no agreement at this time on what that definition should be.

State Facilities Impacts:

Not Applicable

IT Addendum***Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?***

No

Objects of Expenditure

Objects of Expenditure <i>Dollars in Thousands</i>	Fiscal Years		Biennial	Fiscal Years		Biennial
	2022	2023	2021-23	2024	2025	2023-25
Obj. A	\$622	\$2,487	\$3,109	\$2,487	\$2,487	\$4,974
Obj. B	\$213	\$918	\$1,131	\$918	\$918	\$1,836
Obj. E	\$16	\$63	\$79	\$63	\$63	\$126
Obj. G	\$21	\$84	\$105	\$84	\$84	\$168
Obj. J	\$63	\$189	\$252	\$0	\$0	\$0
Obj. A	\$578	\$2,198	\$2,776	\$2,198	\$2,198	\$4,396
Obj. B	\$194	\$799	\$993	\$799	\$799	\$1,598
Obj. C	\$0	\$1,120	\$1,120	\$120	\$120	\$240
Obj. E	\$4,539	\$4,648	\$9,187	\$4,648	\$4,648	\$9,296
Obj. G	\$19	\$72	\$91	\$72	\$72	\$144
Obj. J	\$56	\$160	\$216	\$0	\$0	\$0
Obj. N	\$0	\$307	\$307	\$307	\$307	\$614
Obj. T	\$141	\$581	\$722	\$581	\$581	\$1,162

Agency Contact Information

Chris Conn
(360) 725-4441
chris.conn@dcyf.wa.gov