

ICWA Case Studies In Context: A Spatial Epidemiological Approach



“A cornerstone of Lakota culture can be summed up in the words family and kinship. Family is the backbone, the foundation of our culture. We are given substance, nurtured, and sustained by family.”
Joseph M. Marshall III, Sicangu Lakota (Rosebud)

GIA BARBOZA, BA, MA, MS, JD, PHD

ELLA CHILCOTE, BA CANDIDATE

LANI-ELAINE CASTRUITA, BS, BA,
MA CANDIDATE

Overview of Presentation

- Background, History and Major Provisions of the 1978 Indian Child Welfare Act (ICWA)
- ICWA Project Background
- Harvard Law School's Caselaw Access Project, Data and Analysis
- ICWA In Context
- Significance of Data Limitations & Future ICWA Website Development
- Implications & Future Directions
- Cultural Genocide
- Conclusion & Questions

ICWA Historical Overview

Mid-1800s, public & private agencies routinely removed minor Tribal Citizens (MTC) from homes w/ Federal Government's consent

- 1970s Congressional investigation revealed:
 1. 25-35% MTCs in the US taken from families by state child welfare agencies (SCWAs)
 2. MTCs were 7 – 8x removed more than white children
 3. Vast majority of MTCs placed in non-Tribal homes
 4. State judges & social workers often prejudiced against Tribal Citizens & ignorant of Tribal Nation mores
 5. State officials “have often failed to recognize the . . . cultural and social standards prevailing in Indian communities and families.” 25 U.S.C. §1901

Background of the ICWA

ICWA based upon “Indian” Commerce Clause

- Plenary power of Congress/Federal Government & Tribal Nations

Recognition of Tribal Sovereignty & important role of Tribal Governance

- Protecting well-being of tribal children
- A remedial law designed to protect Tribal Nations & Citizens

Identified SCWAs problem response

Background of the ICWA Cont'd

ICWA-Tribal Courts exclusive jurisdiction when MTC lives on the reservation

- “...concurrent but presumptively tribal jurisdiction when the child lives off the reservation” - *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 49 (1989)

Tribe has right to intervene w/ MTC placement governed by ICWA

- Even when a custody case remains in state court

Major Provisions (& Framing our Results)

Family Court Policy Guidelines Established - BIA

- Acknowledgment or establishment of paternity
- Best interest standard different from state standard
- Extended family
- Consultation with SCWA
- Placement preferences
- Case management cooperation
- Qualified expert witnesses
- No MTC removal unless efforts to keep family intact have proven unsuccessful

Project Background Overview

- Interest in the issue
- Main research question:
 - *Why does disproportionality in child welfare cases persist 40 years following the enactment of the ICWA?*
- Undergraduate Research Award proposal
- Better understand spatial distribution of ICWA cases
- Derive better ICWA case interpretation
 - Circumstances mining the caselaw
- Improve context & understanding of Indigenous populations lives

Project Background

- ICWA enacted to make sure “that the values of Indian people are reflected in the foster care and adoptive placements of Indian children, and to insure the preservation of Indian family units”
 - (25 U.S. C. 1902)
- Over 40 years later – MTCs continue to be overrepresented in foster care 2x more than general population (NICWA, 2017)
 - MTCs 90% placed into non-native homes overwhelmingly
- No study to date used text mining & data analytic advances to study ICWA caselaw

Harvard Law School's Caselaw Access Project

- Data for the analysis comes from Harvard Law School's Caselaw Access Project (CAP)
 - <https://case.law>
- CAP expands public access to U.S. law
 - Provides searchable database & Application Programming Interface (API)
- Goal make all published U.S. court decisions freely available public
 - Harvard Law Library collection
 - Consistent digitized format online

Accessing Harvard Law API



```
base_url =  
https://api.case.law/v1/cases/?page\_size=896&search=%  
22ICWA%22
```



```
get_cases <- httr::GET(url = base_url)
```



```
get_cases <- httr::content(get_cases, as="raw")
```



```
json <- jsonlite::fromJSON(rawToChar(get_cases))
```



```
icwa_cases <- tibble::as_tibble(json$results)
```

Create an empty dataset

```
df <- setNames(data.frame(matrix(ncol = 2, nrow = 0)), c("id", "text"))
```

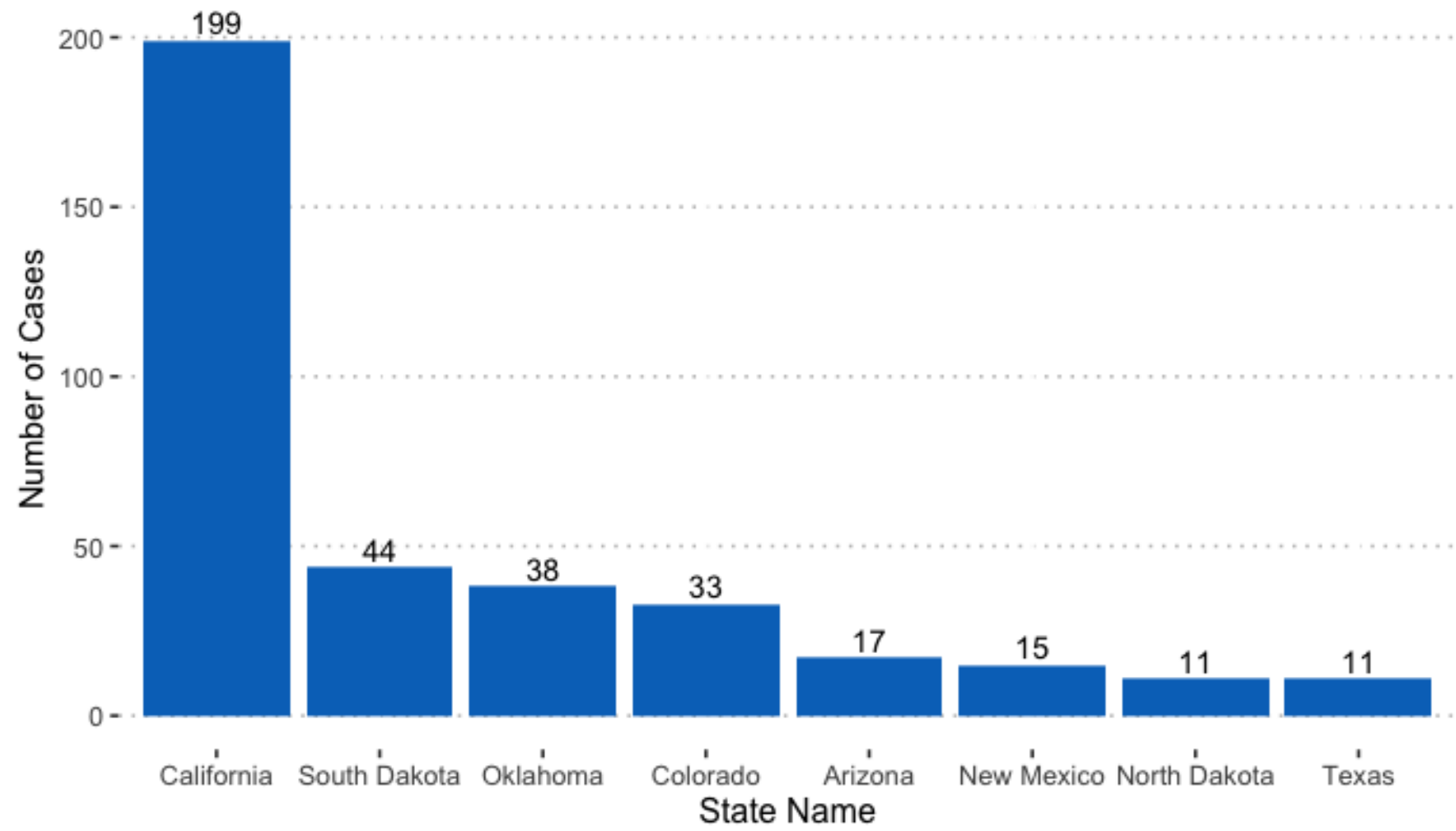
Loop through all ICWA cases and store in the dataset

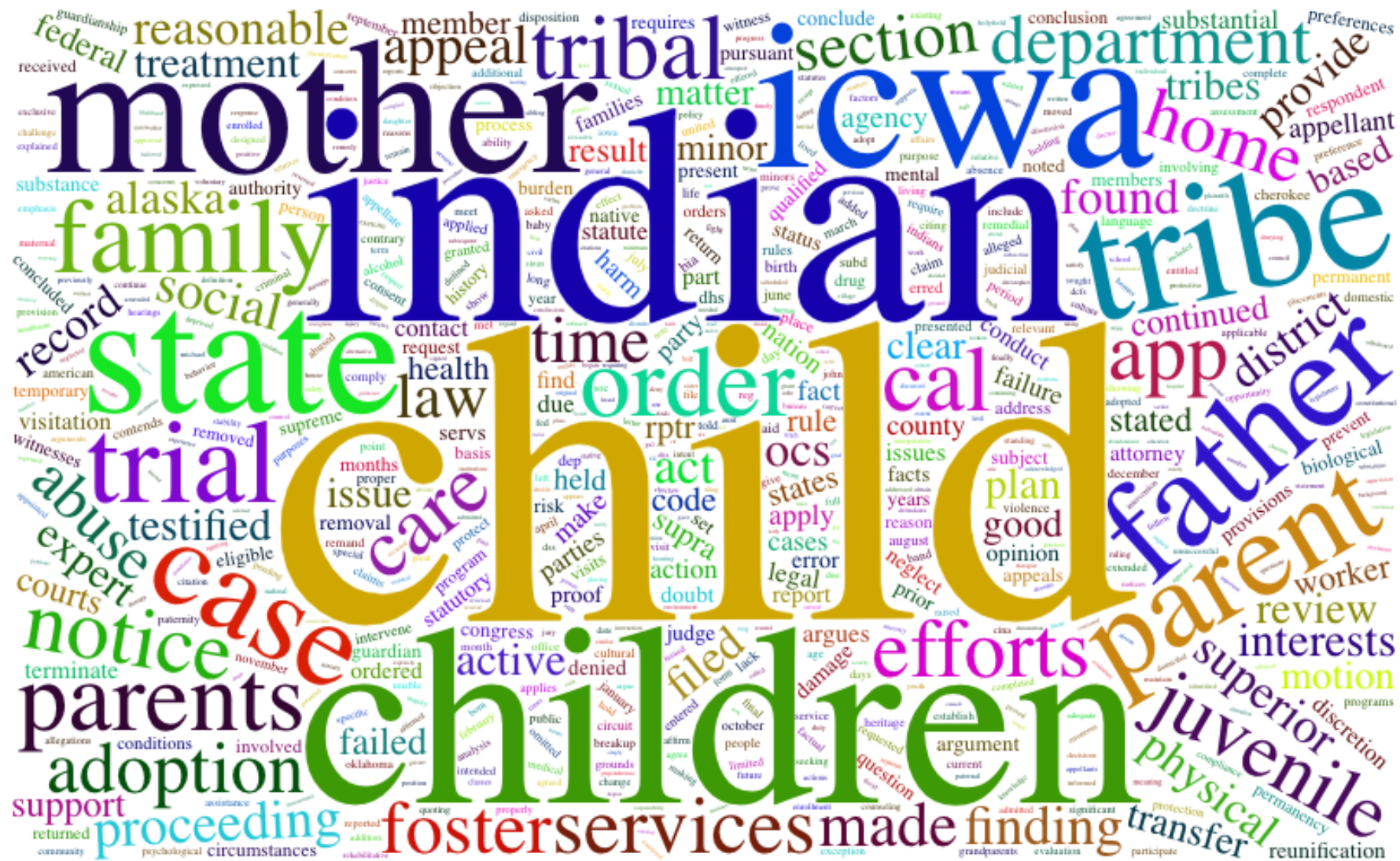
```
for (i in 1:nrow(icwa_cases)){  
  tryCatch({  
    get_case_url = paste0(icwa_cases[i,2],"?full_case=true")  
    get_case_url <- httr::GET(url = get_case_url, auth_header)  
    get_case_url <- httr::content(get_case_url, as="parsed")  
    if (!is.null(get_case_url$casebody[[2]])) {  
      df[i,1] <- get_case_url$id  
      df[i,2] <- get_case_url$casebody[[2]][3]$opinions[[1]]$text  
    }  
  }  
  , error=function(e){cat("ERROR :",conditionMessage(e), "\n")})  
}
```

Natural Language Processing (NLP) ICWA Caselaw

SPATIAL DISTRIBUTION, WORD FREQUENCY AND
DISTRIBUTION OF CASES

ICWA Caselaw By State





Latent Dirichlet Allocation (LDA) Modeling

HOW MANY TOPICS CAN BE DETECTED IN THE CASES AND
WHAT THEMES CAN BE DETECTED

Why LDA?



A generative latent variable model that uses Bayesian methodology

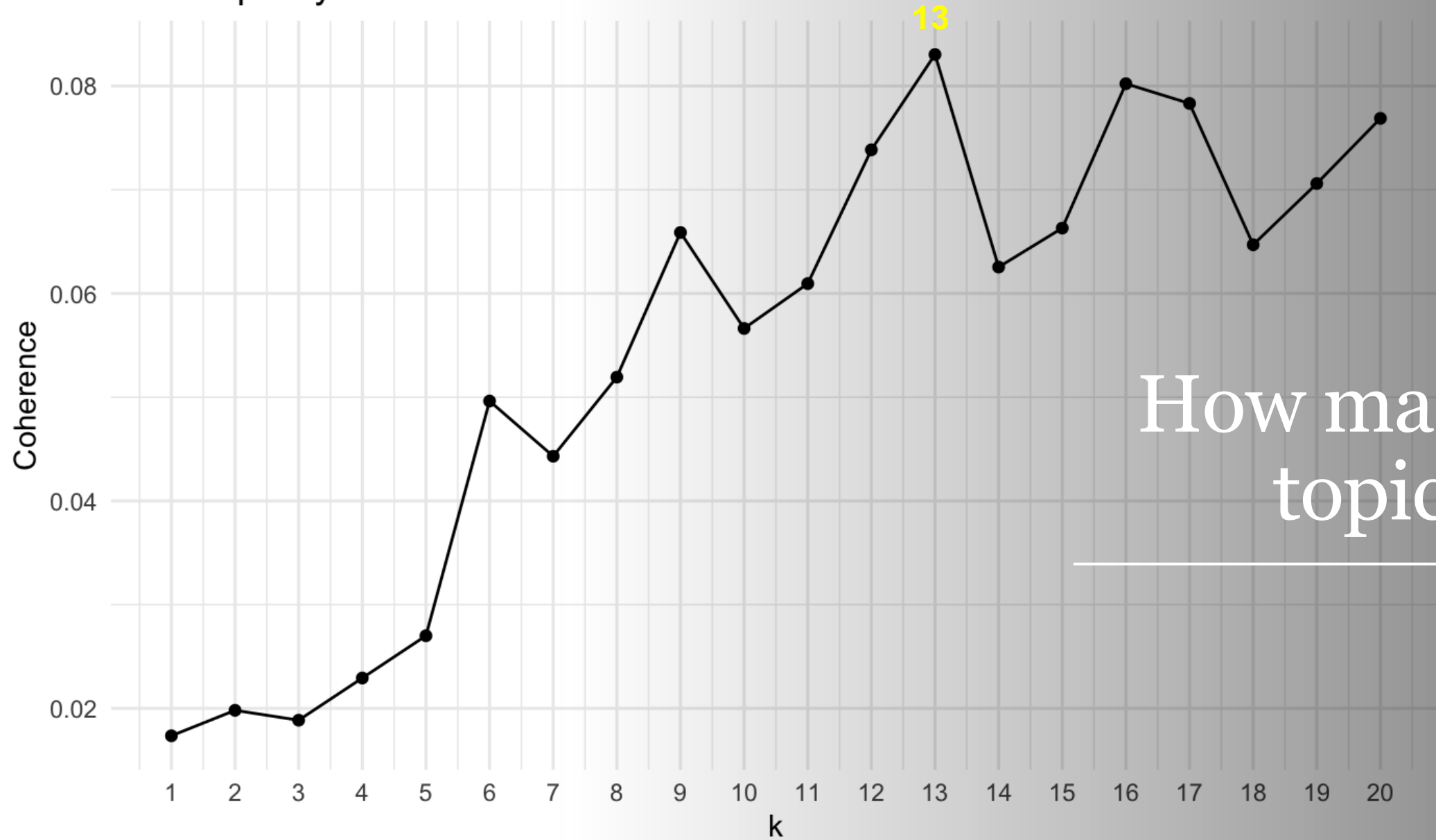


Describes how documents in a dataset are created



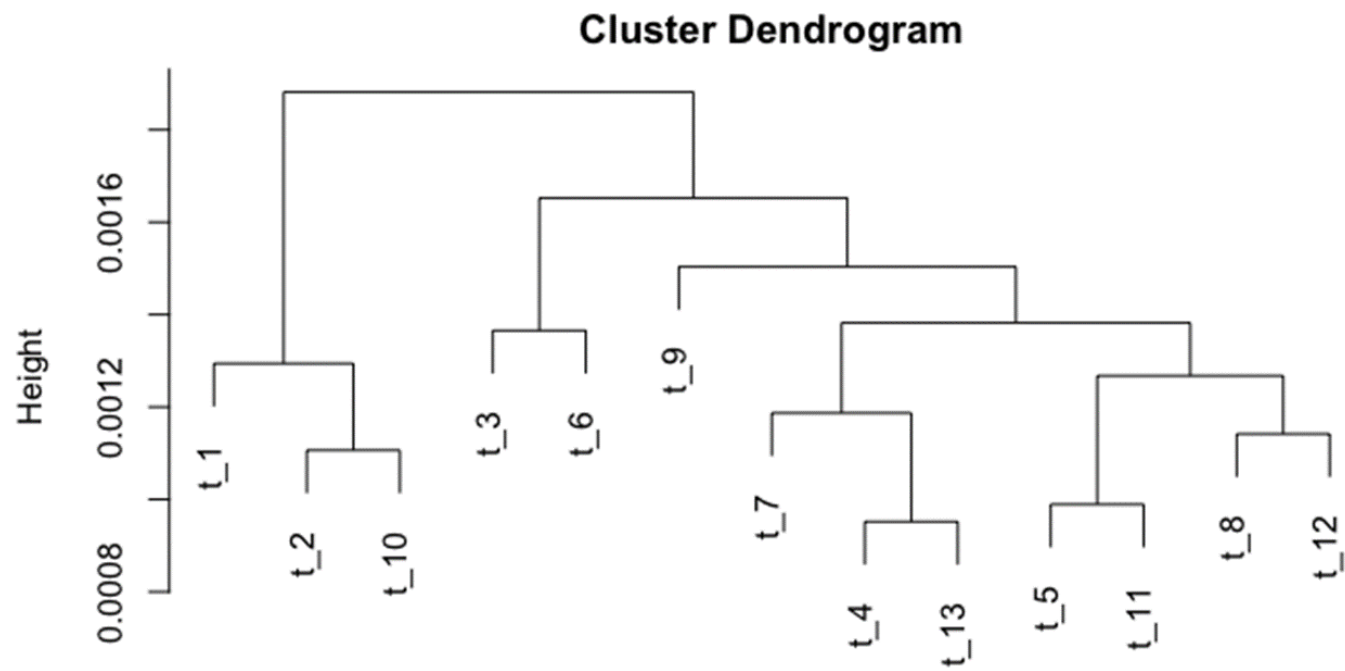
LDA uses the observed words in a document to infer the latent topic structure

Best Topic by Coherence Score



How many
topics?

Topic	Label	Prevalence	Top terms
t_13	social_worker	11.037	notice, tribe, mother, father, information
t_10	active_efforts	10.635	mother, father, efforts, active, services
t_4	transfer_jurisdiction	9.920	tribe, transfer, jurisdiction, case, motion
t_6	foster_care	8.582	adoption, state, tribe, placement, rights
t_5	parental_rights	7.541	parental, rights, parental_rights, termination, evidence
t_3	home_agency	7.486	mother, hearing, code, agency, home
t_8	eligible_membership	7.404	tribe, membership, respondent, member, termination
t_11	qualified_expert	7.366	expert, testimony, testified, evidence, emotional
t_12	adoptive_parents	7.178	adoption, father, mother, parent, custody
t_1	state_dep	6.337	state, efforts, servs, case, health
t_7	united_states	5.828	jurisdiction, tribal, state, tribe, reservation
t_2	summary_judgment	5.399	state, plaintiffs, county, defendants, id
t_9	placement_preferences	5.286	placement, good, foster, preferences, family



```
as.dist(model$topic_linguistic_dist)  
hclust(*, "ward.D")
```

Topic Relationships

ICWA in Context

INDIGENOUS POPULATIONS IN SOUTH DAKOTA

The People of the State of South Dakota in the Interest of T.I. & T.I., minor children and Sisseton-Wahpeton Sioux Tribe & Yankton Sioux Tribe, Intervenors (2005 SD 125)

SD filed an abuse and neglect petition against parents after son was found walking alone at night without proper attire. The mother told state officials that she had an apartment but no electricity, food or furniture and disclosed the use of alcohol.

The children were placed in and out of foster home but eventually the mother regained custody despite the states' concerns that she was exposing her children to domestic violence, her unstable relationships and her lack of financial stability

The state attempted to provide mother with home-based and financial services including rent, gas and medication but she was eventually threatened with eviction. Thereafter, the mother to go to a woman's shelter with her children, but she instead moved to a different area.

When she asked the Yankton Sioux Tribe director for services, she was told none were available.

Parental rights were eventually terminated due her "limited cooperation in completing required tasks."

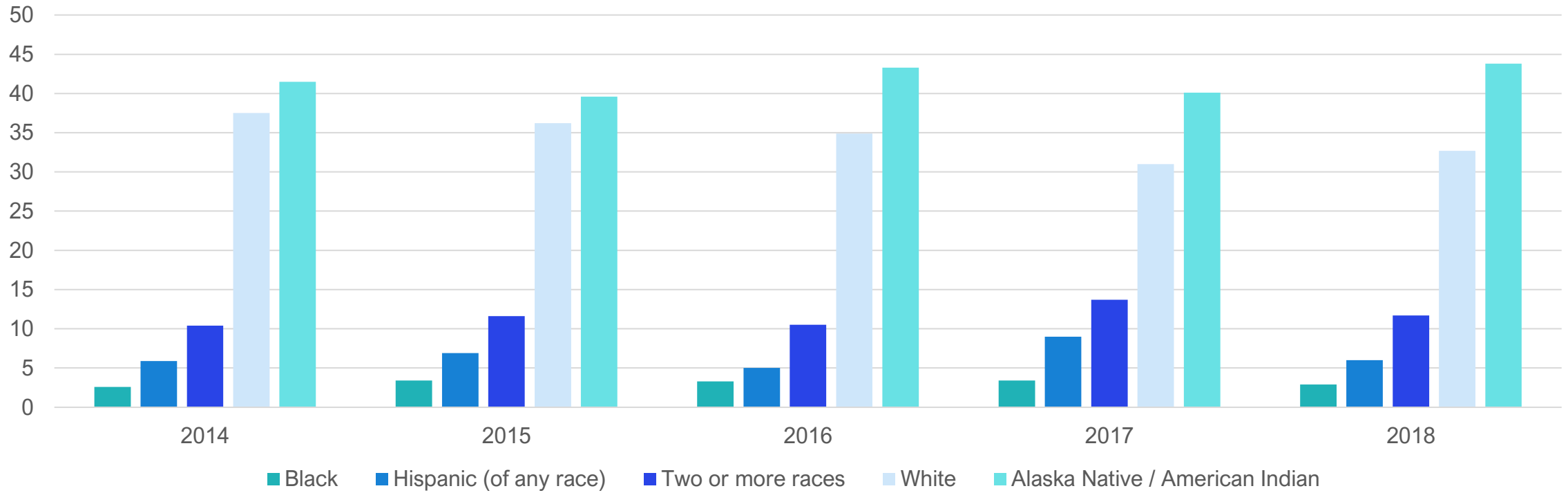
SD Supreme Court Ruling on Three Issues

On appeal the Supreme Court considered the following issues;

1. Whether the trial court erred in denying transfer of jurisdiction to either tribe? *No, only state court had jurisdiction due to lack of enrollment in the SWS tribe.*
2. Whether the trial court erred in finding that terminating parental rights was the least restrictive alternative? *No, parents were unable to provide for their children.*
3. Whether the trial court erred in finding beyond a reasonable doubt and through QEWT that continued custody would result in serious emotional and physical damage so that termination was appropriate? *No, even though he was not an expert in SWS tribal practices he was an expert in YST practices.*

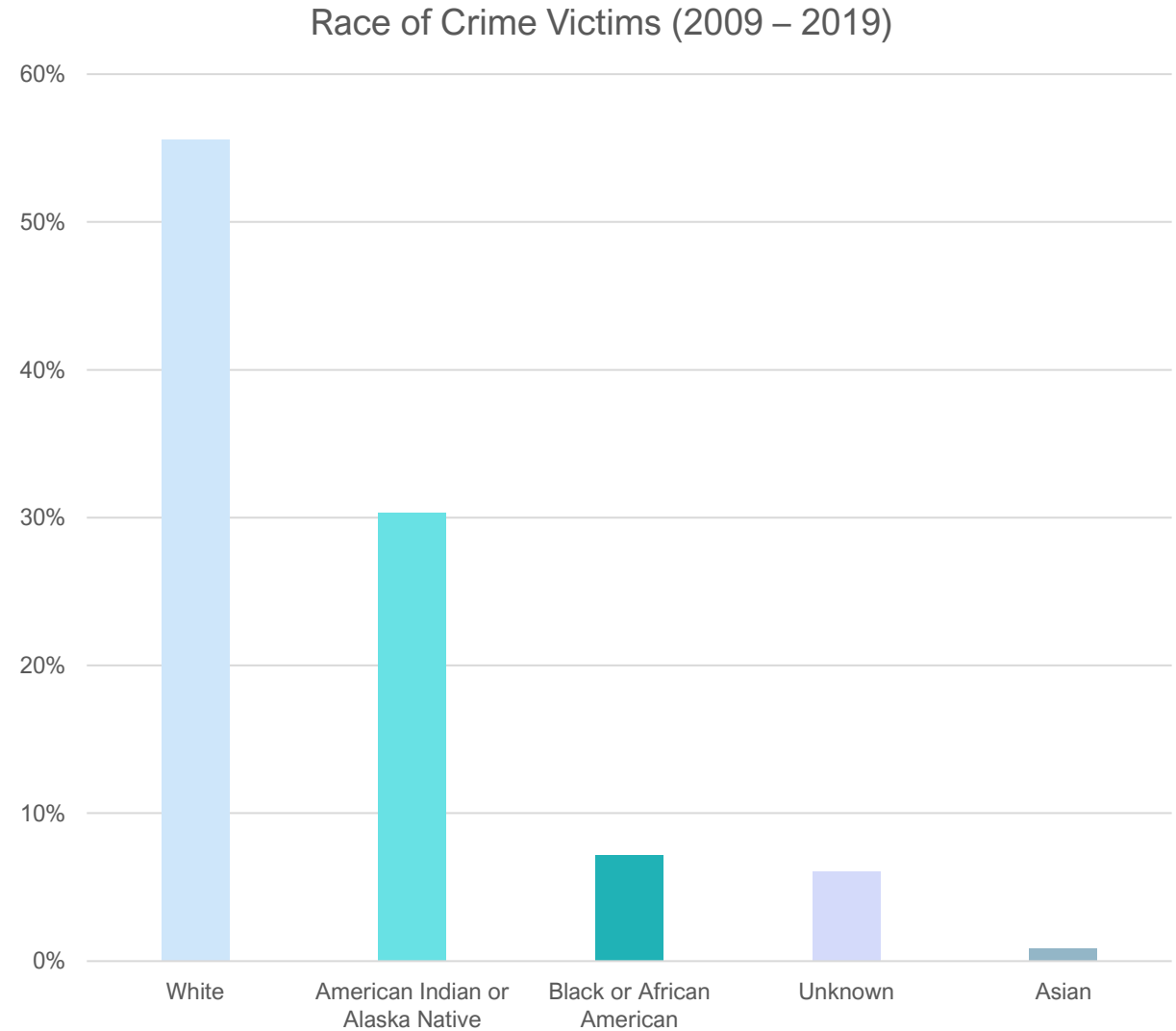
Race/Ethnicity	1990 TREND		2000 TREND		2010 TREND		CURRENT	
	#	%	#	%	#	%	#	%
White, Non-Hispanic	634,690	91.17%	664,542	88.03%	689,502	84.69%	689,502	84.69%
Black, Non-Hispanic	3,092	0.44%	6,380	0.85%	14,065	1.73%	9,959	1.22%
Hispanic	5,151	0.74%	10,860	1.44%	22,119	2.72%	22,119	2.72%
Asian or Pacific Islander, Non-Hispanic	2,917	0.42%	5,912	0.78%	10,045	1.23%	7,866	0.97%
Native American, Non-Hispanic	49,549	7.12%	66,079	8.75%	77,809	9.56%	69,476	8.53%

Trending Demographics By Decade in South Dakota



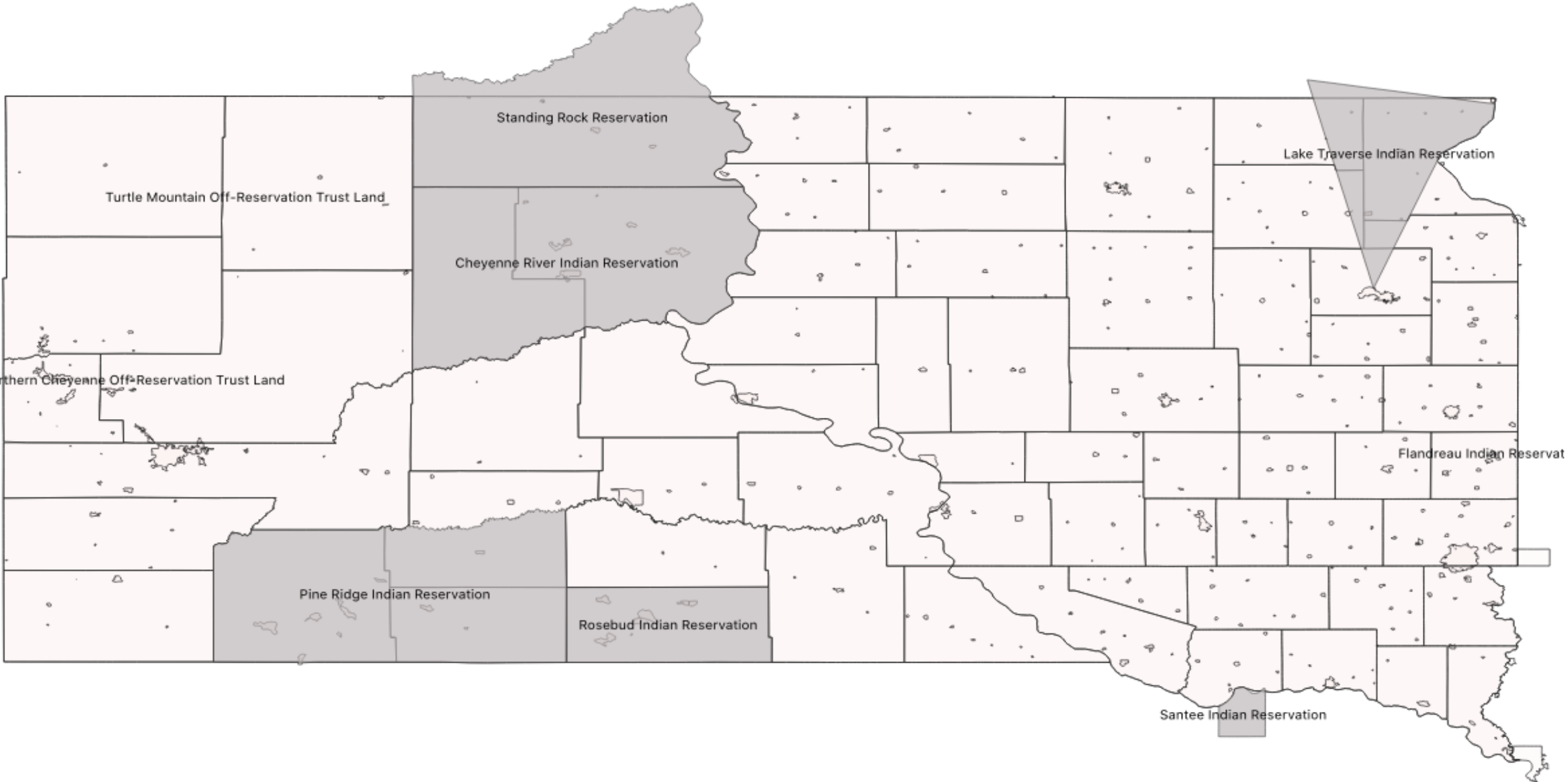
Child Welfare Involvement in South Dakota

Crime Victims in South Dakota (NIBRS 2009-2019)





South Dakota Tribal Nations



<https://www.census.gov/tribal/?st=46&aianihh=0605>

South Dakota's Cost Burden Demographics

SOUTH DAKOTA

Race/Ethnicity	# With Severe Cost Burden	# Households	% With Severe Cost Burden
White, Non-Hispanic	24,520	296,545	8.27%
Black, Non-Hispanic	425	4,214	10.09%
Hispanic	1,030	7,330	14.05%
Asian or Pacific Islander, Non-Hispanic	354	3,082	11.49%
Native American, Non-Hispanic	3,245	17,850	18.18%
Other, Non-Hispanic	705	4,529	15.57%
Total	30,279	333,535	9.08%

South Dakota (State)

Households experiencing any of 4 housing problems

	# with problems	# households	% with problems
Race/Ethnicity			
White, Non-Hispanic	65,580	296,545	22.11%
Black, Non-Hispanic	1,740	4,214	41.29%
Hispanic	2,795	7,330	38.13%
Asian or Pacific Islander, Non-Hispanic	1,273	3,082	41.30%
Native American, Non-Hispanic	8,045	17,850	45.07%
Other, Non-Hispanic	1,575	4,529	34.78%

Households experiencing any of 4 severe housing problems

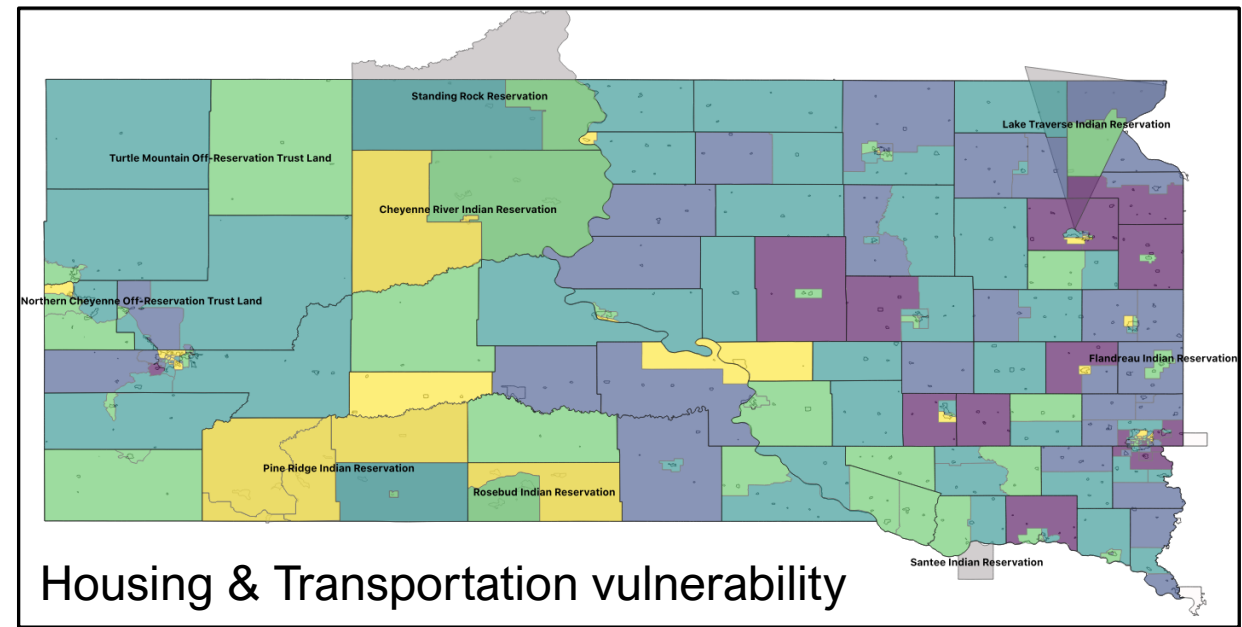
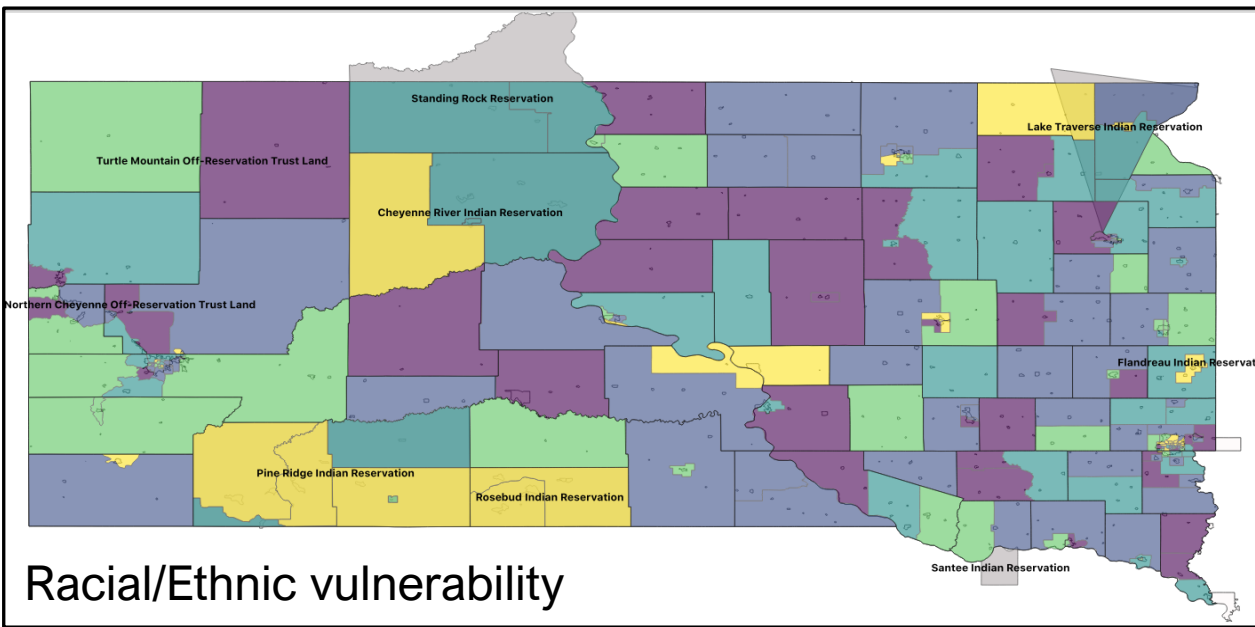
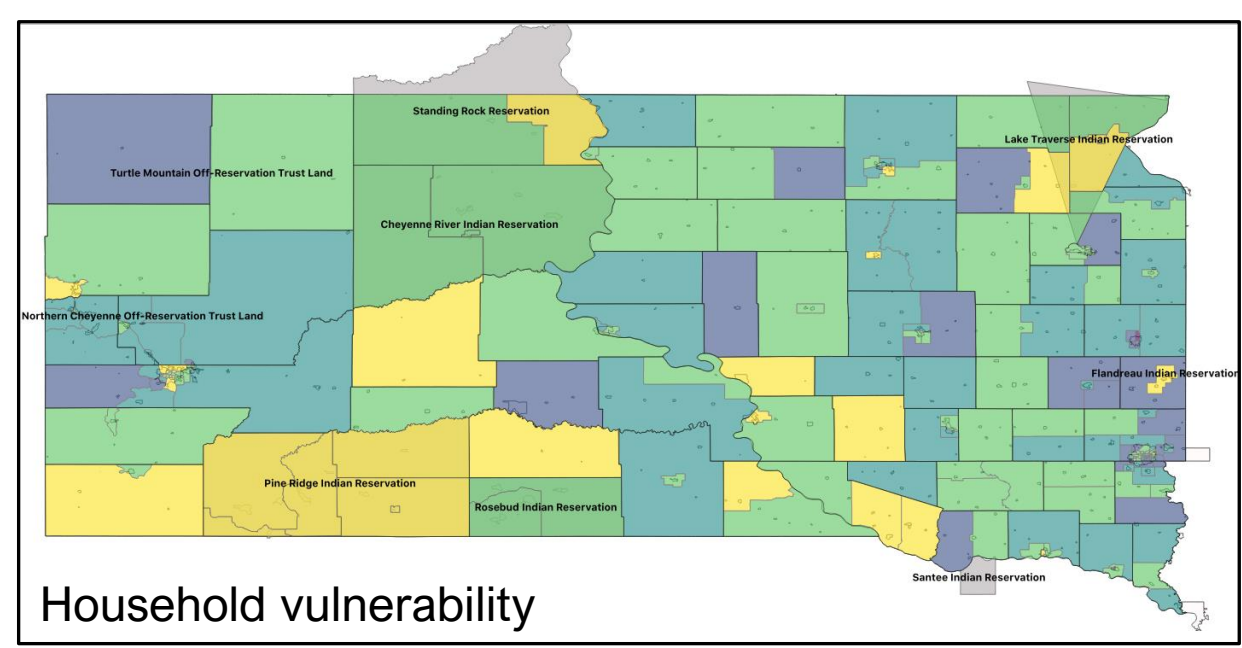
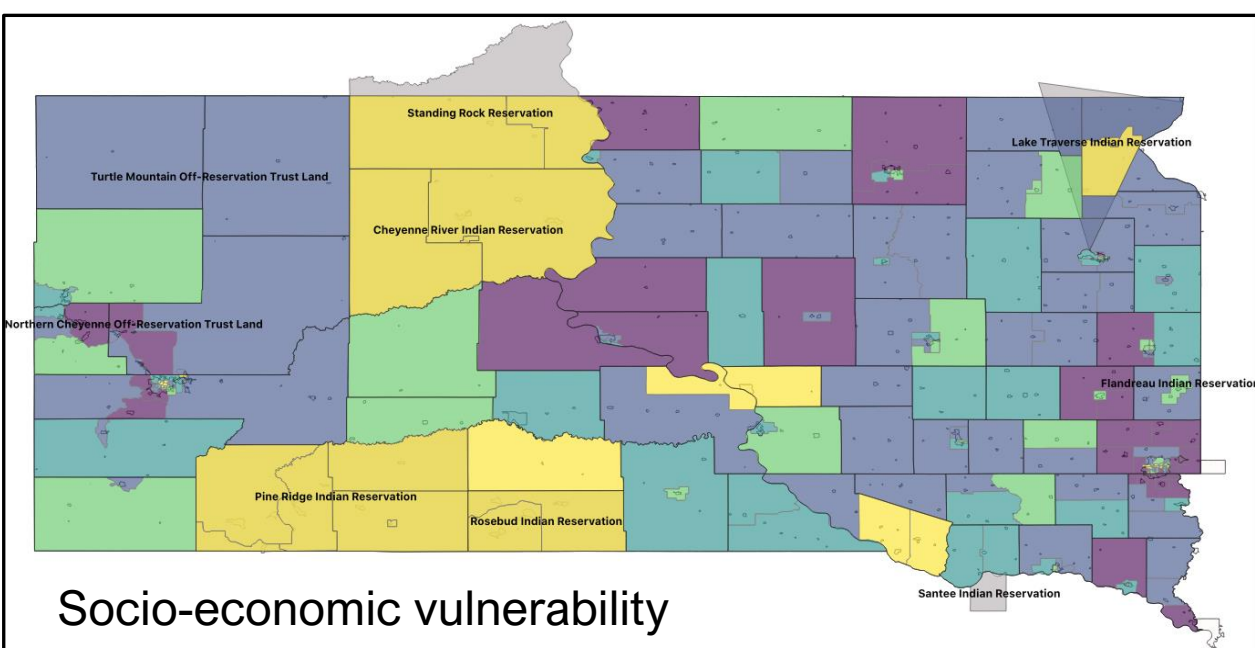
	# with severe problems	# households	% with severe problems
Race/Ethnicity			
White, Non-Hispanic	29,415	296,545	9.92%
Black, Non-Hispanic	805	4,214	19.10%
Hispanic	1,655	7,330	22.58%
Asian or Pacific Islander, Non-Hispanic	863	3,082	28.00%
Native American, Non-Hispanic	5,910	17,850	33.11%
Other, Non-Hispanic	973	4,529	21.48%

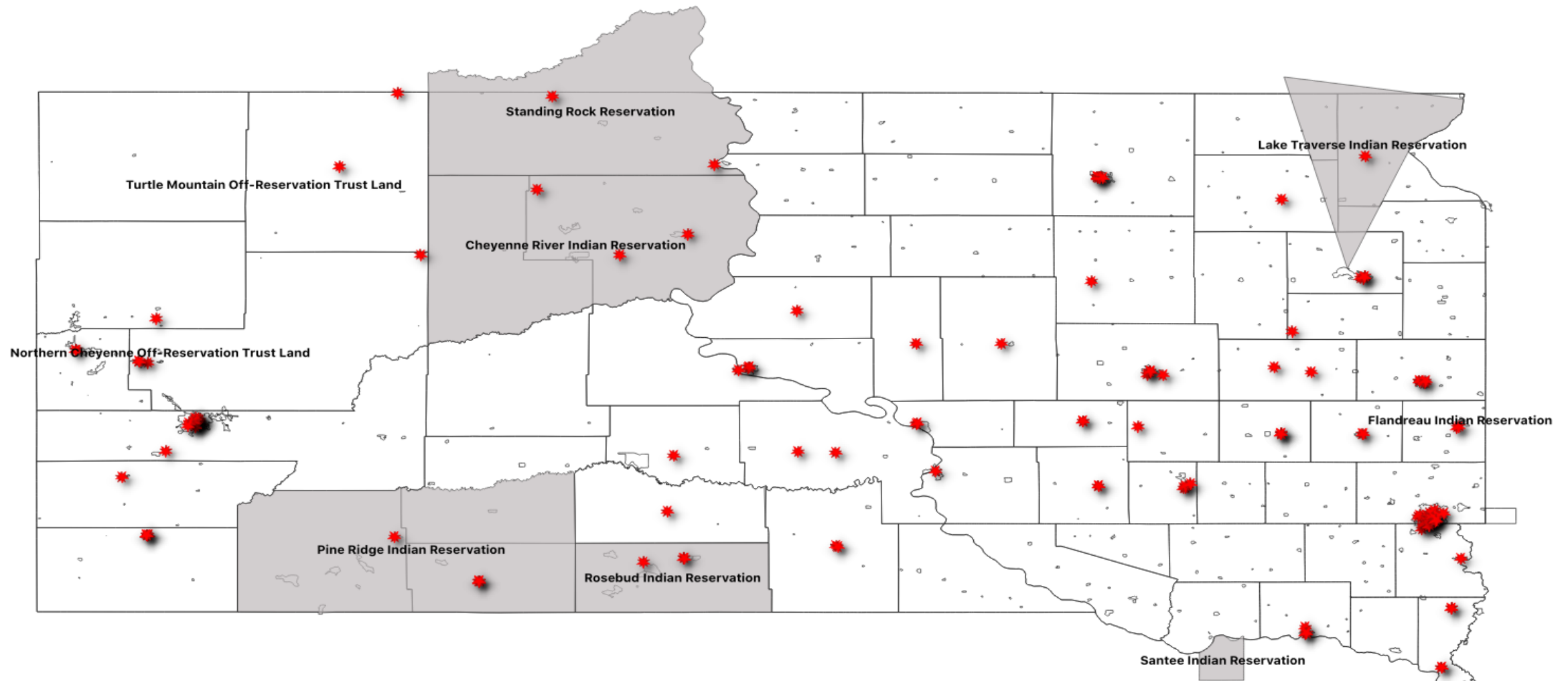
South Dakota (State)	Low Poverty Index	School Proficiency Index	Labor Market Index	Transit Index	Low Transportation Cost Index	Environmental Health Index
Total Population						
White, Non-Hispanic	59.29	54.01	72.98	29.10	35.77	91.67
Black, Non-Hispanic	44.86	45.18	62.09	44.88	57.67	82.73
Hispanic	47.05	44.53	62.98	34.12	42.79	88.39
Asian or Pacific Islander, Non-Hispanic	54.71	51.02	70.54	35.49	46.50	88.00
Native American, Non-Hispanic	20.65	22.27	28.42	17.15	18.06	94.92
Population below federal poverty line						
White, Non-Hispanic	52.08	51.84	68.07	27.83	35.55	91.81
Black, Non-Hispanic	44.09	47.74	63.51	41.73	55.93	83.08
Hispanic	37.26	36.19	55.75	32.96	41.58	88.82
Asian or Pacific Islander, Non-Hispanic	57.29	54.85	69.73	33.31	45.33	88.76
Native American, Non-Hispanic	15.79	20.22	24.24	16.13	16.49	95.06

South Dakota's Demographic Opportunity Indicators

South Dakota's Tribal Nations Demographics

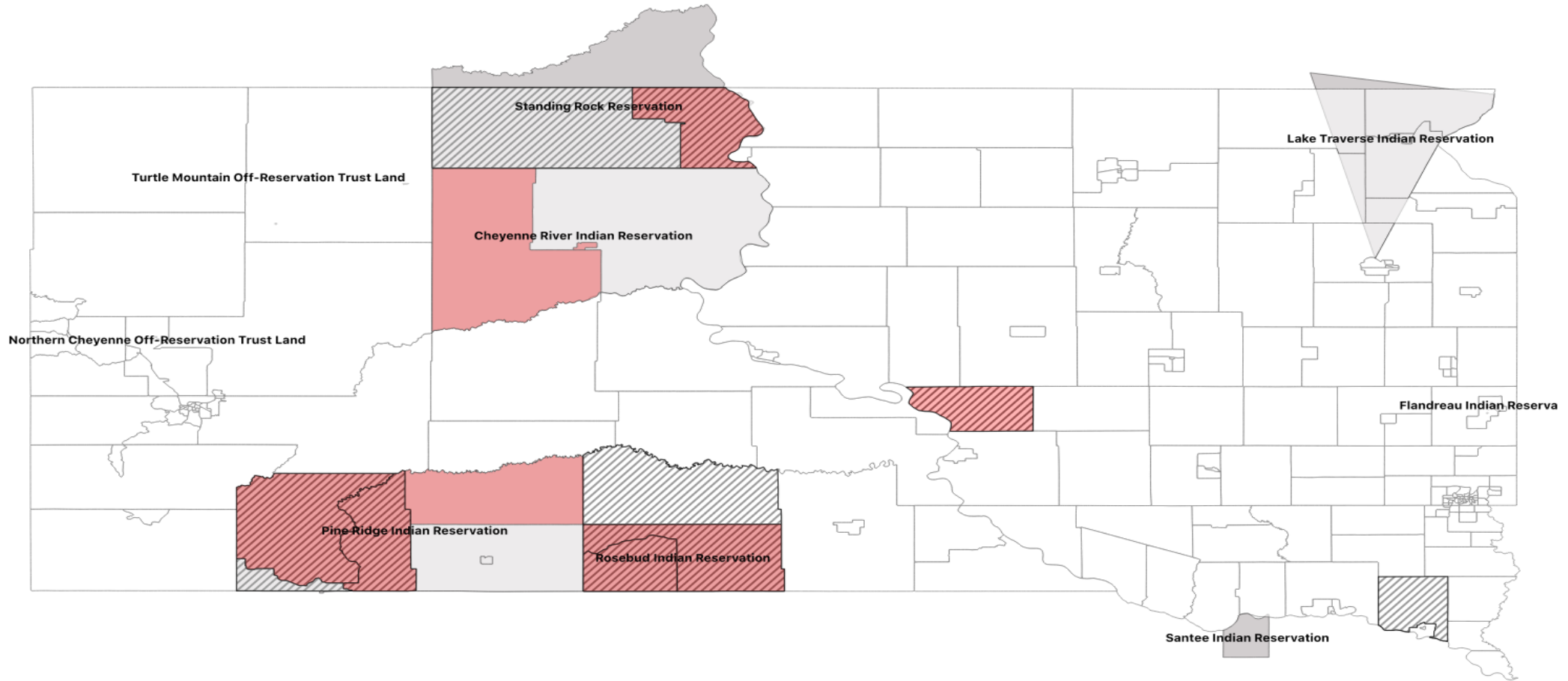
	TOTAL POPULATION (UNDER 18)	DISABILITY STATUS	UNEMPLOYMENT RATE	OCCUPIED TENURE (RENTER/OWNER)	FAMILIES BELOW POVERTY LINE	% HS GRADUATE OR HIGHER
Cheyenne River Reservation	2,998	9.9%	22.4%	3,022 (960/1,433)	26.8%	84.9%
Standing Rock	3,089	11.4%	21.2%	2,319 (1,187/1,132)	32%	83.8%
Pine Ridge	7,370	14.2%	16.4%	4,149 (1,997/2,152)	38.5%	75.3%
Rosebud	4,705	6.2%	9.0%	3,022 (1,692/1,330)	52.8%	78.6%
Lake Traverse	7,936	10.6%	6.7%	4,048 (1,450/2,598)	16.3%	88.8%

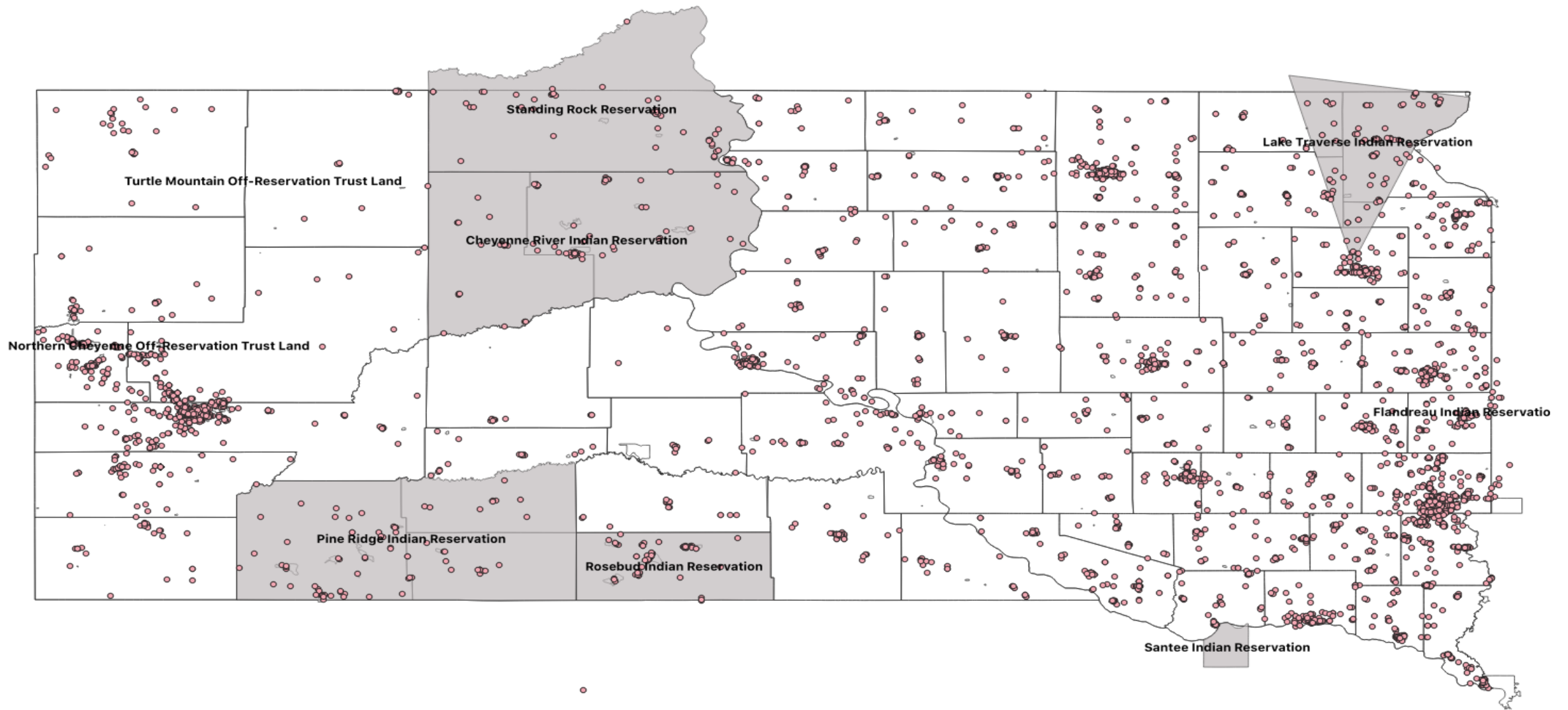




Mental Health & Substance Use Facilities

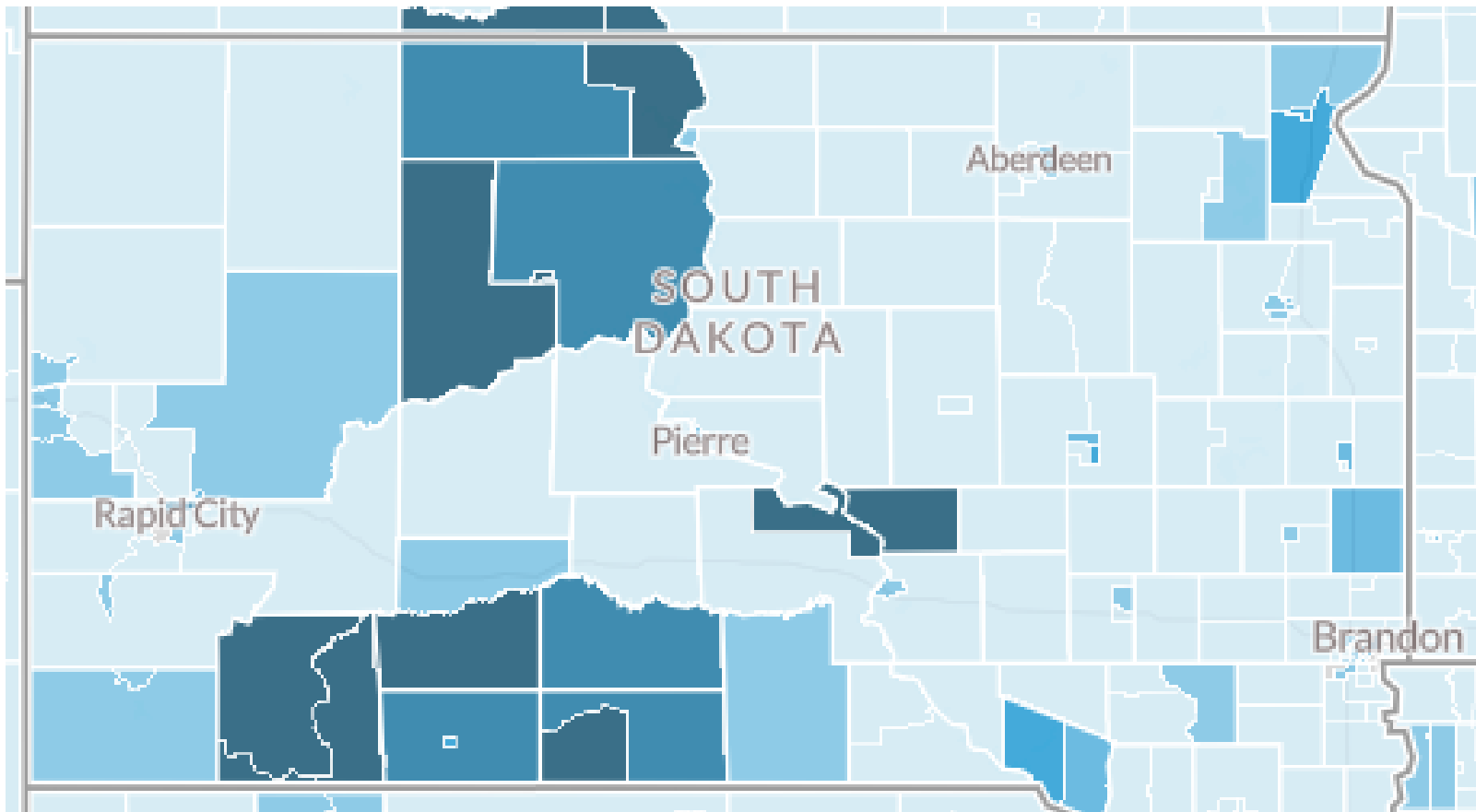
Housing and Transportation Costs in RE/CAP Areas





Facility Registry Services Data (EPA)

<https://www.epa.gov/enviroatlas/data-download-step-2>



Emergency Rental Assistance Priority Index percentile



Children (10)

Jane Sue 'Ahkohkee' McIntosh B: 1801

Brig. Gen. William "Tustunnuggee Hutkee" McIntosh,
 B: 1775 in Kasihita, Chattochochee, Georgia, USA
 D: 30 Apr 1825 in Acorn Bluff - McIntosh Plantation, Carrol, Georgia, USA

Parents

William H. McIntosh, Capt 1745-1794

Senoya McGilivray Heneneha 1753-1812

Elizabeth "Lizzie" Grierson
 B: 1779 in Cowita Town, Georgia, USA — Other spouses (2)

Wm H Mc Intosh
 in the 1820 United States Federal Census

Name: Wm H Mc Intosh
 [William H McIntosh]
 [Wm H McIntosh]

Home in 1820 (City, County, State): McIntosh, Georgia

Enumeration Date: August 7, 1820

Free White Persons - Males - Under 10: 3

Free White Persons - Males - 26 thru 44: 1

Free White Persons - Females - Under 10: 3

Free White Persons - Females - 45 and over: 1

Number of Persons - Engaged in Agriculture: 1

Free White Persons - Under 16: 6

Free White Persons - Over 25: 2

Total Free White Persons: 8

Total All Persons - White, Slaves, Colored, Other: 8

Source Citation

1820 U S Census; Census Place: McIntosh, Georgia; Page: 27; NARA Roll: M33_9; Image: 49

Source Information

Ancestry.com. 1820 United States Federal Census [database on-line]. Provo, UT, USA: Ancestry.com Operations, Inc., 2010. Images reproduced by FamilySearch.

Original data: Fourth Census of the United States, 1820. (NARA microfilm publication M33, 142 rolls). Records of the Bureau of the Census, Record Group 29. National Archives, Washington, D.C.

Description

This database details those persons enumerated in the 1820 United States Federal Census, the Fourth Census of the United States. In addition, the names of those listed on the population schedule are linked to the actual images of the 1820 Federal Census. Enumerators of the 1820 census were asked to include the following categories in the census: name of head of household, number of free white males and females, number of other free persons except Indians, number of slaves, town or district and county of residence. [Learn more.](#)

Example of Historical Limitations

Significance of Data Limitations

- Attempts to use data innovatively - Inferences can be made
- Severely lacking Indigenous Population Data Sources - Implications
 - Issues with Urban Indian Population v. Tribal Reservation
 - Systems of Care

Implications & Future Directions

- BIA & Boarding school
 - Forced to attend resulting loss of culture & family connection
 - Labeled as incorrigible
- Specific Jurisdictions
- Linguistic issues, issues of cultural identity
- Child Welfare Involvement
- Foster care & long-term issues
- Cultural Genocide
- Inconsistencies of who is 'Native American'

Barboza Research Group

A Social Justice Research Consortium

Projects



Licensed Adobe Stock Photos/Images

Legal Notices



Future ICWA Source Project Website

Cultural Genocide - Aftermath of 1492

“An Indian is an Indian
regardless of the degree
of Indian blood or which
little government card
they do or do not
possess.”

– *Former Principal Chief
Wilma Mankiller
(Cherokee Nation)*

Award child to foster
care problematic

Erasure of Tribal Identity
– Cultural Genocide

Inconsistencies of who
is ‘Native American’

Conclusion & Questions



- Future Congressional Legislation to address ICWA shortcomings & Jurisdictional Issues?

Thank you!

gbarboza@uccs.edu

etaylor4@uccs.edu

lcastrui@uccs.edu