

**THE ADOPTION AND SAFE FAMILIES ACT (ASFA) TRAINING SERIES**

**COLLABORATION WITH NATIVE AMERICAN TRIBES: ICWA AND ASFA**

**TRAINER'S GUIDE**

**January 2003**

**Developed by  
The Institute for Child and Family Policy  
Edmund S. Muskie School of Public Service  
University of Southern Maine  
Portland, Maine**

**Funded by  
The U.S. Department of Health and Human Services  
Administration for Children and Families  
Children's Bureau  
Washington, D.C.**



**THE ADOPTION AND SAFE FAMILIES ACT (ASFA) TRAINING SERIES**  
**COLLABORATION WITH NATIVE AMERICAN TRIBES: ICWA AND ASFA**

**Introduction**

The national vision for child welfare is that children will grow up in safe, nurturing and stable environments. To help achieve that vision, state and county child welfare agencies are striving to assure that their practice, systems and management approach ensure that clients needs are assessed quickly, that individualized services for children and families are available and delivered promptly, that the impact of the services is monitored and, if need be, that services are modified.

The emphasis on results and the use of data to measure progress toward the achievement of outcomes carry clear expectations for child welfare administrators, supervisors and managers. While agencies are making progress implementing Adoption and Safe Families Act (ASFA), more work needs to be done to assure that the managerial and supervisory day to day decisions are informed by data and reports, that agencies refine internal administrative systems to support practice and that training continues to enhance the skills needed to successfully implement the practice, managerial and legal implications of ASFA.

The document you are reading is one in a set of trainer's guides designed to communicate information on the Adoption and Safe Families Act (ASFA) that goes beyond introductory, compliance based topics. While this material is designed primarily for training purposes, it certainly is adaptable to other forums, such as internal or external workshops, presentations, newsletters or briefings on ASFA and could be successfully presented to child welfare administrators, supervisors, managers, foster parents, caseworkers, providers, teachers and other community stakeholders.

**The Training Series**

The trainer's guides in this series are:

**The Adoption and Safe Families Act (ASFA) and the Child and Family Services Reviews (CFSR): Using Outcomes to Achieve Results**

This trainer's guide highlights the major requirements of ASFA, presents federal outcomes and measures and systemic factors and provides an opportunity to discuss the philosophy, practice implications and results of the CFSR.

**Action Planning: A Problem Solving Tool**

This trainer's guide introduces and demonstrates how the use of Action Planning can assist child welfare managers and supervisors in planning, managing and evaluating practice, systems and programs toward the achievement of desired outcomes.

### **Collaboration with Native American Tribes: ICWA and ASFA**

In the child welfare system Native American children have different service delivery systems as well as laws that apply to them. Therefore, individuals must ask different questions and make different assumptions in their efforts to identify and work with Native American children and families. Because of the importance of the interaction between the agency and tribes, this trainer's guide focuses on successful approaches to collaboration, the requirements of the Indian Child Welfare Act (ICWA) and ASFA and the practice considerations when working with Native American children and families.

### **Using Data to Measure Success**

Child welfare managers and supervisors are increasingly expected to be able to use data, information and reports to guide decision making and to determine what is working and what isn't working in the organization, with practice and in the service delivery system. This trainer's guide gives participants practice in analyzing reports and in using basic data tools for reading and interpreting data.

### **Change is all Around Us: Tools to Build Commitment to Change**

In most organizations change occurs constantly. In order to be effective in leading and modeling change management skills, supervisors and managers must understand the dynamics of avoiding resistance to change and how to build commitment to it. This trainer's guide includes a model for building commitment to change, provides an opportunity to build on these skills and includes use of a case study, *Family Net: An Automated Child Welfare Information System* which explores organizational and managerial issues when a major change in the workplace takes place.

### **Collaboration with the Courts (under development)**

ASFA promotes the concept that the child protective system involves a network of interrelated agencies and services. The courts, of course, are an essential piece of this network. This trainer's guide explores what the courts and child protective agencies identify as their main opportunities, challenges and needs as they work together and independently to carry out their required activities in child welfare cases.

## **Notes on Using These Trainer's Guides**

The Muskie project team expects that each agency will use the *Adoption and Safe Families Act (ASFA) Training Series* in a variety of ways, thus we designed the training guides to be easily modified to accommodate the differing needs of child welfare agencies. This approach enables each public child welfare agency to customize these

training guides to meet its unique needs -- in effect to use the materials contained in this series to guide its own workshops, briefings and presentations. For example, some agencies will select and use material from all of the trainer's guides, others will use only 1 or 2 of the guides, while others will use these guides as a springboard to create their own materials to better suit their needs. The material in these guides is proven to accommodate and support this type of adaptation by child welfare personnel. At minimum, an agency will need to adapt the material by adding their own agency's outcome measures, results of the Child and Family Services Review (CFSR), policies, regulations, data, reports and other state or county specific materials.

To increase usability, this trainer's guide and the others in the series have the same format. The pages are divided into two columns. One contains the text of the guide and the other sometimes contains notes on the text and also provides space for users to write their own notes.

Each guide begins with information on the length of time the session will take to complete, the rationale, the learning objectives, activities, sample materials, advance preparation, glossary of terms and an annotated bibliography. The Trainer's Instructions are guidelines for the way a presenter may want to organize the material and thus are an attempt to standardize content, not delivery style. The text (appearing in regular type) provides information on moving through the material, while the text in italic type is a suggestion for what the presenter might actually say as he/she presents the material. Of course, the material in the text can be modified or changed to suit the needs of the presenter and the group. Following the text of the guides are the handouts/overheads that accompany the text. These appear in the order that they are referenced in the text.

### **Additional Resources**

The *Adoption and Safe Families Act (ASFA) Training Series* builds on training material previously produced by the Institute for Child and Family Policy, Edmund S. Muskie School of Public Service at the University of Southern Maine:

- **Using Information Management to Support the Goals of Safety, Permanency and Well Being**, developed as part of a project funded by the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services under Section 426 of the Social Security Act, published September 27, 2000 (<http://www.muskie.usm.maine.edu/sacwis>) and
- **Bringing Together the Child Welfare Team**, developed as part of a project funded by the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services under Section 426 of the Social Security Act, published September 27, 2002 (<http://www.muskie.usm.maine.edu/asfa>).

Several talented experts in child welfare, curriculum design and the adult education field tested and provided feedback on these documents, including the trainer's notes, exercises and handouts, and helped polish the material to better convey the complex concept of outcomes based management.

The training guide(s) can be viewed/downloaded on the internet at <http://www.muskie.maine.edu/asfa>. Or, they can be ordered from Clearinghouse, National Child Welfare Resource Center for Organizational Improvement, University of Southern Maine, One Post Office Square, 400 Congress Street, P.O. Box 15010, Portland, ME 04112. Phone: (207) 780-5813; Fax: (207) 780-5817; e-mail: [clearing@usm.maine.edu](mailto:clearing@usm.maine.edu).

## **Collaboration with Native American Tribes: ICWA and ASFA**

**Time:** Approximately 1.5 hours

**Rationale:** Indian children have different service delivery systems and laws that apply to them; therefore, individuals must ask different questions and make different assumptions when they are identifying and working with Indian children and families. Because of the importance of the interaction between the agency and tribes, this module focuses on successful approaches to collaboration, the requirements of the Indian Child Welfare Act (ICWA) and the Adoption and Safe Families Act (ASFA) and some practice considerations when working with Native American Indian children and families.

### **Learning Objectives**

After completing this module, the participant should be able to:

- Identify the tribes in his/her state/county and how to locate resources related to tribes
- Explain the characteristics of collaboration
- Be able to explain the relationship between ASFA and the Indian Child Welfare Act (ICWA)
- Be able to identify and discuss the application of ASFA and ICWA requirements to a child welfare case

### **Activities**

- Become acquainted with resources regarding American Indian Tribes (10 minutes)
- Exercise: Storyboard a large group activity identifying successful approaches to collaboration with tribes and

successful approaches to collaboration with tribes and tools that can help (40 minutes)

- Review the content of the Top Ten Tips for State/Tribe Collaboration Around ASFA Implementation (10 minutes)
- Comparison of ASFA and ICWA: The Highlights (10 minutes)
- Exercise: Explore successful approaches to collaborating around ASFA using a case example (50 minutes)

### **Sample Materials**

- Definition of Collaborate (Overhead #1)
- Cross System Collaboration: Tools That Work (Overhead #2)
- Top Ten Tips for State/Tribe Collaboration around ASFA Implementation (Overhead #3)
- ASFA and ICWA: The Highlights (Overhead #4)
- 'Kelly' Case, participant's version (Overhead #5)
- 'Kelly' Case, trainer's version (Overhead #6)

Overheads/handouts are designed as "overheads", but they can be used as both overheads and/or handouts.

### **Advance Preparation**

Identify and prepare a list of the federally recognized tribes in the state. To find this information, visit

<http://www.kstrom.net/isk/maps/tribesbystate.html>

Invite representatives from local tribes to help prepare training material and participate in this session. If there are no tribes in the state, the next step would be to seek out an Indian organization within the state. However, if there are no tribes or Indian

within the state. However, if there are no tribes or Indian organizations within the state, then you should seek out regional or national Indian organizations to help you out with the process.

### **Glossary of Terms**

*Collaborate*: to work jointly with others, to cooperate with or willingly assist an agency or person with which one is not immediately connected.

*Sovereignty*: Having the status of being a distinct political society, separated from others, capable of managing its own affairs and governing itself. (American Indian tribes have sovereignty and are considered sovereign nations by the United States.)

### **Bibliography and Suggested Reading**

- **Publications**

*Adoption and Safe Families Act of 1997*. (1997) Public Law 105-89.

*Colorado Indian Child Welfare Training: Participant's Manual*. (June 2000) Prepared by the State of Colorado, The National Resource Center for Organizational Improvement, Edmund S. Muskie School of Public Service, University of Southern Maine, Portland, ME and the National Indian Child Welfare Association, Portland, OR

This manual accompanies a training session on handling child welfare cases involving American Indian children. It includes material on the Indian Child Welfare Act of 1978 (ICWA) and the Adoption and Safe Families Act of 1997 (ASFA), as well as information on determining when ICWA and related agreements apply and material on case related issues, such as determination of an "Indian Child", jurisdiction, emergency removal, Termination of Parental Rights and the role of tribes. Though the material is based on child welfare practice in Colorado, this manual could be helpful to anyone dealing with child welfare cases involving Indian families..

Cross, T.A., Earle, K.A., Simmons, D. (2000) *Child Abuse and Neglect in Indian Country: Policy Issues*. Families in Society, Vol. 81, No. 1, pp. 49-58.

This article traces the conditions that lead to the passage of the Indian Child Welfare Act in 1978. Although the Act was a major step in returning the care of Indian children to their people, there are still issues that prevent its full operationalization. The article discusses these and supplies some recommendations for improvement.

Earle, Kathleen A. (December 2000) *Child Abuse and Neglect: An Examination of American Indian Data*. Seattle, WA: Casey Family Programs and the National Indian Child Welfare Association and the U.S. Department of Health and Human Services.

This report presents the findings of a research study designed to obtain data regarding the current status of child abuse and/or neglect of Native American children in the U.S. It also includes background material on the problem of child abuse and neglect in Indian country, and a discussion of the effectiveness of child abuse reporting laws and policies for native people.

Hoel, James L. (1998) *Cross-System Collaboration: Tools That Work*. Washington, D.C.: Child Welfare League of America.

This book presents a collection, or "toolbox," of effective principles of collaboration. Chapters describe tools that work in the areas of structure, leadership, and interpersonal elements. The material for the publication came from the Mapping a New Direction III project- a project that involves partners representing 11 counties in Iowa that are collaborating to manage new community-based juvenile justice programs and local service delivery systems that provide comprehensive service to families.

Indian Child Welfare Act of 1978. (1978) Public Law 95-608, 25 U.S.C. paragraph 1901 et seq.

Simmons, David and Trope, Jack. ( September 1999) *P.L. 105-89 Adoption and Safe Families Act of 1997: Issues for Tribes and States Serving Indian Children*. Portland, ME: National Resource Center for Organizational Improvement, Edmund S. Muskie School of Public Service, University of Southern Maine, Portland, ME.

ASFA does not specifically address how its provisions interface with those of the Indian Child Welfare Act, especially those related to the principles of tribal sovereignty, jurisdictional or service delivery issues unique to Indian children. This book provides information about the impact of ASFA upon Indian children and families in state systems, upon tribal programs and possible tribal responses to ASFA.

Spaulding for Children. (1995) *Understanding the Indian Child Welfare Act*. Spaulding for Children, National Resource Center for Special Needs Adoption, 16250 Northland Dr., Southfield, MI. #113, \$95

This 17 minute video presents a straight forward presentation that highlights the provisions of the Indian Child Welfare Act.

- **On Line**

<http://www.acf.dhhs.gov/programs/dts>

This is the website for the federal Administration for Children and Families, Office of Community Services, Division of Tribal Services. It contains information on tribal issues, including information on current issues related to tribes, links to American Indian/Alaska Native websites, tribal resources and federal websites.

<http://www.calib.com/nccanch>

National Clearing House on Child Abuse and Neglect Information provides links to the National Research Centers and Clearinghouses funded by the Children's Bureau to offer technical assistance and training to help states, tribes and public child welfare agencies implement federal legislation relevant to child welfare.

<http://www.nicwa.org>

The National Indian Child Welfare Association website is a good source of information on American Indian child welfare. The Association works on behalf of Indian children and families by providing public policy, research, advocacy, information and training and community development services. The website provides information about the association, its services and publications.

<http://www.muskie.usm.maine.edu/asfa>

This website was developed by the Institute for Child and Family Policy, Edmund S. Muskie School of Public Service at the University of Southern Maine. It contains a curriculum titled 'Bringing Together the Child Welfare Team' that is designed to help child welfare supervisors, managers and senior administrators understand and implement the requirements of the Adoption and Safe Families Act (ASFA). The site also contains final reports and related state by state data from two phone polls, conducted in 2001 and 2002, that asked child welfare and court improvement project representatives to discuss how meeting ASFA requirements has changed the way that child welfare agencies do business and to identify what skills child welfare managers and supervisors need to implement the requirements of ASFA. It includes a section on collaboration with Native American tribes.

### **Trainer's Instructions**

1. Begin the session by welcoming the group and introducing yourself and other presenters and presenting the agenda and materials. Then introduce the module by presenting the rationale and objectives.
2. Begin the discussion using the following as a guide. Refer to Overhead #1 - the definition of collaborate.

*Collaborate means to work jointly with others, to cooperate with or willingly assist a unit, person or organization with which one is not immediately connected. Collaboration can occur within this agency, for example with the foster care recruiters or the budget office or with MIS, and it can occur with organizations external to the agency, for example when a caseworker addresses issues related to serving Native American Indian families. To deal successfully with tribes requires an understanding of the legislation involved but also skills in collaboration with tribal representatives. So let's first look at some of the*

*tribal representatives. So let's first look at some of the issues involving collaboration with Indian tribes.*

3. Introduce the next activity in this module, engaging tribes.

Invite the tribal representatives to participate in or lead this discussion. Begin by asking participants to name the American Indian tribes, if any, that are located in the state/county. Share the website that helps locate tribes by state:

<http://www.kstrom.net/isk/maps/tribesbystate.html>.

Remind the group that The Indian Child Welfare Act (ICWA), which was passed in 1978, was intended to reduce the high percentage of Indian children removed from their homes and also to reduce the high number of adoptions of Native American Indian children by primarily white families. Note that ASFA does not modify nor supercede ICWA and should not be viewed as necessarily affecting the application of the Indian Child Welfare Act in the case of children involved in custody proceedings. Since Indian children have different service delivery systems as well as laws that apply to them, individuals must ask different questions and make different assumptions in their efforts to identify and work with Indian children and families.

4. Move into a discussion of collaboration with Indian tribes using a storyboard exercise. Refer to the flipcharts posted around the room, noting the question written on each flipchart. The questions are:

- How has (or hasn't) ICWA effected child welfare practice?
- What are some ways in which you have collaborated with the tribes in your area?
- What works well for developing successful collaboration with the tribes in your area/county/ region?

Notes in italics in the Trainer's Instructions section are talking points, comments that the trainer may make directly to the participants or use to form the basis of his/her presentation.

- What obstacles impede successful collaboration?
- How have you overcome these obstacles?

Provide each participant with some sticky notes and give them 5 minutes to write answers to the questions on the sticky notes.

5. After 5 minutes, ask participants to post their sticky note on the associated flipchart. Process the comments posted on each flipchart with the group.

6. Discuss the characteristics of successful collaborations using Overhead #2 - “Cross-System Collaboration: Tools that Work.” Review the overhead highlighting a few tools listed under the three elements: Leadership, Interpersonal and Structural. Refer to the “What works for good collaboration with tribes in your area/county/region?” flipchart created during the previous storyboard exercise and identify any of the “tools” from the “Cross-System Collaboration: Tools That Work” overhead that were posted by the participants on the flipchart. Then refer to the “What obstacles impede successful collaboration” flipchart and ask the group to identify “tools” that might have helped remove the obstacles.

7. Continue by saying:

*Now that we have discussed some of the aspects of collaboration with tribes, let's focus on collaboration with tribes since the implementation of ASFA. First let look at Overhead #3: Top Ten Tips for State/Tribe Collaboration Around ASFA Implementation, and then let's compare the requirements of ASFA and ICWA (Overhead #4).*

8. Introduce the next exercise by saying:

*When dealing with cases involving Native American Indian families, supervisors and workers often times struggle with two issues: (1) how to identify an Indian child, and (2) when to contact the tribe. As you work with your staff to adequately assure that the requirements of the Indian Child Welfare Act are met, all Indian children are identified, and the tribe(s) contacted in every case involving an Indian child, you may find it useful to refer to the handouts we have used in this module.*

9. Ask the group to break into 2 smaller groups. Have both groups read the 'Kelly' case (Overhead #5) and then ask one group to answer questions 1-5 and the second group to answer questions 6-10. Ask each group to appoint a recorder. After 10 minutes have the groups come together and share their answers to the questions. Process the responses using the 'Kelly' Case, trainer's version (Overhead #6).

10. Ask for and address questions.

11. To wrap up the module, ask participants to reflect and then share the key points they learned from these discussions and activities about collaboration with Native American Indian tribes.



*Collaborate:* to work jointly with others, to cooperate with or willingly assist a person or an agency with which one is not immediately connected.



## Cross-System Collaboration: Tools That Work

### Leadership Elements

- **Take Care of Business:** Failure to attend to basic organizational details will quickly breed frustration. Effective and strategic management of such details communicates an image of the collaborative's significance and organizational integrity.
- **Formal Management Tools:** The level of managerial sophistication should be geared to the complexity of the project.
- **Vision:** There should be a vision statement about the project and the process of collaboration itself that is clear, inspirational, credible, authentic, and realistically supported.
- **Impasses and Breakthroughs:** Attention to timing allows good leaders to know when work is moving along and they can recede into the background and let empowerment occur; when a stronger role is necessary to move beyond points of impasse; and when to celebrate breakthroughs.
- **Process Feedback:** Help the collaborative group reflect on its own process.
- **Breaking Barriers:** The ability to address and resolve critical barriers that block a project's success or a collaborative group's course of action is a key leadership skill.
- **Challenge and Demand:** The authoritative exercise of leadership is not directed toward making people do what the leader wants. It is directed toward the critical anxieties and hostilities that inevitably arise in collaborative work. The purpose is to free participants to engage in real dialogue and to energize them to do real work.

### Interpersonal Elements

- **Personalities Matter:** Some people partner better than others, as do some organizations. For both, the important qualities include: flexibility, openness, patience, interpersonal

sensitivity, communication skills, courage, the ability to take risks, the willingness to extend trust, and the willingness to do things in a new way.

- **Organizational Respect:** A climate of mutual respect demands that each member of the collaboration devote time to understanding the norms and values of their partners' organizational culture.
- **Organizational Nurture:** Nurture needs to work organizationally as well as individually. Good partners work hard to empathically understand each other.
- **Organizational Disclosure:** Direct, open communication develops trust and connection. Staff issues and financial operations provide critical venues for organizational self-disclosure.
- **Organizational Trust:** Trust in one another's ability to consistently follow through on tasks is critical. Organizational representatives must possess the information and latitude to act as an empowered custodian of their organization's resources and its capacity for risk.
- **Strength-Based Approach:** The courage to honestly analyze our own work without projection or blame. Organizations whose overall culture is negative and distrustful of clients and their own staff will not be successful in a strength-based approach nor in a collaborative effort.
- **Extending the Organization:** Good partners respect appropriate boundaries, but they also extend themselves to support their partners. Important to collaboration is the ability to make the extra effort to assure a high-quality result without resentment or grandiosity.
- **Organizational Investment:** The allocation of our time signals allocation of value.

## Structural Elements

- **Equity of Investment:** "Everyone must bring something to the table". This can be dollars or staff time or expertise or effort or the willingness to share risk. A willingness to commit important resources is more than a state of mind.
- **Strong mandates from top administrators:** This should include highly visible modeling from top administrators.

- **Boundaries:** Limits need to be clarified and tested in order for real trust to grow. Successful collaboration focuses on close relationships, new intimacy, and new relationships. Closeness, in turn, involves risk.
- **Clear Goals:** Service integration efforts must be guided by results-driven models that specify clear accomplishments.
- **Concrete Tasks:** “Mutual, effortful action creates connection.”
- **Peer Networking:** Structure opportunities for members to meet with others that are working on similar projects in other jurisdictions.
- **Data and Outcomes:** Objective data helps to unify a diverse membership and provide an objective basis for measuring success and for focusing collaborative effort.
- **Blending Funding Streams:** Effective allocation of fiscal resources is a critical management function. When resources are pooled and mutually administered, the fundamental structure of the collaborative relationship is redefined.
- **Executive Control Function:** One person or agency needs to assume leadership in terms of managing the structure and organization. The critical issue is not power and control; the critical issue is skill and resources.
- **Increased Inclusion:** The overall momentum of each collaborative should be toward expanding the range of membership in the partnership.

Adapted from Cross-System Collaboration: Tools That Work by James L. Hoel, published by CWLA, 1998



## **Top Ten Tips for State/Tribe Collaboration Around ASFA Implementation**

1. Approach tribes with respect as unique, sovereign entities. Treat tribes as partners, not adversaries.
2. Know the law and state/tribal agreements.
3. Inquire whether children/parents are American Indian in *all* cases at *every* stage of the case.
4. Provide tribes with timely notice of ICWA cases. Be sure to notify the right contact at the tribe, usually the social service provider.
5. Give tribal court orders and acts full faith and credit. Tribal courts have full authority to conduct Indian child custody proceedings (ICWA, P.L. 95-608, Section 1911 (d)).
6. Work collaboratively with tribal social workers in implementing ICWA requirements and include tribal social workers in all aspects of case plan development, including permanency planning.
7. Remember that the ICWA active efforts requirement is a higher standard of service than the reasonable efforts requirement under ASFA.
8. Contact extended family members. Remember that American Indian extended families are much larger than mainstream families and include relatives beyond grandparents, aunts, uncles, and cousins.
9. Follow ICWA or Tribal Placement Preferences.
10. Do not fast-track potential Indian child welfare cases without immediately involving the tribes and/or extended family members.

Source: Amanda Cross, Institute for Child and Family Policy, Muskie School, University of Southern Maine, in consultation with the National Indian Child Welfare Association.



## ASFA and ICWA: The Highlights

ASFA	ICWA	Integration of ASFA & ICWA
ASFA applies to all children in state custody.	ICWA applies to American Indian children who enter the child welfare system.	In spite of its later date of enactment, ASFA has never been interpreted as modifying provisions of ICWA. Rules of statutory construction imply that specific legislative enactment's (ICWA) take precedence over general statutory agreements (ASFA).
<u>Reasonable efforts</u> are not required in aggravated circumstances (state defined), when there has been murder of a sibling, felony assault of the child or previous Termination of Parental Rights (TPR). Place child and finalize permanent placement.	<u>Active Efforts</u> are required for All American Indian families or custodians.	ASFA lays out circumstances under which reasonable efforts are not required, but does not prohibit states from making reasonable efforts. Since ICWA requires active efforts for all families, states should not seek suspension of services unless the state can meet the ICWA legal standards for TPR or the child is in a permanent placement that does not require TPR.
<u>TPR</u> must be filed when a child has been in care 15 of the last 22 months. Exceptions to the TPR requirement include relative care, best interests, case plan services not delivered or the court has determined that compelling reasons apply.	<u>TPR</u> should only occur when ICWA legal standards are met: There is evidence beyond a reasonable doubt, expert witnesses have given testimony, continued custody by parent is likely to result in serious harm, and active efforts have been made.	Indian children may be eligible for TPR exceptions if: ICWA legal standards for TPR cannot be met, ICWA active efforts requirements have not been met (case plan services not provided), the child is in an ICWA extended family preferred placement (relative care), or the parent is progressing.

ASFA	ICWA	Integration of ASFA & ICWA
<p><u>Permanency Hearing</u> Within 12 months after child has entered foster care. Within 30 days after determination reasonable efforts not required. Permanency plan developed at hearing.</p>	<p>No Comparable Provision. The child’s tribe, parents and Indian custodians should receive notice of and a chance to participate in the hearing.</p>	<p>Hearings will take place within ASFA timelines, but decisions regarding permanency should be governed by ICWA.  The 12 month hearing is not a “cut-off” date for parental rights. Any permanency plan developed for an Indian child that provides for out-of-home placement would have to follow ICWA placement preferences (extended family member, tribal member, or American Indian family).</p>
<p><u>Cross Jurisdictional Placements</u> -- states may Not delay or deny placement of a child for adoption when an approved family is available outside the jurisdiction responsible for the case.</p>	<p>Tribally-licensed homes are equivalent to state licensed homes. ICWA lists preferred placement with extended family, members of a child’s tribe, or an American Indian family. Adoption proceedings transfer to tribal court, absent good cause or objection by parent.</p>	<p>Placements “outside the jurisdiction” of the state would include tribal jurisdiction. Locating an ICWA preferred placement could be grounds for delaying or denying placement with approved, but not ICWA preferred placement, family. Petition to transfer proceedings to tribal court could be justification to delay the placement pending court action on petition. If the tribe has identified and approved an ICWA placement, the state could be in violation of ASFA if it delayed or denied the placement of an Indian child with such an approved tribal family.</p>

Source: Amanda Cross, Institute for Child and Family Policy, Muskie School, University of Southern Maine, in consultation with David Simmons, National Indian Child Welfare Association

## **'Kelly' Case**

### **Participant's Version**

#### **Case Scenario #1 A**

Kelly is a 20-year-old mother with an 18-month-old son, Sam. She moved to town ten months ago from the \_\_\_\_\_ reservation to live with a cousin. When that didn't work out, Kelly and Sam moved in with her new boyfriend, Shawn. After Kelly moved in with Shawn they began to go out drinking together, leaving Sam with a baby-sitter. One night the couple did not come home. When they did not return the following morning, the baby-sitter's mother called DHS. DHS had to place the children in emergency foster care because Kelly and Sam had gotten into a fight at a bar the night before and both had been jailed.

1. Does ASFA modify or affect the application of ICWA in this case?
2. What steps does the child welfare worker have to take to verify the Indian status of the family and child?
3. Who has jurisdiction over this case? How do you determine jurisdiction?
4. What steps should the worker take prior to court involvement?
5. How much notice must be given to tribes and parents before custody proceedings can be held? Does official notice of proceedings need to be sent to the (Local) \_\_\_\_\_ Tribe, even if Kelly doesn't want to involve her family?

## **Case Scenario #1 B**

The court released Kelly and Shawn, asking them to seek help for substance abuse problems. Shawn insisted he had no problems. Kelly agreed to substance abuse services, but did not keep many of her appointments. DHS decided to keep Sam in foster care.

One night Kelly stayed home when Shawn went out. When Shawn came home the couple fought, yelling loudly. A neighbor called the police about a domestic disturbance. Kelly fled to her cousin's house. She made arrangements to stay there for a few months, but after two weeks moved back in with Shawn.

6. What steps should a worker take when considering where to place Sam for foster or kinship care? Does ICWA state an order of placement preference for Sam?
7. Would it make sense to cease reasonable efforts in this case and pursue termination of parental rights (TPR)? Why?
8. What can the worker include in the case plan to satisfy the "active efforts" requirements of ICWA?
9. How can tribal involvement occur in case planning? How can you involve the tribe and extended family as permanency planning resources?
10. Since the tribe is out of state, how can the worker seek culturally appropriate services?

Source: Amanda Cross, Institute for Child and Family Policy, Muskie School, University of Southern Maine, in consultation with Patty Elofson, National Indian Child Welfare Association.

## **'Kelly' Case Trainer's Version**

### **Case Scenario #1 A**

Kelly is a 20-year-old mother with an 18-month-old son, Sam. She moved to town ten months ago from the \_\_\_\_\_ reservation to live with a cousin. When that didn't work out, Kelly and Sam moved in with her new boyfriend, Shawn. After Kelly moved in with Shawn they began to go out drinking together, leaving Sam with a baby-sitter. One night the couple did not come home. When they did not return the following morning, the baby-sitter's mother called DHS. DHS had to place the children in emergency foster care because Kelly and Sam had gotten into a fight at a bar the night before and both had been jailed.

1. Does ASFA modify or affect the application of ICWA in this case?
  - ASFA does not modify or affect the application of ICWA for Indian children who are involved in state child custody proceedings. Based on current law and legislative history ICWA has not been modified or changed by ASFA. States are still obligated to follow ICWA.
  
2. What steps does the child welfare worker have to take to verify the Indian status of the family and child?
  - At intake and at every stage of the case the worker should diligently inquire whether the child/parents are American Indian. Workers need to ask about absent parents and extended family members.
  - The worker should look at answers to race/ethnicity self-identification questions on all forms.

- The worker needs to contact the child/parent’s tribe or tribal providers about ICWA eligibility. This inquiry can be made by letter or phone to the tribal enrollment office. (This does not constitute “Notice.”) In addition, discuss services, providers, placement options, and contacts for case planning with tribal providers. If the parents do not provide tribal information, consult with other relatives, Indian social services, health or educational organizations, or contact the Bureau of Indian Affairs in Washington, D.C. for information on parents and tribal contact information. If they don’t respond, keep trying.
    - The worker should fill out a family tree with the client and tribal social worker.
    - The worker needs to document in the case file all inquiries made regarding the child’s ethnicity.
3. Who has jurisdiction over this case? How do you determine jurisdiction?
- The tribe has exclusive jurisdiction when a child resides or is domiciled within a reservation or is a ward of the tribal court.
  - The tribal and state court have concurrent jurisdiction when a child resides or is domiciled off the reservation and is not a ward of the tribal court.
  - The state must ask the tribe if they would like jurisdiction transferred to the tribal court. The tribe has the right to intervene in the case even if jurisdiction is not transferred to the tribal court.
4. What steps should the worker take prior to court involvement?
- The worker should check with the tribe to see if the child is domiciled on the reservation or a ward of the tribal court.
  - Workers must follow ICWA placement preferences, even in emergency placements. The preferences outlined in the Act are placement with:
    - A member of the child’s extended family

- A foster home licensed or approved by the child's tribe
  - An Indian foster home licensed or approved by an authorized non-Indian licensing authority
  - An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child's needs.
- The worker should develop a specific and detailed account of the circumstances that led to the conclusion that the child would suffer imminent physical danger or harm by remaining with their family. (ICWA requires higher standards of proof than generally apply.)
  - The worker needs to set forth a specific action plan describing the “active” reunification efforts already undertaken and those which are planned to restore the child to the parents. (“Active efforts” imply energetic efforts that show an active attempt to assist in alleviating the child’s safety concerns, not just an identification of the problems or solutions.)
  - Provide official Notice to the tribe(s) and parents via registered mail, return receipt requested.

5. How much notice must be given to tribes and parents before a custody proceedings can be held? Does official notice of proceedings need to be sent to the \_\_\_\_\_ Tribe, even if Kelly doesn't want to involve her family?

- Tribes must receive ten days notice before a custody proceedings can be held. If the tribe or a parent asks for an additional 20 days to prepare for the proceedings, the proceedings can occur after 30 days. Formal notice is required by section 1912(a) of ICWA, even if a parent does not want to involve their family.
- A temporary custody review may have to take place within five days. This means a second hearing will have to be held ten days after the tribe has been notified.



## Case Scenario #1 B

The court released Kelly and Shawn, asking them to seek help for substance abuse problems. Shawn insisted he had no problems. Kelly agreed to substance abuse services, but did not keep many of her appointments. DHS decided to keep Sam in foster care.

One night Kelly stayed home when Shawn went out. When Shawn came home the couple fought, yelling loudly. A neighbor called the police about a domestic disturbance. Kelly fled to her cousin's house. She made arrangements to stay there for a few months, but after two weeks moved back in with Shawn.

6. What steps should a worker take when considering where to place Sam for foster or kinship care? Does ICWA state an order of placement preference for Sam?
- A worker should consider that Sam needs to be placed in the least restrictive setting and in reasonable proximity to his permanent home.
  - Sam's placement must follow the placement preferences outlined in the Indian Child Welfare Act -- placement with:
    - A member of the child's extended family
    - A foster home licensed or approved by the child's tribe
    - An Indian foster home licensed or approved by an authorized non-Indian licensing authority
    - An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child's needs.
  - The worker should remember that locating an ICWA preferred placement could be grounds for delaying or denying placement with an "approved," but not ICWA preferred, placement family. Due to the ICWA placement preferences, there are circumstances when a state may not be considered to

have violated ASFA by seemingly denying or delaying placement with an “approved family.”

- ASFA mandates placements “outside the jurisdiction” of the state when approved homes are available. If the tribe has identified and approved an ICWA placement, the state could be in violation of ASFA if it delays or denies the placement of an Indian child with an approved tribal family. (Tribally licensed homes are legally equivalent to state licensed homes.)

7. Would it make sense to cease reasonable efforts in this case and pursue termination of parental rights (TPR)? Why?

- No. ICWA provides that parental rights can only be terminated where there is evidence beyond a reasonable doubt, including testimony of expert witnesses, that the continued custody of the child by the parent is likely to seriously damage the child. Active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family must have been made before a termination of parental rights is sought. In evaluating the “failure to provide services” exception to the TPR filing requirement, necessary services to be provided to the family would be circumscribed by ICWA’s active efforts requirement. Thus, failure to adequately utilize appropriate tribal, extended family and community resources could trigger this exception in ASFA. States should not seek suspension of services unless the state can meet the higher burden of proof required by ICWA legal standards.

8. What can the worker include in the case plan to satisfy the “active efforts” requirements of ICWA?

- Under ICWA, a state court will consider whether active efforts have been made in support of a petition to terminate parental rights of an Indian parent. Therefore, when working on an ICWA case, it makes sense to pursue active

efforts with Indian families beyond the reasonable efforts required under ASFA.

- To satisfy the “active efforts” requirements of ICWA (the following is not an exhaustive list):
  - The worker should develop a case plan with the assistance of the parent that involves the use of tribal/Indian community resources -- extended family resources, tribal services, urban Indian programs, and individual Indian caregivers, such as medicine people and ministers.
  - The worker must document provision of timely and culturally relevant resources on an intense level.
  - The worker should assist parents and children in maintaining an ongoing family relationship.
  - The worker needs to develop creative case plans that identify services and programs that will assist the family.

9. How can tribal involvement occur in case planning? How can you involve the tribe and extended family as permanency planning resources?

- Tribes can stay involved in case planning if the worker maintains contact with the tribal social worker. The tribal social worker can participate in case staffings and court reviews via telephone. Both workers can maintain contact with extended family members. Also, official notice of every proceeding must be sent to the Tribe and to the parents, regardless of if they respond.

10. Since the tribe is out of state, how can the worker seek culturally appropriate services?

- Work with the tribal worker to help identify resources in the area
- Investigate urban Indian programs in the area, including education or health programs

- Access American Indian organization information on the web.

Source: Amanda Cross, Institute for Child and Family Policy, Muskie School, University of Southern Maine, in consultation with Patty Elofson, National Indian Child Welfare Association.

