

## Washington State ICW Training Application Scenarios

In each of these scenarios, ask yourself if ICWA could apply and what other information you need to confirm application. Identify the clues that help you develop your critique. Also ask yourself how would you get that information and who would you need to assist you.

- 1) A birth mom claims to have American Indian Ancestry has her child removed after a report of child abuse. The decision to remove comes during an initial investigation of the allegation by state CPS. The investigation by CPS determines that the abuse presented a future court determination that the emergency removal was warranted. The birth mom is not enrolled in her tribe and neither is the child that was removed, but both are eligible for membership according to the child's tribe. The non-custodial father is living in another state and has had no contact with the mom or child for over two years. While you have a name for the father, no other information is forthcoming from the birth mom.
- 2) State CPS investigates a report of suspected child neglect involving two birth parents living near an Indian Reservation. Both claim to be members of a nearby tribe. CPS has not removed their two young children, but has listed them at risk for a removal and is planning on removing the children soon if the problems in the home do not improve immediately. The CPS determines that in-home services could help address concerns without a removal and ask the birth parents to agree to a voluntary services agreement, which they do. In-home services begin immediately without court involvement. The children's tribe confirms that both parents are enrolled members. The children are not enrolled, but may be eligible for membership.
- 3) An Indian custodian under ICWA is investigated by tribal CPS for a child abuse allegation. The tribal CPS worker decides that an emergency removal is necessary and removes the two youngest children under the age of 12 and files a petition in tribal court asking for continuation of the out of home placement. The third child is 17 and is not removed. The Indian custodian is a tribal member of the tribe whose reservation she lives on and the children are tribal member of the same tribe.

- 4) An adolescent, who is an enrolled member of a federally-recognized tribe, has been caught skipping school again and drinking at an older friend's house. She is currently on probation for joy riding in a stolen car with a friend. Her state probation counselor feels that her mom, who is a single parent, cannot adequately control her behavior and has asked the state court to place her in a group home where she can get more intensive supervision and access to treatment services.
- 5) An American Indian mom is seeking custody of her 12 year old daughter after the daughter's recent visitation with her non-custodial birth father where the birth father refused to return his daughter to her. The birth mother is a member of a tribe, but the child is not a member, but may be eligible for membership. The father is a member of a Canadian First Nation in British Columbia. The father placed his daughter with his mother shortly before the visit was to end and has left for seasonal work and won't be back again for a few weeks. The paternal grandmother has now petitioned a state court to award placement with her, claiming the mother is unfit to care for her child and that the father is not currently able to provide proper supervision because he often works out of state for long periods of time. Neither the birth mother nor the birth father has ever been to court to establish legal custody. The state court asks state CPS to investigate the allegations the grandmother has made before making a decision on a placement with the grandmother.
- 6) A state CPS caseworker is assigned to a case involving a birth father and two children between the ages of four and six years of age. The case started with a report from a teacher that the two children were being left home alone without any supervision from their parents. Upon initial investigation you found the children at the home with a family friend. The family friend was living in the home and was caring for the children while their birth father was away tending to family business on his tribe's reservation in another state. The children had been placed in the care of the family friend by the birth father. The family friend said the father was expected back in the next 30 days. The children seem to be fine, but the family friend expresses concern about having to care for the children by herself for the remaining time while the father is gone and says she won't be able to keep the children until the father returns. The CPS caseworker says they might be able to arrange a voluntary foster care placement to care for the children while the father is gone.

## **Scenario I**

Mona, age 28, and David, age 28, are married and have three children: Stewart, age 6, Lori, age 4, and Emma, age 2. In addition, Mona has a child, Alex 9, from a previous marriage. Mona is an enrolled member of the Coeur D' Alene Tribe and David is an enrolled member of the Confederated Tribes of Salish and Kootenai. All of their children, except Alex, are enrolled in the Coeur D' Alene Tribe. Alex is not enrolled in the Coeur D' Alene Tribe because he does not meet the blood quantum criteria for enrollment set by the tribe. The family lives in Spokane, Washington. The family moved from the Coeur D' Alene Tribe reservation to Spokane 3 months ago because of David's construction job. At the end of the summer they will return to home to the Coeur D' Alene Tribe.

Mona and David are being investigated by Washington Child Protective Services (CPS) for abuse after bruises were discovered on Stewart's back by his teacher. The school calls State CPS and CPS arrived at school to question Stewart and looked at his bruises. The State CPS investigator believes that Stewart needs immediate medical attention and further examination, so law enforcement is contacted and law enforcement gives CPS authority to transport Stewart to the hospital for medical services. Mona is telephoned by CPS and told that Stewart was being taken from school to the hospital for x-rays and that she should come to the hospital. David was called at work. The state CPS investigator has also contacted Mona's Tribe after learning that the children may be Tribal members. Mona, David and the state case worker meet at the hospital. After further examinations and x-rays, a small fracture was found on Stewart's right ankle.

When questioned by State CPS, David admitted hitting Stewart and knocking him to the floor when he refused to do his homework the other evening. Mona said that she knew about it but was afraid to take Stewart to the doctor because she was afraid that her children might be taken away. She knew the bruises would eventually go away. She did not know Stewart's ankle was broken.

This was the third incident in which David had been investigated for child abuse. The other two incidents happened on Coeur D'Alene Tribal lands so the Tribal Indian Child Welfare (ICW) program investigated. Neither time were the children taken from the home upon investigation, but soon after the second incident the tribal court ruled that the children were in need of protective supervision and the children were removed by the tribal ICW program. The children that were placed into protective custody are the same children that David and Mona are currently parenting together. David was ordered by the tribal court to receive counseling in managing his anger. He completed a six-week counseling session, and both Mona and David attended mandatory parenting classes. The tribal court released the

children from protective custody six months ago following the parents' completion of their case plan, but has continued the case as a voluntary services case. When he was 18, David had the rights to his first child, Suzanna, terminated in a state court proceeding.

Stewart was treated and released from the hospital but the state social worker would not allow him to return home. He also suggested that all four children be placed in emergency shelter care pending further investigation and a safety plan being developed. The parents do not want their children to be removed from their home.

**Does ICWA apply?**

**Are there any issues that need clarification to confirm this?**

**Which children are “Indian Children” under ICWA?**

**Who could assist you in confirming the children’s membership status?**

**What is the process going forward if the tribe does not reply in inquiries about membership?**

**What ICWA requirements would apply at this stage?**

**Can the state case worker remove the children and place them in protective custody in an emergency foster home in Spokane?**

**Who has jurisdiction? What kind of jurisdiction?**

**What are some best practices at this point in the case?**

Forty eight hours later, at the emergency custody hearing the court finds that there is probable cause that the children are at risk of imminent physical harm. The Court determines that the children were appropriately placed in emergency foster care.

**What next steps does the case manager take in dealing with the children’s tribe?**

**Notification?**

**Jurisdiction?  
Intervention?**

**What steps would the case worker take to prepare for court?**

**The dependency hearing for foster care placement?**

**The dispositional hearing?**

**What standard should be used to create a reunification plan for the children and parents?**

**Create this plan:**

**What is the role of the state case worker?**

Since David already has his rights to his first child terminated during prior CA involvement the state case worker argues that he does not need to provide active efforts to reunify these children with David. The state case worker explains that that the state law says that where “aggravated circumstances” are present reasonable and active efforts are not required.

**Is this Correct?**

## **Washington State ICW Training** ***Active Efforts Scenarios***

In each of these scenarios, ask yourself if active efforts have been provided what the evidence of this would be (documentation). Also ask yourself if active efforts have not been provided or were not successful initially, what steps would you take to make the effort successful and how would you document your efforts.

- 1) American Indian birth parents whose two children were removed from them six months ago are now just completing a parenting class that was part of their reunification plan. The parenting class was offered by a private agency that contracts with the state. Both parents are members of a tribe outside of Washington, along with their children. While both parents attended all of the classes, they have not been comfortable with some of the information and the teaching methods the trainer uses. Consequently, the parents have not been eager to participate in class discussions. The parent trainer has raised doubts to the state caseworker about whether the parents have learned enough and are ready to apply their learning based upon their lack of participation in class. The caseworker has told the parents that she is considering not recommending the return of the children at this time base upon this feedback from the parent trainer.
- 2) A state caseworker is working to coordinate services for an Alaskan Native mother so she can have her children returned. Her two school-aged children were removed about nine months ago based upon a severe neglect allegation that was substantiated during the investigation. The father of the children has been absent from the home and the children's lives since shortly after birth. The caseworker has worked closely with the mom and extended family, including driving the mom to appointments wherever possible, locating services that had experience in working with Alaskan Native families and were approved by the children's tribe, and holding FTDM's at appropriate times. Unfortunately, some of the in-patient treatment services that were identified for the mom were not made available until about six months after the removal. In the meantime, the state caseworker referred the mom to state out-patient treatment services and parent training, but the mom had difficulty refraining from drugs and alcohol during that time and relapsed about three months after her children were removed and before she was admitted to in-patient treatment. Three months later the mom is now

close to completing her in-patient treatment program, but was recently diagnosed with moderate depression during the time she was at the in-patient program. The mother's treatment coordinator at the tribal behavioral health clinic says that while the mother making good progress, it will likely be at least another six months before she will be ready to assume full parenting responsibilities. The state court judge has some concerns about waiting another six months before making a permanent placement, but is willing to wait if at the 12-month permanency hearing there is strong evidence that the mom is on track for being able to have her children back full time by the 15 month date from when her children were removed. The state caseworker has shared with the judge that the mother was at a disadvantage while waiting for treatment services and the tribe has played a very important role in helping the mom stay on track despite her depression and other smaller setbacks in her life. The caseworker also shares that there has been good progress in engaging the mom's extended family using FTDM's, which has resulted in the mom receiving additional support. The caseworker has also indicated that they are looking into ways to help the children nurture their tribal relationship and cultural connections using the tribe and extended family.

- 3) A tribal caseworker is collaborating with the state caseworker on a case that presents some very difficult facts. The case involves an American Indian birth mom with a long history of drug and alcohol abuse who had her parental rights terminated to one of her older children three years ago. In that situation, the birth mom allowed the non-custodial birth father, a non-Indian man with a violent history, to watch her children while she was away. During that time the birth father physically assaulted the oldest child almost to the point of killing him and sexually abused the younger child. The father showed no remorse for his actions and even indicated that he might do this again if "provoked by the children." The birth mom was reportedly using drugs when this incident occurred and while she felt very distraught about what happened to her children, she was not able to admit that she may have made a poor decision and placed her children at risk. In the current situation, the birth mom has another child, a toddler that was left at home without supervision for almost two hours while the mother was trying to find diapers and formula. While the mother was gone the toddler fell off a chair and received a big bump on her head and a broken arm. During the investigation the child was removed from the home and placed in a shelter care facility. After the birth mom was located she was tested and not found to be under the influence of any drugs or alcohol, but admitted she did not make diligent attempts to find care for the child while she was gone. The state petitions that the state court to terminate the parental rights of the birth mom and father based upon state and federal law that allows them the discretion to dismiss efforts to reunify and move right to termination of parental rights when there are aggravated

circumstances (previous TPR history and current aggravated circumstances).

- 4) A State caseworker develops a voluntary services agreement with a tribal family that is trying to keep their children from being removed. There are three children ages three, six and eight. State CPS had identified the family a few months ago after a report of neglect was made and has identified their children as at-risk for foster care, but has not yet removed them pending the success of the safety and in-home service plan that are being implemented. The state caseworker has been good at referring the family to state services located nearby and helping with transportation and conducting FTDM's to discuss the plans and other resources and supports. The tribal family lives near the reservation and has asked if they might be able to use some of the tribal services in their tribal community. The state caseworker is not familiar with the tribe's services, but looks into this and discovers that there is a local MOU between the tribal and the regional CA office that provides authority for CA and the tribe to share resources. The tribal case manager is able to work with a tribal ICW caseworker to plan how the tribal family can access tribal services with the state caseworker's involvement. Four months after the voluntary services agreement was signed the birth parents are participating in state and tribal services and have been making progress, but they have missed a few appointments and have shown decreased interest in receiving the services lately. The birth mom says they feel that they have done everything they have been asked to, so why do they have to continue going to appointments and receiving services. The birth father says he is concerned about all the time he has missed in his job to stay in compliance with services agreement and is also questioning why services need to continue. The state caseworker calls for an FTDM where he is able to facilitate some additional support for the birth parents and works with one of the service providers to find another time for appointments. The state caseworker continues to work hard to find another time for appointments. The state caseworker continues to work hard to find the best available services and options to increase the level of support for the family, including using extended family and informal services provided by tribal community members. The birth parents, however, continue to miss appointments and another report of neglect is called into state CPS upon where the children are found to be home unsupervised while the father is gone and the mother is next door visiting her neighbors. After six months, the risk for the children has not decreased enough and the state petitions the court to remove the children with a finding that active efforts were unsuccessful in preventing removal.



## **Scenario II**

Marie is a 27 year old Native woman living in a small town in Washington. She is employed at the local steak house as a waitress. Marie was born on a reservation in Washington where she is enrolled. Her father was an influential leader of the tribe. She moved to the small Washington town four years ago to get away from an unhealthy relationship. She is a tribal member but never bothered to register her son Joe who would be eligible for membership. She has a large extended family on the reservation.

Marie's son, Joe, is age 4 and her ex-boyfriend's child. The child exhibits unhealthy attachment often clinging to strangers or throwing large tantrums when it is time to leave his day care program. Joe is otherwise outgoing, friendly and affectionate.

### **Is Joe an Indian Child under ICWA?**

Marie is chronically depressed. Her self-worth, self-esteem and confidence are very low. She has few friends and relatives in this new community. When she is depressed her drinking becomes a problem. She rarely goes out to socialize; she does most of her drinking at home by herself. She has a good relationship with Joe and she does not inflict physical punishment on her son.

One day Marie failed to pick Joe up from day care. After trying repeatedly to reach Marie at her work and via her cell phone the day care provider called the police, worried that Marie may have been in an accident or harmed. The day care provider also called Marie's emergency contact, Sue, another waitress at the steak house. The day care provider has a relationship with Sue because she has picked up Joe in the past. Marie, Joe and Sue has shared with the day care provider that the child sometimes stays the night with Sue.

When Sue arrived at Joe's day care, the police and a CPS Investigations worker were already there. The police called CPS because they had more information about Marie being picked up earlier that day for DUI. When Marie was booked into jail, she told the law enforcement staff that Joe was at day care and his temporary care was needed. Marie already informed the Police about Sue and her relationship to the family. The CPS Investigator made arrangements with Sue to keep Joe overnight. The State case worker explained that a meeting with the mother will take place later this afternoon and the mother will be updated with what took place with Joe. The case worker gave Sue all contact information, just in case Marie was released before the CPS worker had a chance to reach the jail.

The CPS worker talked to Joe who said that he loved his mommy very much, but that at night time she would become a “zombie.” He stated that after dinner she always put on his favorite DVD and then started drinking her adult juice. When this happened, he said, she didn’t read to him, didn’t tuck him in, and just wouldn’t pay attention to him. In some cases, he would have to put himself to bed. The child informed the case worker that he knows Sue and stays over at her house once in a while too.

On the way to the jail, Marie called the State case worker and shared that she was released. They made arrangements to meet at Marie’s home. Marie informed the case worker that she was fully aware of where Joe was and was in agreement with his placement.

Upon arriving at the home, the CPS worker noticed that the furniture was sparse, but the home was in order. There were a few age appropriate toys and many children’s DVDs around for Joe who had his own bedroom and toddler bed. The refrigerator was empty except a bag of McDonald’s leftovers and a 6-pack of beer. Marie shared with the social worker that she drinks nearly every day after work 4-6 beers.

Since this was the first time that CPS had been involved they decided that differential response would be the most appropriate way to support the mother. CPS asked Marie if she would be willing to work with them to create a voluntary service plan. Although initially reluctant, after discussing how CA could help Marie get signed up for food assistance and also provide clothing vouchers since Joe had recently outgrown all of his clothes, Marie agreed. Marie also agreed to quit drinking and attend local AA meetings once-a-day 6 days a week. DSHS offered to help cover the cost of child care while at the meetings. Marie also agreed that if she was drinking she would drop Joe off at her friend Sue’s house. When CPS asked the mother about extended family who might be help to help support her she said they were far away and didn’t matter.

Joe was returned to his mother and the family engaged in a Voluntary Service Plan. The first two weeks the FVS worker checked-in on the family four times and found good progress.

**Does ICWA apply at this point in the case?**

**What is best practice?**

A week later a CPS worker received a call from Sue. Sue said that Marie had called and asked her to pick Joe up, that she couldn’t take it anymore she had to have a drink. Sue agreed to take Joe for the evening. That was 3 days ago and she can’t find Marie anywhere. She apologized for not calling sooner but said she “didn’t want to get Marie in trouble.”

Unable to find Marie, CA took Joe into protective custody and placed him with Sue at a 72-hour shelter care hearing and probable cause to place the child was found because of Marie's abandonment. A trial date was set. CA asked Sue about Joe's family and other resources. Sue said that Marie never talked about her family.

It wasn't until one week later that Marie surfaced. She called Sue and CA apologizing but on the phone call to CA she was slurring her words and couldn't identify where she was. She said she needed real help that AA wasn't enough. A day later she showed up at the CA office in tears. The assigned case worker asked her where she had been and she said she could barely remember. She said she loved Joe and didn't want to do this to him anymore. She had seen too many people on her reservation do this to their children. She asked if DSHS could help her get into treatment. CA also suggested that they could dismiss the abuse and neglect petition if she would be willing to sign a voluntary placement agreement allowing CA to place Joe with Sue. She agreed to do this.

**Does ICWA apply at this point in the case?**

**How must CA go about executing a voluntary placement agreement with Marie?**

**Who must be notified?**

**What is good practice?**

CA made some phone calls and found out that they could get Marie a bed in 6 weeks at a treatment facility 2 hours away. In the interim CA put together a safety plan that allowed for unlimited visitation with Joe supervised by Sue, so long as Marie was sober.

Two weeks later Marie showed up at Sue's house inebriated and demanded to have Joe back. She said she was reading the voluntary placement agreement and it said that she could request Joe back at any time. "Now was that time," she said. Sue did not want Marie driving drunk with Joe in the car and immediately called the police. By the time the police arrived Marie was sobbing demanding her child back. Sue called CA who filed a petition for emergency protection because of Marie's unwillingness to participate in her safety plan and the voluntary placement agreement. Mother showed up to the emergency protection hearing and demanded an attorney.

**Does Marie have a right to an attorney?**

The judge who was the same judge that executed the voluntary agreement was frustrated that CA knew of mother's struggles and yet 3 weeks later the mother was still not in treatment. The judge asked Marie if her tribe had a treatment facility that she might be able to get into sooner. Marie said that she absolutely did not want to get the tribe involved because it would put shame on her father and her family. The judge told CA to get in contact with the tribe immediately, approved temporary placement with Sue, and set a date for the adjudication and disposition.

**Was the judge right, should CA contact the tribe at this point in the case? How should the tribe be contacted?**

**Does ICWA still apply to this case if the mother doesn't want the tribe involved?**

Prior to the proceeding the tribe files a request for transfer to tribal court. The mother objects to the transfer and the judge keeps the case in state court.

**Did the judge make the correct decision?**

The tribe then files a motion to intervene in the case. At the adjudication proceeding the judge finds that by clear and convincing evidence the mother abandoned and endangered the child and that this is causally related to her drinking problem. The judge also found that active efforts had been provided to keep the family together. Finally a qualified expert witness testified that removal of the child from the home was necessary for the safety of the child. The expert who testified was non-Native social worker who spent the first 10 years of her career working in the state's ICWA unit. The tribal social worker called into the hearing as well and stated that removal was necessary for the safety of the child.

**Did this hearing meet the ICWA standards?**

**What standards typically apply at the adjudication proceeding?**

**Does this qualified expert witness meet the requirements of ICWA's qualified expert witness provision?**

At the disposition proceeding the tribe and CA suggest that the case plan be reunification and that mother who began treatment 1 month ago at a treatment facility recommended and paid for by her tribe (but located close to the small town in Iowa) will continue as recommended by the facility. The judge agrees. The tribe and CA also agree that there is

“good cause” to deviate from ICWA’s placement preferences because all of the potential family placements are three hours away which would prevent frequent visitation with the mother. The tribe does provide for the record the positive home study of the maternal grandmother’s home located a few hours away and states that she is a willing placement.

**Is Sue an appropriate placement under ICWA at this time?**

After leaving treatment the 5<sup>th</sup> time Marie refuses to take responsibility for her drinking and for Joe saying she “just can’t handle it.” At the permanency hearing CA suggests that the plan be changed from reunification to adoption with the current foster home, Sue, with whom Joe has bonded. Sue is willing to be an adoptive home for Joe who she has grown to love over the past 2 years.

CA must now prepare for a termination of parental rights proceeding.

**What must the social worker do to prepare?**

**Is Sue an appropriate placement under ICWA at this time?**

The social worker’s court report attached to the TPR petition contains the following section:

*Efforts to achieve reunification with the child included working with the tribal ICW worker to: schedule and facilitate visitations, provide mother money to travel for visitations when she had passes from her inpatient program, provide mother with information on the serious risk her drinking could have on her ability to parent, help mother remain connected with her extended family for support, provide mother with five separate opportunities for drug and alcohol treatment recommended by the tribe, and arrange for and attempt to maintain consistent contact with the mother.*

**Are these active efforts?**