Child Welfare Information Gateway

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ISSUE BRIEF

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Tribal-State Relations

What's Inside:

- Key factors affecting Tribal-State relations
- Components of successful Tribal-State relations
- Promising practices in Tribal-State relations

Promising Practices in Child Welfare

Issue briefs include a review of research and policies to bring together current information with examples of promising practices.

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Both the United States Congress and Tribal governments have articulated the importance of protecting the safety, permanency, and well-being of American Indian/Alaska Native (AI/AN) children. Through the Indian Child Welfare Act (ICWA) of 1978, Congress stated "…that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children" (25 U.S.C. Sec. 1901). Congress goes on to further assert that "…it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian Tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture…" (25 U.S.C. Sec. 1902).

Providing child welfare services for AI/AN children routinely involves multiple governments, agencies, and jurisdictions. In addition, unique historic and cultural factors play a major role in shaping service availability, utilization, and effectiveness for Tribal families and communities. Under ICWA, the Federal Government has established requirements for State and private agencies that regulate how placements of Tribal children and services to Tribal families should occur. The Administration for Children and Families (ACF) re-emphasizes these requirements in their instructions to States regarding the development of Child and Family Services Plans, issued in April 2005 (ACF, 2005). However, it is not unusual to see Tribal-State conflicts with regard to the implementation of ICWA requirements and such issues as notification, transfer of cases, service provision, placement preferences, preservation of connections, and achievement of permanent family outcomes.

This issue brief is intended to help States and Tribes find ways to work together more effectively to meet the goals of ICWA. Understanding the principles of effective practice identified here, along with the history and context for Tribal-State relationships, will assist readers in developing positive Tribal-State relations in their communities.

This issue brief examines the following questions:

- What are the key factors affecting Tribal-State relations in child welfare, including past and current Federal and State policies?
- What are the components of successful Tribal-State relations?
- What are some promising practices in Tribal-State relations from across the country?

Key Factors Affecting Tribal-State Relations

Almost all Tribes operate some form of child protection services, and many have their own Tribal codes, court systems, and child welfare programs (Cross, Earle, & Simmons, 2000). A number of factors affect relationships between Tribes and States in the provision of child welfare services. These include, but are not limited to, the Federal trust responsibility between Tribes and the Federal Government, influence of various Federal policies, issues of State jurisdiction over Tribal affairs, Tribal-State disagreements, availability of funding for child welfare activities, and Tribal-State differences in child welfare values and practices. How each of these factors is understood and

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addressed by all involved parties can significantly enhance (or detract from) the ability of Tribes and States to have productive and meaningful relationships that support child welfare services to Tribal children.

The Federal Trust Responsibility Between Tribes and the Federal Government

AI/AN Tribes are recognized as governmental entities in the U.S. Constitution, which states, "The Congress shall have Power…To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes" (Article I, Section 8). In addition to Constitutional recognition, Tribal governments are acknowledged through Federal laws, court cases, and more than 400 treaties as distinct governments with sovereign nation status[1] (Canby, 1998; Cohen, 1982, as cited in Hicks, 2004). These treaties and laws created a unique and fundamental relationship between Tribes and the Federal Government. In return for ceding millions of acres of land to the U.S. Government, Tribes received the guarantee of protection and of the right to self-governance (National Congress of American Indians, 2003).

As a result of this Constitutional relationship, the Federal Government has both significant authority over and key responsibilities to Tribes. In particular, the Federal trust responsibility refers to the Federal Government's obligation to protect Tribal self-governance, assets, resources, lands, and treaty rights (Canby, 1998; Deloria, 1985; National Congress of American Indians, 2003; O'Brien, 1989, as cited in Hicks, 2004). This includes the provision of resources and services to protect the well-being of AI/AN people. This direct relationship between Tribes and the Federal Government does not negate Tribal people's relationship to the States where they reside. Tribal people are citizens of all three entities: their Tribal nations, their States, and the United States.

Federal Policies Impacting Tribal-State Relations

In addition to the relationship between Tribes and the Federal Government established in the U.S. Constitution, Tribal-State relations have been affected by a number of specific Federal policies and programs. These include historical policies promoting assimilation (such as the General Allotment Act of 1887, Termination Era and Relocation policies, and the Indian Adoption Project) as well as more recent policies and child welfare laws that support Tribes' right to self-determination (such as the Indian Self-Determination and Education Assistance Act, the Indian Child Welfare Act, and the Indian Child Protection and Family Violence Prevention Act).

The history of Federal initiatives and policies has shaped the ability of Tribes to respond to child welfare issues, the parameters of State jurisdiction over Tribal affairs and their relationship with Tribal governments, and ultimately the overall well-being of Indian children and families. These policies and their consequences underlie the political environment that exists today among Tribes, States, and the Federal Government, and they define the policy boundaries that influence the ability of Tribes and States to provide effective child welfare services to AI/AN children.

Early Federal policies supporting assimilation of AI/AN people have had lasting negative

[1] Tribes are inherently sovereign, meaning that they do not trace their existence to the United States and that they possess governmental power over all internal affairs (Reed & Zelio, 1995).

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consequences both for Tribal-State relations in child welfare and for AI/AN families. One such policy, the General Allotment Act of 1887 (25 U.S.C. §§ 331-334, 339, 341, 342, 348, 349, 354, 381), divided most Tribal lands and distributed some of the land to non-Indian settlers. Reservations thus became a "checkerboard" of Indian and non-Indian land that contributed to extremely confusing jurisdictional issues for States and Tribes (Hicks, 2004). This jurisdictional complexity still impacts Tribal-State relations in child welfare in many areas.

In the mid-20th century, the Federal Government pursued policies that sought to terminate Federal recognition of many Tribal governments, leaving them with no land base, government funding, or services (American Indian Resources Institute, 1993). Soon after, the Federal Government initiated a relocation policy that encouraged all Tribal families and individuals to relocate from their Tribal communities to urban areas (Snipp, 1996). At about the same time, the Indian Adoption Project, a collaborative effort between the Federal Government and private agencies, resulted in the removal of hundreds of AI/AN children from all over the United States from their families and Tribes for the purpose of adoption within non-Indian homes (George, 1997).

It was believed that these policies would help Indian people become eligible for State-administered services. While these policies promoted the assimilation of AI/AN people, they did so by diminishing Tribal communities and Tribal governmental capacity, encouraging Tribal families to leave their Tribal communities and extended families, and removing children from their families and culture. Today, the vestiges of these policies are still visible, as generations of AI/AN people struggle to reestablish or maintain Tribal relationships that once served as natural support systems for families. Current State governments are better able to establish effective partnerships with Tribes when they understand how these policies may have contributed to the increased incidence of child abuse and neglect in Tribal communities and when they appreciate the challenges that Tribal governments face in trying to address the impact of these policies.

In the 1970s, a new era began in Federal policy as the Tribal right to self-determination was formally recognized and supported through the Indian Self-Determination and Education Assistance Act (Public Law 93-638). This law provided Tribes with the opportunity to contract directly with the Secretary of the Interior and the Secretary of Health and Human Services to administer programs formerly operated by the Federal Government (e.g., the Bureau of Indian Affairs and the Indian Health Service) (O'Brien, 1989). This included child welfare services and related support services for AI/AN families operated by the Bureau of Indian Affairs and Indian Health Services.

Soon after, Congress recognized the high rate of removals of AI/AN children by public and private agencies and passed ICWA (Public Law 95-608), which established Federal standards for the removal, placement, and termination of parental rights of AI/AN children. ICWA also clarified the jurisdiction of State and Tribal governments in child welfare and authorized Tribal-State agreements and funding for the development of Tribal programs. In 1991, the Indian Child Protection and Family Violence Prevention Act (Public Law 101-630) was enacted, which established Federal requirements for the reporting and investigation of child abuse and neglect on Tribal lands,

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required background checks on individuals who have contact with AI/AN children (including foster and adoptive families), and authorized funding for Tribal child abuse prevention and treatment programs.

In 2004, Executive Order No. 13336, "American Indian and Alaska Native Education," reiterated adherence to a government-to-government relationship and support for Tribal sovereignty and self-determination as was expressed in Federal Executive Order No. 13175, "Consultation and Coordination with Indian Tribal Governments." The current administration directs the head of each executive department and agency to continue to ensure, to the greatest extent practicable and as permitted by U.S. law, that the agency's working relationship with federally recognized Tribal governments fully respects the right of self-government and self-determination due to Tribal governments. In 2005, the U.S. Department of Health and Human Services issued a new Tribal consultation policy. The policy lays out the expectation for consultation and the method of consultation that should take place. A copy of this policy can be found at www.hhs.gov/ofta/docs/FnlCnsltPlcywl.pdf.

These laws and polices have been a catalyst for Tribes to reassert their jurisdiction and authority in child welfare matters involving their children, both on and off Tribal lands. They have required both Federal and State agencies to work more closely with Tribal governments and enabled some Tribal governments to access services and funding they previously could not, such as Title IV-E Foster Care and Adoption Assistance and Title XX Social Services Block Grant. Most importantly, these laws acknowledge Tribal governments as valuable resources in child welfare decision-making and have encouraged States to embrace this belief.

Despite these changes, many challenges remain. Funding for the Title IV-B programs (Promoting Safe and Stable Families and Child Welfare Services) to Tribal governments has increased in recent years, but the overall amounts still fall short of what is needed. The Adoption and Safe Families Act has sought to speed permanency for all children, but the new mandates also create additional challenges. Finally, many questions about the interface of the Adoption and Safe Families Act and the Indian Child Welfare Act remain unresolved, which has created problems for States and Tribes trying to implement these laws.

Limitations to State Jurisdiction

Another factor that can impact Tribal-State relationships in child welfare is jurisdictional conflict between States and Tribes around the provision of child welfare services to Tribal children. Historically, the direct relationship between the Federal Government and Tribal governments has limited Tribal-State interaction. In fact, the Supreme Court ruled in 1832 that States had no authority to pass any laws that may interfere with the government-to-government relationship between the United States and the Tribes (O'Brien, 1989, p. 276).

A key shift in the Federal-Tribal relationship came in 1953 when Congress enacted Public Law 280 (P.L. 280). P.L. 280 granted six States (California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska) concurrent criminal jurisdiction over Tribal lands within their borders and recognized some limited State jurisdiction in civil matters, the scope of which is still being debated today. Later, the United States Supreme Court said that while P.L. 280

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provides a State legal forum for Indian people and Tribes that choose to use it, P.L. 280 does not allow States the authority to regulate the civil affairs of AI/AN people living on Tribal lands. Lower courts have differed on the issue of whether child welfare matters are civil or criminal, but in practice many P.L. 280 States are exercising some form of concurrent jurisdiction over child welfare matters involving AI/AN children on Tribal lands. Meanwhile, some Tribes in P.L. 280 States are choosing to exercise exclusive jurisdiction on Tribal lands in child welfare matters, especially when Tribal resources and infrastructure are sufficient to do so.

Jurisdiction and Service Responsibility

Jurisdiction and service responsibility are distinct legal concepts. Jurisdiction refers to which government has the authority to adjudicate a case in court, while service responsibility defines which government is responsible for providing services to the child and family. AI/AN people are citizens of their Tribe, the United States, and the State in which they reside. This entitles them to services provided by the State, even if the Tribe exercises jurisdiction in a particular case. How jurisdiction and service responsibility are understood and applied, however, can vary greatly from State to State.

In some areas, State agencies routinely participate in Tribal court child custody proceedings as the entity with primary service responsibility, while the Tribe exercises jurisdictional authority over the particular case. In other areas, Tribes may have both jurisdiction and service responsibility; or the Tribe may not have jurisdiction but retain some level of service responsibility. Understanding Tribal and State jurisdiction can be especially challenging when considering the provision of services to Tribal members residing in P.L. 280 States.

Providing an integrated response to child abuse and neglect involving AI/AN children requires that jurisdictional authority and service responsibility are clear. It is important for all parties to listen to and understand the perspectives of all involved and consult applicable Federal laws (e.g., P.L. 280 and ICWA) for guidance. When conflicts or misunderstandings arise regarding these issues, the ability to secure a timely permanent placement and/or appropriate services for Tribal children can be impeded. In some instances, States or counties have withheld services to Tribal children living on Tribal lands, citing a lack of jurisdiction or service responsibility. In other situations, States or counties have come onto Tribal lands asserting jurisdiction in child welfare cases that is not consistent with Federal law. For both entities, budgetary concerns are significant and sometimes create disagreement over who should pay for services (National Indian Child Welfare Association, 2003).

While State jurisdiction over Tribal affairs has often been problematic in child welfare, efforts to improve these relationships have proven beneficial. Many Tribes and States have developed procedural agreements that define the jurisdiction, roles, and responsibility for services when AI/AN children come into contact with the State child welfare system. These intergovernmental agreements lay a foundation for improved Tribal-State relations in child welfare.

Tribal-State Disagreements

Tribal-State disagreements and conflicts, even those unrelated to child welfare, can pose another significant barrier to developing

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collaborative relationships for the benefit of AI/AN children. If the conflict involves a legal question, whether it concerns a single case or more widespread issues, litigation may even be pursued. Legal action always concludes with someone "winning" the case, which often results in resentment from the other party. This resentment can make both Tribal and State governments apprehensive about engaging in future Tribal-State collaborations. Even relatively small disagreements can stall the development of collaborative efforts as States and Tribes spend time negotiating solutions and acceptable methods for implementing any solution. In the development of intergovernmental agreements, it is not uncommon for long delays to occur when Tribes and States cannot agree on interpretations of Federal law or authority, as may be the case when policies are unclear or do not address specific Indian child welfare issues.

Developing forums and processes to address these issues before they escalate or significantly delay services is the preferred approach to long-term conflict and litigation. In many areas, Tribes and States spend a good portion of their time together with the intention of developing a foundation for positive conflict resolution based upon understanding, integrity, patience, and openness in their relationships. This may include provisions in Tribal-State agreements that define how grievances will be handled.

Availability of Funding

Access to funding is a significant barrier to improving Tribal-State relations and improving outcomes for AI/AN children. Understanding the differences in funding access and need between Tribes and States is critical to developing positive Tribal-State relationships for child welfare.

Although Tribes are governmental entities, their funding and resources often differ from those of States and counties. Historically, Tribes have not had the financial resources needed to adequately support even basic child welfare programs and services (Reed & Zelio, 1995). Tribal communities, many of which have staggering unemployment and poverty rates and little access to capital for economic development, are dependent upon Federal funding that comes from treaty rights and the Federal trust responsibility to support basic services for their people. The primary sources for general revenue that supports public services for States, such as taxes on personal and business income and user fees, are not feasible in the vast majority of Tribal communities.

It is often assumed that, because some Tribes have gaming operations or receive Federal funding, Tribes have similar access as States to funding for child welfare purposes. Closer examination shows that Tribes have access to fewer Federal sources of child welfare funding and generally smaller amounts per capita than States do. For example:

- *Title IV-E Foster Care and Adoption Assistance Program*. This program provides reimbursement for foster care and adoption services (including administrative costs, maintenance payments, and training for foster/adoptive parents and staff) provided to children placed by States and public agencies with whom States have agreements. Congress originally intended for the Title IV-E program to serve all eligible children in the United States, including those under Tribal jurisdiction; however, language

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referencing Tribal governments was left out of the law. Therefore, Indian children under Tribal jurisdiction do not have the same access to this entitlement program as children under State custody. Currently, in order to gain access to Title IV-E funds, Tribes must enter into intergovernmental agreements with their respective States. These agreements are occasionally difficult to negotiate and can be limited in scope, sometimes allowing reimbursement for only portions of the program (Brown, Whitaker, Clifford, Limb, & Munoz, 2000).

- *Title IV-B, Subpart 1 (Child Welfare Services*). This program provides States and Tribal governments with Federal support for preplacement preventive services to strengthen families and avoid placement of children, services to prevent abuse and neglect, and services related to the provision of foster care and adoption (45 C.F.R., Part 1357, 2000, as cited in Brown, Limb, Munoz, & Clifford, 2001). Tribal governments are eligible to submit plans for funding under this program. However, out of the 558 Tribal governments that could submit plans, 477 of them would be eligible for grants of $10,000 or less, and at least half of these Tribes would receive amounts under $5,000.[2]
- *Title IV-B, Subpart 2 (Promoting Safe and Stable Families*). The Title IV-B program promotes services that prevent the removal of children from their homes, help reunify children with their families when possible after removal, and support adoption when return to the home is not possible. Federal statute provides that only Tribes that are eligible for a grant of at least $10,000 according to a population-based funding formula are eligible to participate in this program. Only a small portion of the federally recognized Tribes (approximately 91 Tribes) met these criteria as of FY 2005. Therefore, the Title IV-B, subpart 2 program has had little impact on the overall need for these types of services in Tribal communities across the United States (Clifford-Stoltenberg & Simmons, 2004).
- *Indian Child Welfare Act, Title II Funds*. The Indian Child Welfare Act includes a small grant program, as well as provisions that encourage Tribal-State agreements to share Federal resources that Tribal governments cannot access. Congress appropriated $3.8 million for this program in FY 1978, its first year.[3] In FY 2005, the appropriation was $10.3 million.

In terms of Tribal-State relations, the ability to effectively respond to child abuse and neglect of AI/AN children is highly dependent upon the availability of both State and Tribal resources. Tribes that do not have the programs necessary to meet all the needs of their Tribal population often must rely on State services to address those needs. This poses a problem for many Tribes, as they can be located far from State service locations without any viable means of transportation for Tribal members, or they may feel that State services

[2] The amount for Indian Tribes is based on the following formula: each State receives a base amount of $70,000, additional funds are distributed in proportion to the State's population of children under age 21 multiplied by the complement of the State's average per capita income. The amount for Tribes is an amount per the number of children in the State in which the Tribe is located times the number of children in the Tribe, times three (as provided on the U.S. Department of Health and Human Services website at http://aspe.hhs.gov/SelfGovernance/inventory/ACF/645.htm).

[3] Department of the Interior and Related Agencies Appropriations for 1979: Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives, 95th Congress, II. (Bureau of Indian Affairs, p. BIA 29).

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are not responsive to their unique community needs. Likewise, when States need help in providing services or identifying placements to meet the requirements of the Indian Child Welfare Act, the outcomes often are dependent upon the Tribe's ability to assist in these tasks. A lack of access to funding for Tribes also inhibits their ability to actively participate in State child custody proceedings and can impact how States view their relationship with Tribes.

In November 2004, the U.S. Department of Health and Human Services' Administration for Children and Families (ACF) released a series of reports on the Promoting Safe and Stable Families program (ACF, 2004). The reports reveal that greater flexibility in State funding had strengthened the abilities of Tribal families to care for their children.

Negotiation of Differences in Child Welfare Values and Practices

A final potential barrier to positive Tribal-State relations involves the differences that often arise between State and Tribal child welfare values and practices. Within Tribal communities, child welfare decisions often are made based on the concept of *community permanency*. When a child is born into a Tribe, he or she becomes not just part of the family, but also a part of the entire community. The meaning of family in Tribal settings encompasses individuals outside of the child's biological parents and siblings and is often referred to as the child's extended family. An AI/AN child's extended family becomes a reference point for his or her identity and sense of belonging. From the Tribal perspective, these concepts of identity and belonging are central to the idea of permanency and are considered paramount in decisions regarding the placement of Indian children. When family reunification is not an option, therefore, the Tribal perspective places emphasis on permanency alternatives that help the child stay connected to his or her extended family, clan, and Tribe (Cross, 2002).

While Tribal communities consider placements within the context of the community, mainstream models often consider placements within the context of the individual parent and the individual child. For example, within mainstream society, greater emphasis is often placed on certain types of permanency, such as adoption with full termination of parental rights. In this instance, the connection of the child to his or her birth family is severed. Many Tribal communities, on the other hand, do not agree with terminating a parent's rights and may instead utilize customary adoption practices. In a customary adoption, the child is taken in by a family or community member but still has the opportunity to have a relationship with his or her biological parents and extended family (Clifford-Stoltenberg & Simmons, 2004).

These differences in how family, community, and permanency may be viewed can shape how Tribes and States work together on child welfare cases and form the foundation for what is defined as "success" in achieving permanency for Tribal children. When States pursue policies or practices that are inconsistent or inflexible with regard to Tribal values, Tribal-State relationships are almost certain to suffer. States that embrace Tribal values, on the other hand, demonstrate a respect for Native culture and tradition. This respect can lead to more open, effective Tribal-State relations. One common mechanism for expressing this acceptance of Tribal values and practice is a Tribal-State agreement that allows the Tribe

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maximum flexibility permitted under the law to make decisions that reflect its culture, rather than imposing a State approach.

Overcoming all of the potential barriers discussed in this section can be challenging for both Tribes and States, but many States and Tribes have developed relationships and strategies to address the needs of AI/AN children and families. New collaborations are increasing, and paradigm shifts are occurring in the thinking of State and Tribal officials that are transforming relationships in child welfare.

Components of Successful Tribal-State Relations

Tribes and States share common purposes and common interests. Both entities are concerned with protecting the health and welfare of their citizens by effectively and efficiently utilizing public resources, providing comprehensive programs and services to their constituents, protecting the natural environment, and engaging in economic development activities. States and Tribes are most successful in achieving better outcomes for children and families when a positive partnership is established, as demonstrated through a mutual understanding of government structures, cooperation and respect, and ongoing communication.

Mutual Understanding of Government Structures

To facilitate strong Tribal-State relations, Tribes and States begin by developing an understanding of each other's governmental structures and processes. Without this fundamental knowledge, it will be difficult to identify the most beneficial avenues within each government for negotiating common interests related to child welfare (Johnson, Kaufmann, Dossett, & Hicks, 2000).

Tribes and States wishing to work toward effective child welfare relationships might begin by seeking answers to the following questions:

- Who are the appropriate people at both the Tribal and State levels to discuss child welfare issues (e.g., Tribal council, State governor, child welfare director, etc.)?
- How are child welfare program and policy decisions made within each government? (Do decisions involve the Tribal council/ State legislature? Who determines membership within the Tribe?)
- What does the child welfare service delivery system look like? Who are the key agencies, and what is their authority and mission? Who is the service population for each government (e.g., all AI/AN people in a given area, or only Tribal members living on Tribal lands)?
- What is the best process for discussion and negotiations? Who should be involved, how will issues be discussed, and how will conflict or disagreement be addressed?

Cooperation and Respect

Once Tribes and States understand how each other's governments function, they can further enhance Tribal-State relations by employing general principles of good relationships, including cooperation and respect. Cooperation is a major component of successful Tribal-State relations. When both Tribes and States are willing to set aside prior con-

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flicts (e.g., jurisdictional issues, land claims, water rights, taxation, etc.), they are more successful in reaching out to one another to come to agreements on child welfare issues. This cooperation must be built around mutual respect and an understanding that each entity is an independent government operating to serve a particular population, and that AI/AN families are citizens of both governments.

States and Tribes are most successful in meeting Federal requirements and serving the best interests of AI/AN children when they acknowledge and utilize the strengths and resources of each government. Tribes have a large knowledge base that they can share with States regarding the protection of Tribal children and the strengthening of Tribal families. Their rich traditions and cultural practices were the foundation for the development of unique approaches that are among the most successful used in child welfare today with this population. Safety, permanency, and well-being of AI/AN children are facilitated by the ability of the agency providing care to understand the child's culture, including his or her perception of permanency and critical connections with his or her extended family and Tribe. States that recognize Tribes as important resources in addressing child abuse and neglect among AI/AN families have been able to improve services and outcomes for AI/AN children.

Within Tribal communities, mutual respect is greatly valued. It is a principle evident in all aspects of Native life, especially child rearing (Lewis, 1980, as cited in Cross, Earle, & Simmons, 2000). Mutual respect involves listening actively to other viewpoints, being aware of one's own assumptions, and remaining open to ideas that may challenge one's personal views or experience. In a practical sense, States can demonstrate respect and understanding by viewing Tribal governments as a primary resource that can benefit Tribal children in care. Supporting Tribal capacity development and practice will ultimately benefit Tribal families and children.

Ongoing Communication

Tribes and States that communicate early and often are better able to establish mutual understanding and respect. Often, Tribes and States communicate only in times of conflict or misunderstanding. To remedy this reactive situation, mechanisms for ongoing Tribal-State communication, such as public and private forums, can be created. In addition to ongoing communication, it is helpful to establish a process for frequent review and assessment of policies addressing Tribal-State relations issues and the development of recommendations for improvements in these policies. Many States and Tribes have created Tribal-State advisory committees in child welfare to serve as a forum for communication and planning. In other places, conferences and policy institutes have been developed by Tribes and States. All of these efforts have in common a goal of enhancing communication and institutionalizing successful processes and practices.

Promising Practices in Tribal-State Relations

Tribes and States that engage in cooperative relationships have the potential to serve their children and families in a more comprehensive and holistic manner. Working together, States and Tribes around the country have developed a number of promising approaches to Tribal-State relations in child welfare, including:

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- Use of Tribal advisory committees and forums
- Development of Tribal-State intergovernmental agreements and contracts
- Training and information sharing
- Development of culturally competent permanency alternatives

These four approaches are briefly described below, and specific Tribal-State examples of each model are provided.

Advisory Committees and Forums

Some State governments have helped facilitate strong Tribal-State relations in child welfare by forming Tribal-State advisory committees. These committees take different forms and serve different purposes, but the overall goal is to provide a forum where policy and practice issues can be discussed and resolved regarding services to AI/AN children. A process of ongoing dialogue, whether in the form of advisory committees, forums, or legislative committees, allows Tribes and States to communicate about the impact of particular programs, services, and legislation within their communities. These approaches also provide opportunities for mutual education on State and Tribal government protocols and procedures, thus fostering increased mutual respect and understanding.

The Washington State Department of Social and Health Services has developed Local Indian Child Welfare Advisory Committees (LICWACs) in each of its six regional service areas. Each LICWAC is comprised of Indian people from the region who have an interest and expertise in working effectively with Indian children and families. The LICWAC serves as a forum where State child custody cases involving AI/AN children can be reviewed to ensure compliance with both ICWA and procedures identified in Tribal-State agreements. Caseworkers from the State present their Indian child welfare cases to the LICWAC team in person and receive advice, feedback, and resources to help them provide effective services to the child and his or her family. The LICWAC also may provide information on how to contact the child's Tribe and develop an effective working relationship.

Unlike the LICWACs, Oregon's Indian Child Welfare Advisory Committee is focused more on program-level discussions than case-level issues, but it has a similar goal of improving services to AI/AN children and families. The Committee, comprised of Tribal and State representatives involved in services to AI/AN children and families, meets at least once every quarter to discuss policy and practice issues. At these meetings, Tribal and State representatives share information about their programs, discuss new policies and their implementation, identify training needs, locate resources to support services for this population, and review compliance with ICWA. The Committee provides a valuable resource to both governments in monitoring and improving services.

In New Mexico, the State and Tribes have developed an innovative forum with the unique purpose of improving juvenile court proceedings involving AI/AN children. The process began with a focus on ICWA compliance and funding access, but participants found they had even more fundamental issues related to jurisdiction and comity to address first. As a result, Tribal-State judicial forums were established, with a particular emphasis on strengthening relationships and commu-

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nication between the two governments and their judicial systems.

Intergovernmental Agreements and Contracts

Establishing guiding principles for a government-to-government relationship through intergovernmental agreements and contracts is another way Tribes and States have improved relationships and better served AI/AN children and families. ACF requires States to consult with Tribes regarding the protection of children and the implementation of ICWA. Many States have entered into cooperative agreements with regard to the custody proceedings involving Tribal children. Many agreements, such as those in place in Minnesota and Washington, clarify who has jurisdictional authority, how that will be exercised, and how services will be provided to protect AI/AN children. Such agreements reduce the chance that children will be left in unsafe situations because of misunderstandings between agencies about who should be responding to child abuse or neglect referrals. Agreements that also identify State and Tribal resources, such as State personnel with expertise in ICWA or Tribal expert witnesses for court hearings, aid in making the best determinations regarding children's safety, permanency, and well-being.

Some Tribal-State agreements go beyond defining how ICWA will be implemented to establish the values behind such an agreement (i.e., the importance of embracing Tribal culture and traditions). For example, New Mexico's agreement with the Navajo Nation, signed in 1985, states as its goal to "promote and strengthen the unity and security between the Navajo child and his or her natural family. The primary considerations in the placement of a Navajo child are to insure that the child is raised within the Navajo culture, that the child is raised within his or her family where possible and that the child is raised as an Indian" (as cited in Reed & Zelio, 1995, p. 29).

Other Tribal-State agreements allow Tribes to receive Federal or State funding that they otherwise would be ineligible to receive, thus assisting in fostering permanency for Tribal children. For example, some States and Tribes have entered into agreements that allow Tribal governments to operate Federal Title IV-E foster care programs and secure reimbursement for IV-E eligible services. These agreements, approximately 70 of which are currently in operation in approximately 15 States, enhance Tribes' abilities to recruit and retain Tribal foster and adoptive families. The States of Montana and North Dakota are unique in that they have signed Title IV-E agreements with all of the federally recognized Indian Tribes within their borders. These agreements provide Tribes an opportunity to operate the Title IV-E foster care program in their communities and seek reimbursement for foster care maintenance and administrative activities. In addition, the agreements allow the Tribes to arrange Title IV-E eligible training for their caseworkers and foster parents.

A number of States also have developed agreements to share funding from other Federal and State programs, such as the Title XX Social Services Block Grant program (Idaho) or State general funds (Washington). These agreements acknowledge the importance of Tribal placements and support services and help ensure that Tribal children receive uninterrupted protection, even with changes in Tribal and State leadership.

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In Washington, the State government has been contracting with Tribes since the mid-1980s to provide funding to assist Tribal governments as they enhance their own child welfare service capacity. The funding has been used for a variety of activities, such as Tribal child welfare code development (e.g., dependency, removal, investigation procedures), provision of child welfare services, program procedures development, and staff salaries for Tribal program staff who deliver child welfare services. One of the key principles that make this arrangement successful has been the State's commitment to allowing Tribal governments to make their own determinations about child welfare priorities and offering flexibility in how the services or efforts should be implemented. This commitment of State general fund resources has resulted in increasing numbers of Tribes being able to provide core child welfare services and provide assistance to the State in Indian child welfare cases off Tribal lands.

In general, when developing Tribal-State agreements, Tribes and States should assess both needs and barriers by considering the following questions:

- Are the individuals who will work with the agreement on a day-to-day basis, as well as those who will approve the agreement, involved in its development?
- Have the parties identified common interests, as well as perceived barriers?
- Have the parties identified and accepted existing legal frameworks and legislative mandates?
- Have the parties identified areas that will result in cost savings and better service?
- Have the parties agreed upon procedures for terminating the agreement?
- Have the parties agreed upon good faith enforcement of the agreement? (American Indian Law Center, 1985, as cited in Brown et. al, 2000)

More specifically, States and Tribes interested in developing a Title IV-E agreement should consider the following questions before initiating the process:

- Do the Tribe and State want to "partner" with one another?
- Is it in the mutual interest of both the Tribe and State to pursue a IV-E agreement?
- What are the short- and long-term benefits of entering into an agreement?
- What, if anything, must both parties give up?
- If a Title IV-E agreement is developed, what will the positive effects be for Indian children and their families?
- How does a IV-E agreement intersect with the mutual goals of Tribal self-government and development of infrastructure for the delivery of Tribal child welfare services? (Schmid, 2000).[4]

Training and Information Sharing

As mentioned earlier, ongoing communication is key in developing positive Tribal-State relationships in child welfare. A number of States and Tribes have developed processes for cross-training and information sharing that

[4] For more specific information on successful components of Title IV-E agreements, please see the Brown et al. (2000) document entitled *Tribal/state Title IV-E intergovernmental agreements: Facilitating tribal access to federal resources.* You can access this document by visiting www.nicwa.org and clicking on the "Research" link under the "Policy and Research" tab.

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aid in developing and maintaining effective communication between the governments. Improving training opportunities for Tribal and State child welfare workers in this way helps improve understanding of the cultural context in which AI/AN children and their families live. This information is at the core of how families should be approached and worked with in child protection and permanency situations. In addition, training, especially when done jointly, can help workers better understand the organizational and community environment within which both State and Tribal workers operate. Breaking down stereotypes and identifying protocols can help workers from outside these systems reduce the time they spend trying to secure resources and understand the language needed to successfully communicate the needs of children and families.

In several States, including Arizona and Oklahoma, Tribes and States regularly plan and host training conferences on Indian child welfare issues to support State and Tribal worker skill development, provide information on promising practices, and educate political leaders. In other States, such as Washington, State training academies have been opened up to Tribal staff, and trainings have been developed for State workers that explore practice and policy issues involved in serving AI/AN children and families beyond Indian Child Welfare Act compliance. In addition to improving individual worker skill development, this practice has indirectly provided new forums for Tribal and State workers to discuss the challenges that they face daily.

In the early 1990s, North Dakota Tribes initiated discussions to develop a training organization that could meet the training needs of care providers, caseworkers, law enforcement and legal professionals, and others involved in the protection and care of American Indian children. This spawned a partnership with the State and private foundations that resulted in the establishment of the Native American Training Institute in Bismarck, ND. This organization provides training on topics such as program planning, risk assessment, and foster parent training and has facilitated advocacy at the Tribal and State levels to improve child welfare services and collaboration.

Culturally Competent Permanency Alternatives

When State practice moves closer to the values, traditions, and customs of AI/AN children's Tribes and families, the children benefit. Practitioners who provide more culturally appropriate options in safety and permanency create greater ownership and buy-in from the child's Tribe and reduce potential conflicts in case planning. Individual families also are more engaged when there is a more individualized approach. One example of this has been the exploration of more culturally competent permanency options for AI/AN children in many States.

Several States have submitted proposals under the Federal child welfare waiver program to allow the use of Title IV-E funds to support subsidized guardianships—a permanent placement option of interest to many Tribes. Montana and New Mexico's demonstration projects offer a guardianship option for children in either Tribal or State custody; procedures for processing the cases of children in Tribal custody are determined by appropriate Tribal government authorities. In their proposals, both States cited cultural norms against TPR as a motivation for pursuing alternatives to adoption.

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Another permanency alternative that is generating interest within Tribal communities is the concept of customary adoptions, in which parental rights are modified but not terminated, thus helping to maintain important family connections. States are becoming more aware of the benefits of accommodating Tribal customary adoption and beginning to explore ways to institutionalize the acceptance of this practice more routinely with AI/AN children. Minnesota and Washington are two States that have begun to implement this approach and educate their State workers.

Impact on the Safety, Permanency, and Well-Being of Indian Children

Protecting AI/AN children requires a complex system of child welfare services that involves many different entities, including law enforcement, the courts, and social service agencies. However, when States and Tribes work together in a cooperative manner, children and families benefit from the following:

- Improved access to placement and treatment resources
- An increased ability to address underlying issues that affect safety, treatment, reunification, and placement
- Lower risk for disruption in the permanent placement
- Enhancement of the child's connection to his or her culture and relationship with his or her Tribe

While collaboration can be challenging, it is important for States and Tribes to continue to actively pursue opportunities to form positive working relationships with one another with patience, acceptance, and flexibility. Through the development of cooperative practices such as forums and advisory committees, Tribal-State agreements, training and information-sharing opportunities, and culturally competent permanency alternatives, Tribes and States have the opportunity to improve services and more effectively meet the safety and permanency needs of AI/AN children and families. In developing Tribal-State collaborations, both entities would do well to heed the advice of Sitting Bull, a wise Lakota ancestor: "Let us put our minds together to see what life we can make for our children" (1877).

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References

Administration for Children and Families, U.S. Department of Health and Human Services. (2004). *Implementation of Promoting Safe and Stable Families by Indian Tribes (PSSF), 2001–2003*. Retrieved May 2005 from http://www.acf.hhs.gov/programs/opre/abuse_neglect/imple_prom/index.html

Administration for Children and Families, U.S. Department of Health and Human Services. (2005, April 29). *Program Instruction* (ACYF-CB-PI-05-04). Retrieved May 2005 from http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/pi0504.htm

American Indian Resources Institute. (1993). *Indian tribes as sovereign governments: A sourcebook on Federal-Tribal history, law and policy*. Oakland, CA: Author.

Brown, E. F., Limb, G. E., Munoz, R., & Clifford, C. A. (2001). *Title IV-B child and family services plans: An evaluation of specific measures taken by states to comply with the Indian Child Welfare Act*. Portland, OR: National Indian Child Welfare Association.

Brown, E. F., Whitaker, L. S., Clifford, C. A., Limb, G. E., & Munoz, R. (2000). *Tribal/state Title IV-E intergovernmental agreements: Facilitating tribal access to federal resources*. Portland, OR: National Indian Child Welfare Association.

Canby, W. C., Jr. (1998). *American Indian law in a nutshell*. Eagan, MN: West Group Publishing.

Clifford-Stoltenberg, C., & Simmons, D. (2004). *In the best interest of the child: Increasing child welfare advocacy among tribal leaders*. Portland, OR: National Indian Child Welfare Association.

Cross, T., Earle, K. A., & Simmons, D. (2000). Child abuse and neglect in Indian Country: Policy issues. *Families in Society, 81*, 49-58.

Cross, T. L. (2002). *Heritage and helping: A model curriculum for Indian child welfare practice: Module V—Permanency planning for Indian children* (3rd ed.). Portland, OR: National Indian Child Welfare Association.

Deloria, V. (1985). *American Indian policy in the twentieth century*. Norman, OK: University of Oklahoma Press.

George, L. J. (1997). Why the need for the Indian child welfare act? *Journal of Multi-Cultural Social Work, 5*(3-4), 165-175.

This material may be freely reproduced and distributed. However, when doing so, please credit Child Welfare Information Gateway. Available online at www.childwelfare.gov/pubs/issue_briefs/tribal_state/index.cfm.

Hicks, S. (2004). *Tribal-state relationships: Implications for child welfare service delivery to American Indian/Alaska native children and families*. Manuscript in preparation.

Johnson, S., Kaufmann, J., Dossett, J., & Hicks, S. (2000). *Government to government: Understanding state and tribal governments*. Denver, CO: National Conference of State Legislatures.

National Congress of American Indians. (2003). *An introduction to Indian Nations in the United States* (3rd ed., expanded). Washington, DC: National Congress of American Indians.

National Indian Child Welfare Association. (2003). *FY 2005 budget consultation conference testimony: Department of Health and Human Services and American Indian/Alaska Native Tribes and Organizations*. Portland, OR: Author.

O'Brien, S. (1989). *American Indian Tribal governments*. Norman, OK: University of Oklahoma Press.

Reed, J. B., & Zelio, J. (Eds.). (1995). *States and Tribes, building new traditions*. Denver, CO: National Conference of State Legislatures.

Schmid, D. (2000). *Potential for Washington State Indian Tribes*. Seattle, WA: Casey Family Programs.

Snipp, C. M. (1996). Urban Indians. In F. E. Hoxie (Ed.), *Encyclopedia of North American Indians*. New York: Houghton Mifflin Company.

Additional Tribal-State Relations Resources

- National Congress of American Indians
  Website: www.ncai.org
- National Indian Child Welfare Association
  Website: www.nicwa.org
- National Conference of State Legislatures
  Website: www.ncsl.org/programs/statetribe/statetribe.htm

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