40 Years
Working Together for Children
1976 - 2016

Putting Children First

June 14 – 17, 2016
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Indiana Child Support Conference
Tribal Child Support 101 for State Workers

Jurisdiction
Tribal/State Comparison
Case Management
Promising Practices
Introduction

• States have been operating IV-D programs since 1975
• American Indian and Alaskan Native (AI/AN) children often could not benefit from state programs due to jurisdictional differences.
• Federal funding made it possible for tribes to exercise their sovereignty in child support issues;
• Child support services for Indian children is steadily improving.
Historical Overview of Tribal IV-D

• The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) was a direct result of welfare reform legislation regarding child support issues.

• New legislation included funds for Tribal child support enforcement under 45 CFR 309.

• Tribal Nations began establishing Tribal IV-D programs in 1996.

• Since the Final Rule was published on March 31, 2004, 63 Tribal Nations have established programs. (4 in Start-up)
Current Federal Indian Law has four doctrinal bases*:

1. Tribes are independent entities with inherent powers of self-government;
2. Only Congress has the power to regulate and modify their status;
3. States only have the authority to regulate Tribes if Congress specifically delegates it to them;
4. The federal government has the responsibility for the protection of Tribes and their properties, including encroachments by the states and their citizens.

* American Indian Law in a Nutshell by Wlm. Canby, Jr.
Jurisdiction

• There are three different types of domestic sovereign governments recognized by the laws of the United States: federal, tribal, and state.
• Tribal governments determine their own jurisdiction.
Indian Country

- Originally enacted in 1949, Indian Country is defined comprehensively at 18 U.S.C. §1151 as follows:

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian Country," as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.
Tribal Recognition

• There are 566 federally recognized tribes located in 39 states in the United States;
• Many federally non-recognized tribes and/or tribal organizations; and
• Numerous state-recognized Tribes.
• AI/AN population has grown from 827,268 in 1970 to over 308 million in 2010.
Tribal – State Comparison

- State IV-D Programs
- Tribal IV-D Programs

Equal Counter-parts

- 45 CFR 303
- 45 CFR 309
Tribal / State Comparison

• **States**
  - Establish Paternity
  - Establish Child Support Orders
  - Enforce Child Support Orders
  - Modify Child Support Orders
  - Locate

• **Tribes**
  - Establish Paternity
  - Establish Child Support Orders
  - Enforce Child Support Orders
  - Modify Child Support Orders
  - Locate
State and Tribal IV-D Programs

- **State: 45 CFR 302 & 303**
  - Many written requirements that are very prescriptive;
  - Required actions for locate, establishment and enforcement;
  - Specific timeframes for taking action;
  - System for case closure.

- **Tribal: 45 CFR 309**
  - Written requirements that are less prescriptive;
  - Required actions for locate, establishment and enforcement;
  - No timeframes for taking action;
  - No case closure criteria.
Paternity Establishment

• **States**
  • Default orders are considered valid if the tribunal had jurisdiction.

• **Tribes**
  • Paternity establishments are done under Tribal Codes, Law or Custom and rarely by default;
  • Caveat in regulations claim paternity establishment for child support purposes will not affect Tribal enrollment.
Establishment and Modification of Support Orders

• **States**
  - Procedures to review all orders at least every three years or upon the request of either party or the State in assigned cases.

• **Tribes**
  - Plan must address modifications, but there are no specifics about how, when, or under what circumstances reviews and adjustments are done.
Establishment and Modification of Support Orders

• **Tribes**
  • Emphasis on agreed orders;
  • Non-cash obligations allowed;
  • Genetic testing encouraged;
  • Default Orders discouraged and sometimes not allowed.
Medical Support

• **States**
  • 45 CFR 303.31
  • Required to establish and enforce medical support orders.

• **Tribes**
  • No requirements to establish medical support but have the option to do so.
Enforcement

• **States**
  - Must submit all qualifying cases for tax offset each year;
  - Must take all appropriate enforcement actions within specified time frames.

• **Tribes**
  - No legal authority to submit cases for tax offset, but may request assistance from the state to do so on a case-by-case basis;
  - Only mandated enforcement action is wage withholding.
Distribution

• **States**
  • 45 CFR 302.32, 302.51, 302.52
  • Timeframes for distribution of payments is very prescriptive;
  • Complicated with many instructions

• **Tribes**
  • 45 CFR 309.115
  • Regulations are non-prescriptive, stating only that payments must be processed in a “timely manner”;
  • Detailed instructions regarding TANF cases;
  • In intergovernmental cases, Tribes are advised to send payments to the state or other tribe who is then responsible to distribute accordingly.
Locate

**States**
- **45 CFR 302.35 & 303.3**
- Must have a state parent locator service (SPLS);
- Must have working relationships with all locate sources and agencies listed in the regulations.
- Specific timeframes and number of locate attempts;
- Must have guidelines regarding due diligence.

**Tribes**
- **45 CFR 309.95**
- Not required to have a Tribal Parent Locator Service; no access to SPLS; and only recently gained access to FPLS - must request these services from the state;
- Must use all available locate sources.
- No timeframes or specifics on locate attempts or due diligence.
Inter-governmental Procedures

• **States**
  • 45 CFR 303.7
  • Must comply with Uniform Interstate Family Support Act (UIFSA) and the Full Faith and Credit for Child Support Orders Act (FFCCSOA).
  • Must have a central interstate registry;
  • Must follow timeframes for actions.

• **Tribes**
  • 45 CFR 309.120
  • Not required to recognize or follow UIFSA, but do abide by FFCCSOA (excluding paternities);
  • Must extend the full range of IV-D services to all requests from IV-D agencies in other jurisdictions.
Automated Systems

• **States**
  • 45 CFR 302.85 & 307
  • Must have a certified automated system;
  • 90% federal funding available to build;
  • Must perform specific functions to maintain & track data accurately.

• **Tribes**
  • 45 CFR 309.145
  • No requirement for automated systems;
  • Some Tribes are manual, some use office automation and a few use their state’s system.
  • 45 CFR 310: Computerized Tribal IV-D Systems & Office Automation
    • Model Tribal System
Performance Goals

**States**
- Performance measures are specific regarding paternity and support order establishments, collections and data reliability.

**Tribes**
- Must describe their performance ‘targets’ which must include statistics on paternity and support order establishments, collections and number of cases, but can include additional targets as well.
Federal Funding

- **States**
  - 45 CFR 304
  - States receive 66% funding for most activities

- **Tribes**
  - 45 CFR 309
  - 100% funding for 2-year start-up programs;
  - 90% funding for the first 3 years of a comprehensive program;
  - 80% funding thereafter.
Federal Funding

• **States**
  • *Must provide 34% of their budget through state funds;*
  • Ability to earn incentive money by meeting performance measures;
  • Possible sanctions imposed if performance measures not met.

• **Tribes**
  • *Can meet their match requirements with general Tribal funds or in-kind contributions;*
  • No incentives available for meeting performance measures;
  • No sanctions regarding performance measures.
Tribal IV-D Programs

• Tribal IV-D programs might be small, with limited resources, but they have been hugely successful!

• 2013 Report to Congress
  • $ 43 million child support collected and distributed
  • $ 8.4 million forwarded to States
Inter-Jurisdictional Case Management
Basics

• Not all Tribes have a IV-D program
• Not all states have Indian Country
• Tribal Members live in many areas
• Non-Tribal Members work for Tribal Nations
FFCCSOA vs UIFSA

• Uniform Interstate Family Support Act
• Tribes are not required to enact UIFSA

• Full Faith and Credit for child Support Orders Act
  • 28 USC 1738B
• Requires state and tribal courts to give full faith and credit to valid orders from foreign jurisdictions.
• Paternity establishment is not “child support” and therefore is not included in FFCCSOA
Jurisdiction

• Personal
  • *The power of a court to hear and determine a lawsuit involving a defendant by virtue of the defendant's having some contact with the place where the court is located.*

• Territorial
  • *Refers to a court's power over events and persons within the bounds of a particular geographic territory.*

• Subject Matter
  • *The power of a court to render a judgment concerning a certain subject matter.*
NCP Tribal Member Living in Indian Country

• Non-PL 280 States do not have jurisdiction over a Tribal member living in Indian Country regarding civil matters
• Child support enforcement can be very difficult, but not impossible
• States can request assistance in establishing paternity or a child support order from a Tribal IV-D program
• Pursuant to FFCCSOA, the state can register their order with a Tribal Nation.
Personal Jurisdiction

• Individuals who are enrolled members of a federally recognized Tribal Nation are dual citizens of that Tribal Nation and the state they reside in.
  • A person enrolled in the Menominee Nation who resides in Indianapolis, IN is a citizen of the Menominee Nation AND Indiana.
  • Both the Menominee Nation and Indiana have personal jurisdiction.
Personal Jurisdiction

• Since the CP and NCP both live in IN, you can proceed with case management without inter-jurisdictional issues.
  • However, if the NCP is entitled to per capita, you will need to register the order with the Tribal Nation pursuant to their guidelines

• If the NCP resides within the Tribal Nation s/he is enrolled in, or works for a Tribal Nation you most likely will need to work the case as an inter-jurisdictional case.
NCP Tribal Member Living Off Reservation

• If the NCP lives OFF reservation, the state and Tribe might have concurrent jurisdiction;
• If the NCP works for a NON-Tribal employer OFF the reservation, the state can do a direct income withholding;
• Additional enforcement tools may also be available.
NCP Non-Tribal Member Living or Working in Indian Country

• Non-Tribal members subject themselves to the jurisdiction of the Tribe by choosing to live or work in Indian Country
  • Depending on the state and tribe, they might have concurrent jurisdiction and either could assert personal jurisdiction over the NCP
• Tribal employers do **NOT** have to honor direct income withholding.
Case Management - Jurisdiction

• How do I know when I should contact a Tribal Nation for assistance with a child support case?

  • Are any of the parties enrolled Tribal members?
  • Where do each of the parties reside?
  • Is there an existing order and from what court?
  • Apply the basic rules of civil procedures (i.e., one jurisdiction could decline jurisdiction due to inconvenient forum).
Tribal Membership

• When trying to determine who has personal jurisdiction consider the following:
  • Is the NCP an enrolled Tribal Member?
  • Is the child an enrolled member or eligible for enrollment?
• How does someone become a member of a Tribe?
Tribal Membership

• Descendency
• Blood Quantum
• Adoption
Tribal Membership

• How would I know if someone is an enrolled member of a Tribal Nation?
  • Identifiable Indian
  • Employer is a Tribal Nation
  • Address is within Indian Country
  • Names could provide obvious clue

• How would I verify enrollment?
  • Ask the parties (CP and NCP) for Tribal ID or CDIB card
  • Contact the Tribal IV-D agency
Territorial Jurisdiction

• Territorial jurisdiction may be waived, even unintentionally, by a defendant.
• A non-Tribal member submits to the jurisdiction of the Tribal Nation by choosing to live and/or work within Indian Country
• How do you determine if the NCP’s employer is a Tribal Nation?
Tribal Employers

- Tribal Nations are often the largest employer in the community
- Many Tribal Nations operate gaming enterprises
- Tribal Nations operate various businesses
- Payroll Departments are within the Tribal government

**How do I identify a Tribal Nation employer?**
Clues to Watch For...

• Name of the employer
• Address of the employer
• Did the employer return the IWO you sent to them?
Subject Matter Jurisdiction

• Child support and paternity establishment
Case Scenarios
Inter-Jurisdictional Case Management – Establishment

• Case Scenario 1:
  • CP-Mom requests services from your agency by completing an application;
  • Upon review of the application you think the NCP is a Tribal member.

• What would you do????
Inter-Jurisdictional Case Management – Establishment (cont.)

• Ask the CP;
• Contact the NCP;
• Verify NCP’s address;
• Verify NCP’s enrollment.
Inter-Jurisdictional Case Management – Establishment (cont.)

• Your research determines that the NCP resides in Indian Country... (Enrolled? Employed?)

• What are your next steps?
  • Request assistance from Tribal IV-D program, the Tribal Court, or Tribal Administration
  • IRG (Inter-governmental Reference Guide) http://www.acf.hhs.gov/programs/css/irg-state-map
  • Tribal Nation website
Inter-Jurisdictional Case Management – Establishment (cont.)

• NCP is an enrolled Tribal member but does not reside in Indian Country and does not work for a Tribal Nation =
  • No inter-jurisdictional assistance required
• NCP resides within Indian Country =
  • Request inter-jurisdictional assistance from the Tribal IV-D program
• NCP works for a Tribal Nation =
  • Request inter-jurisdictional assistance from the Tribal Nation
  • Register state order with Tribal court
Request Inter-Jurisdictional Assistance

• Identify the Tribal Nation
• Verify if the Tribal Nation has a IV-D program
• Use the Inter-governmental Transmittal #1 to request assistance with establishing an order or registering an order.
Registration of Foreign Order

• Most Tribal Nations require registration of valid foreign orders
• Registration process can be different Tribe to Tribe;
• Some Tribes will accept UIFSA forms, others will not.
Registration of Foreign Order

• How do I know what to include with a request for enforcement?

• Contact the Tribal IV-D program
  • Call the program
  • Look on their website
  • Look on the IRG

• Contact the Tribal Court
Registration of Foreign Orders

- Request for registration of Foreign Order
- Certified copies of original and/or most recent order
- Certified Statement of Arrears
- Comprehensive information on NCP
- Some Tribal IV-D programs accept UIFSA forms – some do not.
Valid Orders

• Personal jurisdiction, territorial jurisdiction, subject-matter jurisdiction, and proper notice to the defendant are the four most fundamental constitutional prerequisites for a valid judgment.
Complicated?

Scenario:

• CP-Mom:
  • Enrolled Grand Traverse Band (MI) member who resides in Indiana;
  • Applies for child support services in Indiana;
  • Informs child support case-worker that:

• NCP-Dad:
  • Is an enrolled member of the Pokagon Band of Potawatomi (MI);
  • Resides in Milwaukee;
  • Employed by the Forest County Potawatomi casino in Milwaukee.

Who has jurisdiction to enforce your order for wage withholding?
Determining Jurisdiction

• Both Grand Traverse Band and Indiana have jurisdiction over CP-Mom;
• Child could be eligible for enrollment in either the Grand Traverse Band or the Pokagon Band of Potawatomi;
• WI has personal and territorial jurisdiction over NCP; BUT
• Forest County Potawatomi has personal and territorial jurisdiction over NCP due to employment at their casino...
Determining Jurisdiction (cont.)

• Indiana’s order must be registered as a foreign order with the Forest County Potawatomi Tribal Court.
• You must send the required documents to the FCP IV-D program with a request for registration.
• FCP will register the order with their court and issue an IWO.
Interception of Unearned Income

• You verified that the NCP gets per capita income from the Tribal Nation

• What do I need to do to intercept or withhold the per capita?
Interception of Unearned Income (cont.)

• A Circuit Court **CANNOT** order a sovereign Tribal Nation to withhold or intercept per capita or other Indian monies.

• The amount, if reported on tax returns, can be included in the NCP’s gross income when calculating monthly support;

• Orders can be registered for enforcement; and

• Tribal enforcement may include the withholding or interception of per capita or other money via a Tribal Court order.
Promising Practices

- Keep in mind that Tribes are not “mini states”
- Have reasonable expectations
- Be creative and think “outside the box”
- Remember that each Tribe is different.
Practical Steps

• Identify a “Point of Contact” person within the Tribe and within your office

• Find out what procedure(s) is required to register orders with a tribe

• Ask if you can visit their court and child support agency

• Communicate!

• Build trust!
For More Information:

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“Let us put our minds together to see what life we can make for our children.”

Tatanka Iyotake
a.k.a. Sitting Bull
1837 – 1890
Hunkpapa Teton Sioux