

40 Years

Working Together for Children

1976 - 2016



June 14 – 17, 2016

Merrillville, Indiana

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)

Sovereignty

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

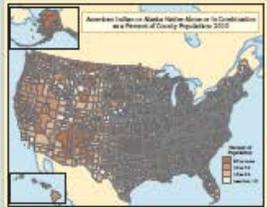
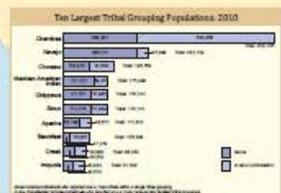
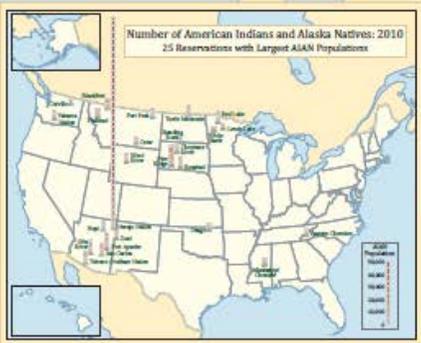
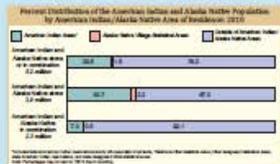
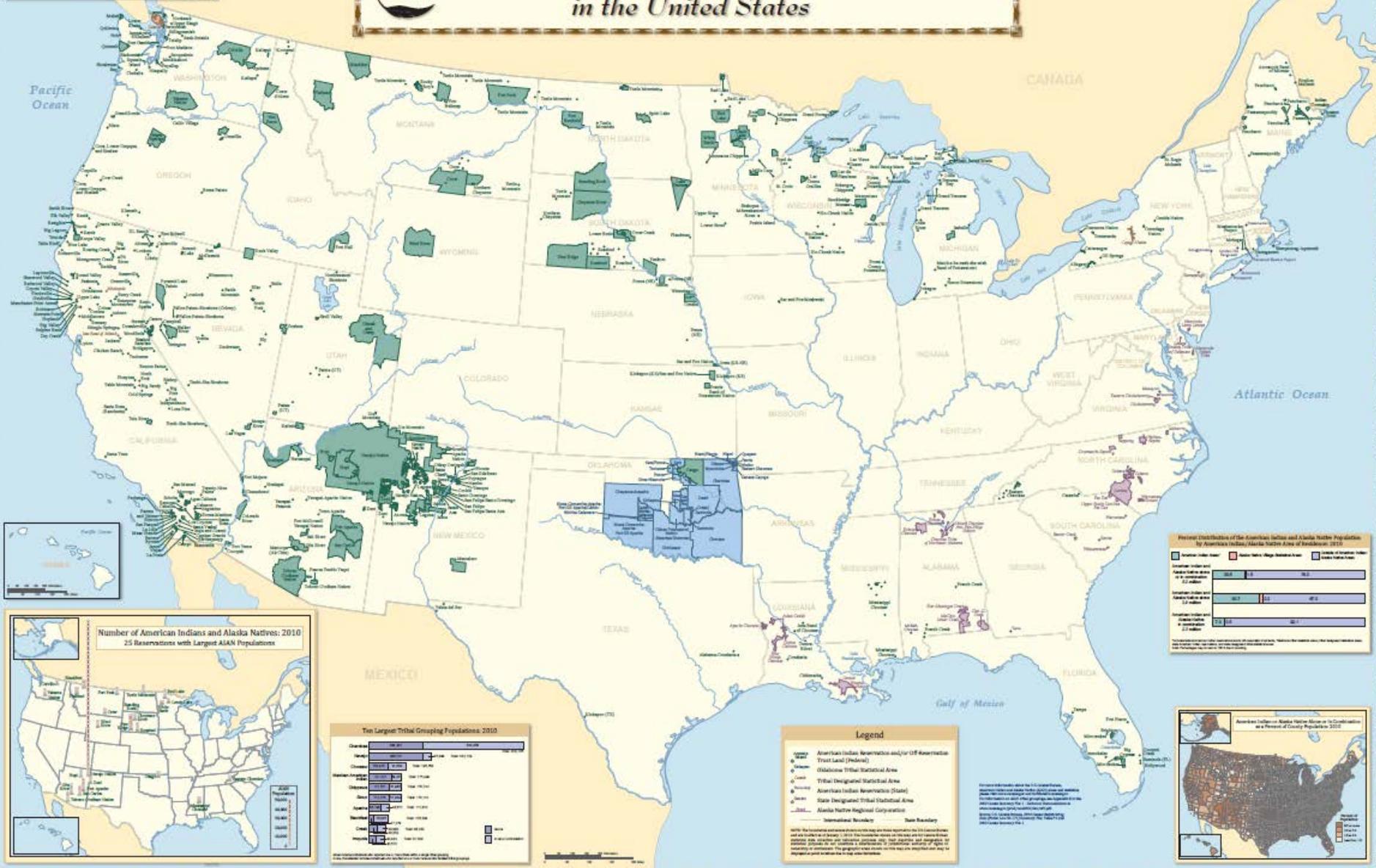
- Originally enacted in 1949, Indian Country is defined comprehensively at 18 U.S.C. §1151 as follows:

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.

American Indians and Alaska Natives in the United States



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
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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

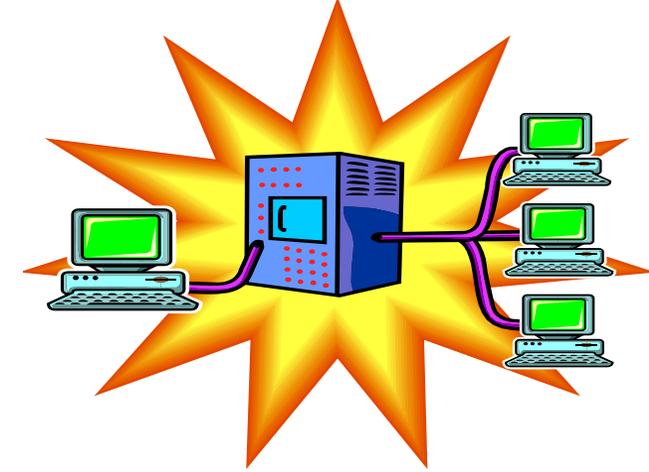
- States

- *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

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

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