

Chapter 13: Tribal Enforcement

Section 13.000: Understanding Tribal Policy

This section discusses the basis for tribal-specific child support policies and gives definitions of specific tribal-related terms.

Contents

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Policy	Consider all federally recognized tribes as independent sovereign governments. Work in partnership with Indian tribes, on a government-to-government basis, to provide culturally relevant child support services. <ul style="list-style-type: none">• The Department of Social and Health Services (DSHS) consults with tribes regarding plans, budgets, policies, and procedures affecting American Indian people.• The Division of Child Support (DCS) seeks to work with Indian tribes to develop informal processes and cooperative agreements to address child support, and support the development of tribal IV-D child support programs. Do not take garnishment actions against Indian tribes, enterprises, or Indian owned businesses on a reservation. <ul style="list-style-type: none">• Tribes have sovereign immunity from these actions.
Procedure	Consult your regional Tribal Liaison, Tribal Claims Officer, or the Tribal Relations Team (TRT) with questions regarding tribal matters.
Visual Aids	Tribal Relations Internet site

Automated Actions	
SEMS Screens	BC, OR, IA, CC, BI
Forms Used	
Hearing and Conference Board Rights	
See Also	U.S. Constitution Treaties Federal Indian Case Law and Policy OCSE-AT-98-21 Cooperative Agreements OCSE IM-07-03 Tribal and State Jurisdiction to Establish and Enforce Child Support Washington State Centennial Accord of 1989 DSHS Administrative Policy 7.01 Differences Between State and Tribal Regulations

Procedures

A. What is Indian law?

- Indian law is based on the legal and political relationship between the United States and Indian tribes.
 - a. It encompasses laws created by treaties, statutes, executive orders, case law, and administrative law.
 - b. These laws define and implement the relationship between the federal government, Indian tribes, state government, and individuals.

B. What is a treaty?

1. A treaty, including one between the United States and an Indian tribe, is essentially a contract between two (2) sovereign nations.
2. Treaties limit the external sovereign powers of Indian tribes, not the internal or self-governing powers.
3. Rights not expressly granted away by tribes in a treaty or taken away by a later federal statute are reserved by that tribe.

C. What does the U.S. Constitution say regarding Indian affairs?

1. The U.S. Constitution clearly recognizes the governmental status of Indian tribes and creates the basis for the unique federal relationship with tribal governments.
2. Primarily, four (4) clauses in the U.S. Constitution define congressional authority over Indian affairs:
 - a. The Commerce Clause (Article I, Section 8, 3).

- b. The Treaty Clause (Article II, Section 2, 2.).
- c. The Property Clause (Article IV, Section 3).
- d. The Supremacy Clause (Article VI, 2.).

D. What is tribal sovereignty?

1. Sovereignty is the right or power that comes from itself, and no other source, that a government draws upon to govern.
 - a. Tribal sovereignty is also known as tribal self-governance.
 - b. Indian tribes enjoy all inherent powers of self-government except those Congress has specifically removed.
2. Similar to other nations or states, each tribe has its own laws, policies, and procedures.
 - The current status of tribes has been described as "quasi-sovereign nations."

E. What is the difference between an Indian reservation and Indian country?

1. An Indian reservation is simply land that is set aside for a tribe or tribes.
2. Indian country refers to all the land under the supervision of the United States government that is set aside primarily for the use of Indians.
 - Indian country includes reservations, dependent Indian communities, allotment lands, and trust lands.

F. What is the 1989 Centennial Accord?

1. The 1989 Centennial Accord is the cornerstone of the formal relationship between the State of Washington and the federally recognized Indian tribes in the state.
2. The Accord affirms that the "respective sovereignty of the state and each federally recognized tribe provide paramount authority for that party to exist and to govern."
3. The Accord illustrates the commitment by the parties to implementation of the government-to-government relationship. This relationship:
 - a. Respects the sovereign status of the parties,
 - b. Enhances and improves communication between them, **and**
 - c. Facilitates the resolution of issues.

G. Does DSHS have policies concerning Indian tribes?

1. DSHS Administrative Policy 7.01 states the Department of Social Health Services' (DSHS) commitment to planning and service delivery to American Indian governments and communities.
2. Some of the policy requirements include having each DSHS division:
 - a. Consult with tribes regarding the development of 7.01 plans and progress reports.
 - b. Inform and seek input from Indian tribes and Indian Policy and Support Services (IPSS) when developing policies and procedures that will affect tribes or American Indian people.
 - c. Appoint Tribal Liaisons and provide opportunities for tribal specific training as funding permits.

H. Which has jurisdiction over child support, the state or the tribe?

- Both have jurisdiction. Concurrent jurisdiction exists with regard to child support.
 - a. In 1953, the plenary power of Congress over Indian tribes resulted in the enactment of Public Law (P.L.) 280, which allowed states to assume jurisdiction over Indian country within their borders.
 - b. Prior to the amendment in 1968 requiring tribal consent, the state of Washington assumed jurisdiction over non-Indians in Indian country and over Indians on trust lands in Indian country, in eight categories.
 - The categories include both domestic relations and public assistance.

Note: This jurisdiction by Washington State is not exclusive, but rather, concurrent with tribal jurisdiction over the same people or subject matter.

I. Do tribes have immunity from lawsuits and garnishment actions?

1. Yes. Sovereign immunity from suit is an inherent right of all governments, including the federal, state, and tribal governments.
2. Case law has established that suits against Indian tribes are barred by sovereign immunity, including immunity from garnishment actions.

J. What does the Revised Code of Washington (RCW) say about state and tribal child support agreements?

1. Chapter 26.25 RCW encourages DCS and Indian tribes to enter into cooperative agreements that will assist the state and tribal governments in carrying out their responsibilities.
2. The purpose of cooperative agreements is to enable the state and the tribes to better provide child support services to Indian children:
 - "The legislature recognizes that the preferred method for handling cases where all or some of the parties are enrolled members living on the tribal reservation is to develop an agreement so that appropriate cases are referred to the tribe to be processed in tribal court." (RCW 26.25.010)
3. Cooperative agreements serve the best interests of the children.

K. What is a DCS tribal case?

1. A tribal case includes, at the minimum, one **or** more of the following:
 - a. A noncustodial parent (NCP) who is a member of a federally recognized Washington tribe living on or near a reservation.
 - b. An NCP who is employed by the tribe, a tribal enterprise, or an Indian owned business located on a reservation or trust land.
 - c. A party included under a cooperative child support process or agreement.
 - d. A party receiving services from:
 - i. A Tribal TANF (Temporary Assistance for Needy Families) program.
 - ii. A Tribal IV-D program.
 - iii. Both Tribal TANF and Tribal IV-D programs.
2. A case involving other tribal issues. Consult your local Tribal Liaison or Tribal Claims Officer.

For example: A local field office may define tribal cases as a case:

- a. Associated with a Tribal TANF case,
- b. Involving any NCP living on a reservation, or
- c. Involving a party who filed a child support action in Tribal Court.

F. What does it mean to live "near a reservation"?

1. DCS policy uses this term based upon a U.S. Supreme Court Decision, *Morton v Ruiz*, 415 US 199 (1974).
 - This case defines an Indian living near a reservation to include an unassimilated Indian living off a reservation who maintains close economic and social ties with that reservation.
2. If you have questions regarding this term, contact your local Tribal Liaison or Tribal Claims Officer.

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