

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

Laws:	42 USC 654 State plan for child and spousal support Chapter 26.25 RCW Cooperative child support services - tribes Chapter 37.12 RCW Jurisdiction over Indians and Indian lands Chapter 43.376 RCW Government-to-government relationship with Indian tribes WAC 388-14A-1005 State plan WAC 388-14A-1050 Cooperation with other states and tribes U.S. Supreme Court Decision, Morton v Ruiz, 415 US 199 (1974) - Definition for "near a reservation"
Policy:	<p>Federally recognized tribes are independent sovereign governments.</p> <p>The Division of Child Support (DCS) partners with Indian tribes, on a government-to-government basis, to provide culturally relevant child support services.</p> <ul style="list-style-type: none">• The Department of Social and Health Services (DSHS) consults with tribes in the development of plans, budgets, policies, procedures and program development affecting American Indian people.• 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.• DCS assigns tribal cases to designated Tribal Liaisons who manage the cases and serve as a local resource for staff and tribes.
Procedure:	<p>Do not take garnishment actions against Indian tribes, enterprises, or Indian owned businesses on a reservation. Tribes have sovereign immunity from these actions.</p> <p>Consult your Tribal Liaison, Tribal Claims Officer, or the Tribal Relations Team (TRT) on cases with tribal connections.</p>
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. Treaties are the supreme law of the land under Article VI, Clause 2 of the U.S. Constitution.
2. 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, Section 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 may be implemented through tribal self-governance.
 - b. Indian tribes exercise 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.

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

1. An Indian reservation is an area of land reserved for a tribe or tribes under treaty or other agreement with the United States.
2. Indian country includes all the land under the supervision of the United States government that is reserved primarily for the use of Indians.
 - Indian country includes reservations, dependent Indian communities, allotment lands, and trust lands.

F. What is the definition of a federally recognized tribe?

1. Federally recognized tribes have a special, legal relationship with the U.S. government.
2. This relationship is referred to as a government-to-government relationship.
3. The Federally Recognized Indian Tribe List Act of 1994 requires the Bureau of Indian Affairs (BIA) to publish an annual list on or before January 30.
 - See the [Federal Register](#) for the current list.
 - Search for "Indian Entities Recognized and Eligible to Receive Services".

G. What is the basis for government-to-government relationships in Washington State?

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](#).
 - a. 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."
 - b. The Accord illustrates the commitment by the parties to implementation of the government-to-government relationship. This relationship:
 - i. Respects the sovereign status of the parties,
 - ii. Enhances and improves communication between them, **and**
 - iii. Facilitates the resolution of issues.
2. The 2012 Legislature codified the government-to-government relationship between the state and [Washington's federally recognized tribes](#) in Revised Code of Washington (RCW) [43.376](#). It provides state agencies:
 - a. Make reasonable efforts to collaborate with Indian tribes in development of policies, agreements, and program implementation that directly affect Indian tribes and develop a consultation process that is used by the agency for issues involving specific Indian tribes;
 - b. Designate a Tribal Liaison who reports directly to the head of the state agency;
 - c. Ensure that Tribal Liaisons who interact with Indian tribes receive training as described in RCW [43.376.040](#); and
 - d. Submit an annual report to the governor on activities of the state agency involving Indian tribes and on implementation of this chapter.

H. Does DSHS have policies concerning Indian Tribes?

1. Yes. [DSHS Administrative Policy 7.01](#) sets out 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 the [Office of Indian Policy \(OIP\)](#) 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.

I. Who has jurisdiction over child support, the state or the tribe?

- DCS holds the position that both have jurisdiction and that 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: DCS holds the position that jurisdiction by Washington State is not exclusive, but rather, concurrent with tribal jurisdiction over the same people or subject matter.

J. 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.

K. 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.

L. What is a DCS tribal case?

1. Tribal Liaisons manage tribal cases. 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.

- b. An NCP who is not a member of a federally recognized Washington tribe, but is employed by the tribe, a tribal enterprise, or an Indian owned business located on a reservation or trust land in Washington, if:
 - i. An enforceable order exists, or
 - ii. An enforceable order does not exist, but the Tribal Liaison recommended including the case in a tribal caseload.
- c. A party included under a cooperative child support agreement with DCS.

Example: Nez Perce tribal member.

- d. A party receiving program services from a Washington:
 - i. Tribal TANF (Temporary Assistance for Needy Families) program.
 - ii. Tribal IV-D program.
 - e. Paternity needs to be established and CP is a member of a Washington Tribe with a Tribal IV-D program. See Section [13.010](#) A.
 - f. Cases associated with a Washington tribal TANF case. See Section [13.015](#) E.
 - g. A Washington tribal TANF arrears-only case.
2. A case involving other tribal connections issues. See Section **M** below. Consult your local Tribal Liaison or Tribal Claims Officer.

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

- a. Involving any NCP living on a reservation,
- b. Involving a party who filed a child support action in Tribal Court,
- c. Involving an American Indian child receiving foster care, or
- d. Involving a responding or initiating intergovernmental case with tribal connections.

Note: [Tribal Liaisons](#) manage cases involving Washington tribal TANF and IV-D programs. See Section [13.005](#) A 2.

M. What are some possible "tribal connections" on a DCS case?

- 1. One or more parties are members of a tribe.
- 2. The NCP, CP or child has a tribal surname.
- 3. The NCP, CP or child lives on or near a reservation.
- 4. The NCP has a tribal employer.
- 5. The NCP or CP has tribal income or assets.
- 6. The NCP, CP or child receives tribal services.
- 7. The tribe has a IV-D, TANF or foster care program.
- 8. A CP has an associated tribal TANF arrears only case.
- 9. The child was conceived on an Indian reservation.
- 10. The child is potentially eligible for tribal enrollment.

11. There is an existing tribal court order.
12. DCS has a [cooperative agreement](#) or informal process with the tribe.
13. A party receives Indian Health Services benefits.

Note: Contact your [Tribal Liaison](#) if you discover tribal connections on a case. Any of these characteristics may require making the case a tribal case.

N. 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 Indian living off a reservation who maintains close economic and social ties with that reservation.
2. Tribes often designate "near reservation" areas.
 - If you have questions regarding this term, contact your local [Tribal Liaison](#), [Tribal Claims Officer](#), or the [DCS Tribal Relations Team](#) (TRT). Tribal Liaisons may contact the particular tribe for assistance in determining their "near reservation" areas.

O. What happens if a high profile case has tribal connections?

1. The DCS Community Relations Unit (CRU) and Policy will work together when circumstances require the involvement of both units and will coordinate with the Tribal Relations Team (TRT).
2. See Section [23.000](#) for the definition of a high profile case.