



September 27, 2017

TRIBES AND CHILD SUPPORT

**PAST, PRESENT & FUTURE
OPTIONS FOR STATES
AND TRIBES**

**CONFLICT VS COMMON
GROUND**

THE FEDERAL/STATE/TRIBAL RELATIONSHIP

SARAH COLLEEN SOTOMISH –

- Reservation Attorney, Tulalip Tribes, Retired from the State of Washington as the Tribal Liaison for DSHS/Economic Services Administration (TANF & Child Support)
- Citizen of the Quinault Indian Nation
- Descendent of one of the Five Traditional Leadership Families and Descendent of Treaty Signers.



BROAD PRINCIPLES

“Let us put our minds together and see what kind of life we can make for our children”

Tatanka Iyoytanka (Sitting Bull)



“No right is more sacred to a nation, to a people, than the right to freely determine its social, economic, political, and cultural future without external interference. The fullest expression of this right occurs when a nation freely governs itself. We call the exercise of this right Self-determination. The practice of this right is Self-government.”

- Joe DeLaCruz (1937-2000)



BACKGROUND REGARDING INDIAN TRIBES

Overview

- Did you know there are over 500 (566) federally recognized tribes in the U.S (48 states and Alaska)
- 35 states have federally recognized tribe(s) within their boundaries
- 11 States have processes for state recognition of tribes within their boundaries
- Last I looked there are 60 tribes/consortiums operating child support programs funded by the federal government
- It is a given, not all tribes will eventually choose to run their own Title IV-D program
- What then???



SETTING THE STAGE

- SOVEREIGN STATUS OF INDIAN TRIBES
- SOVEREIGN IMMUNITY
- U.S. COMMISSION ON INTERSTATE CHILD SUPPORT (1998)
- FEDERAL FULL FAITH & CREDIT (28 U.S.C. 1738(B))
- CLASS ACTION LAWSUIT BY TRIBAL CP'S

“Neither Congress nor the Department of Health and Human Services, when adopting these statutes and regulations, seems to have contemplated the existence of a sovereign Native American Indian Tribe within a state’s borders.” *Howe vs. Ellenbecker, et al*, Civ. 90-3007. U.S. District Court, District of South Dakota, August 11, 1992, 774 F.Supp. 1224, 796 F.Supp. 1276, 8 F.3d 1258 (1993)



Federal Law

NEW WELFARE REFORM LEGISLATION

Direct Funding: 455(f) of the Social Security Act of 1996 (PRWORA), 45 CFR 309.120, Cooperative Agreements, 45 CFR 302.24, 303.107

Section 375

- (b) DIRECT FEDERAL FUNDING TO INDIAN TRIBES AND TRIBAL ORGANIZATIONS.— Section 455 (42 U.S.C. 655) is amended by adding at the end the following new subsection:
- “(b) The Secretary may, in appropriate cases, make direct payments under this part to an Indian tribe or tribal organization which has an approved child support enforcement plan under this title. In determining whether such payments are appropriate, the Secretary shall, at a minimum, consider whether services are being provided to eligible Indian recipients by the State agency through an agreement entered into pursuant to section 454(34).”

CHILD SUPPORT ENFORCEMENT FOR INDIAN TRIBES 42 USCA § 654

(a) CHILD SUPPORT ENFORCEMENT AGREEMENTS.—Section 454 (42 U.S.C. 654), as amended by sections 301(b), 303(a), 312(b), 313(a), 333, 343(b), 370(a)(2), and 371(b) of this Act, is amended—

(3) by adding after paragraph (32) the following new paragraph:

“(33) provide that a State that receives funding pursuant to section 428 and that has within its borders Indian country (as defined in section 1151 of title 18, United States Code) may enter into cooperative agreements with an Indian tribe or tribal organization (as defined in subsections (e) and (l) of section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)), if the Indian tribe or tribal organization demonstrates that such tribe or organization has an established tribal court system or a Court of Indian Offenses with the authority to establish paternity, establish, modify, and enforce support orders, and to enter support orders in accordance with child support guidelines established by such tribe or organization, under which the State and tribe or organization shall provide for the cooperative delivery of child support enforcement services in Indian country and for the forwarding of all funding collected pursuant to the functions performed by the tribe or organization to the State agency, or conversely, by the State agency to the tribe or organization, which shall distribute such funding in accordance with such agreement.”; and

(4) by adding at the end the following new sentence: “Nothing in paragraph (33) shall void any provision of any cooperative agreement entered into before the date of the enactment of such paragraph, nor shall such paragraph deprive any State of jurisdiction over Indian country (as so defined) that is lawfully exercised under section 402 of the Act entitled ‘An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes’, approved April 11, 1968 (25 U.S.C. 1322).”

- Tribal Consultation
- Tribal Child Support Regulations (45 CFR 309) –
- Public Law 280



WASHINGTON STATE

- There are 29 federally recognized tribes in Washington State
- There are 11 tribal TANF Programs (this includes 1 consortium with four tribes)
- There are 8 Tribal Child Support Programs
- The Centennial Accord, DSHS Administrative Policy 7101, the state/tribal relations unit, hundreds of pages of tribal specific policy and the creation of tribal liaisons in all the regional offices who handle only tribal cases
- Washington tribes have been working child support issues for over 25 years and lead on many national issues



WASHINGTON STATE LAW

RCW 26.25.020

Cooperative agreements—Authorized.

(1) The department of social and health services may enter into an agreement with an Indian tribe or tribal organization, which is within the state's borders and recognized by the federal government, for joint or cooperative action on child support services and child support enforcement.

(2) In determining the scope and terms of the agreement, the department and the tribe should consider, among other factors, whether the tribe has an established tribal court system with the authority to establish, modify, or enforce support orders, establish paternity, or enter support orders in accordance with child support guidelines established by the tribe.

RCW 39.34

(Interlocal Cooperation Act)

39.34.010. Declaration of purpose

It is the purpose of this chapter to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities.

39.34.020. Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

“Public agency” means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state.



WASHINGTON STATE LAW

RCW 43.376.020

Government-to-government relationships—State agency duties.

In establishing a government-to-government relationship with Indian tribes, state agencies must:

- (1) Make reasonable efforts to collaborate with Indian tribes in the 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;
- (2) Designate a tribal liaison who reports directly to the head of the state agency;
- (3) Ensure that tribal liaisons who interact with Indian tribes and the executive directors of state agencies receive training as described in RCW [43.376.040](#); and
- (4) Submit an annual report to the governor on activities of the state agency involving Indian tribes and on implementation of this chapter

RCW 43.376.030

State agency tribal liaison.

The position of tribal liaison within a state agency is responsible for:

- (1) Assisting the state agency in developing and implementing state and agency policies that promote effective communication and collaboration between the state agency and tribal governments;
- (2) Serving as a contact person with tribal governments and maintaining communication between the state agency and affected tribal governments; and
- (3) Coordinating training of state age



FUNDAMENTAL TRUTHS

- A tribal/state relationship exists whether the two governments attend to it or not
- There is very little resource materials providing guidance as to how to develop a positive government-to-government relationship
- Interactions between state and tribes across the US are changing
- Tribes are flexing their political and economic muscle and applying principles of tribal sovereignty, self-governance, and cultural and environmental preservation to endeavors that range from resource management to gambling to TANF and child support
- These activities bring focus and conflict to dealings between state and tribes and illustrate the need for more cooperative and mutually beneficial relations among these governmental entities
- States like Washington with longer histories of tribal/state dealings provide excellent examples of cooperative agreements, enabling legislation for negation processes, commissions, committees and special activities



WHERE DOES ONE BEGIN?

- Accept existing legal frameworks
- Mutual respect and a basic understanding of each other's government
- Find Common Ground
- Listen
- Develop trust as equal partners
- Agree to disagree over who has jurisdiction (whether exclusive or concurrent) and look at a more appropriate forum analysis
- Get together and start a dialogue (communication, cooperation, and coordination)
- Have reasonable expectations (attitudes)
- Take a realistic look at goals and performance
- Take risks and be creative
- Most important, think about the children and who is in the best position to address all the issues and concerns.



WHAT HAVE WE LEARNED?

- State tribal relations is a process
- Developing a positive working relationship with Indian tribes on a government-to-government basis is a long term and evolving process
- This relationship has to evolve
- Big investment for both parties (time and resources)
- No quick fixes in this arena
- When you sign on you sign on for the long haul (long-term commitment)
- Let the tribes take the lead, novel idea
- Don't give up



I believe in children...



I believe in the future.

