

**GOVERNMENT TO GOVERNMENT RELATIONSHIPS**

Cooperative Jurisdictional Efforts between the  
Three Affiliated Tribes  
and the State of North Dakota




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**NEED FOR COOPERATION**

A review of statistics from the state of North Dakota shows a significant number of cases, with Lack of Jurisdiction (L J) to which no further collection action was being taken, pending a cooperative agreement with the tribe.

ESTIMATE OF 700 CASES, BASED UPON PRIOR  
NORTH DAKOTA CASELOAD AND STAFFING  
ANALYSIS - 7/29/1979

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**FORT BERTHOLD RESERVATION IN NORTH DAKOTA ENCOMPASSES  
APPROXIMATELY 980,000 ACRES AND OVERLAPS SIX NORTH  
DAKOTA COUNTIES**

McKenzie County - 441  
McLean County - 147  
Mountrail County - 265  
Dunn County - 73  
Mercer County - 41  
Ward County - 323\*



\* Not all individuals from TAT,  
various Tribes represented.

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### WHERE TO BEGIN

- Recognition that each party is a sovereign government receiving federal funding for the operation of a child support program.
- Protection of the cultural diversity of Tribal members and citizens of the State.
- Desire to cooperate and share resources and expertise to ensure parents and children receive necessary child support.
- To greatest extent possible, have only one entity provide child support enforcement services.

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### PRELIMINARY DISCUSSIONS

- ✧ Identify those individuals from Tribe and State involved in negotiations.
- ✧ Type and frequency of discussions.
- ✧ List of concerns and issues to be addressed.
- ✧ Methods to exchange information
- ✧ Maintain Confidentiality.



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### STATEMENT OF PURPOSE/SHARED VISION

- ✧ Effective and efficient delivery of child support enforcement services in cases wherein the state and Tribe have a mutual interest.
- ✧ Services be provided at little or no cost to either party.
- ✧ System wide communication on a regular basis with Tribal IV-D and ND employees.
- ✧ Protection of sovereign rights and cultural diversity.

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## IDENTIFICATION OF TRIBAL CASES

A considerable amount of time and effort was spent trying to properly identify who were tribal members. The state using their Fully Automated Child Support Enforcement System (FACSES) did not have enrollment information by Tribe. They had certain data elements such as:

- Residence by county.
- Zip Code information.
- Tribal Orders enforced or paid through FACSES.
- Employer wage withholding records.

Necessary to develop a template of information to try and capture the appropriate data

## DEVELOPED INFORMATION FORM - STATE REQUESTS

North Dakota Child Support Enforcement  
Regional Child Support Enforcement Unit

To: Three Affiliated Tribes Child Support Enforcement  
From: \_\_\_\_\_  
Date: \_\_\_\_\_  
Please determine if these individuals are or are not enrolled members of the Three Affiliated Tribes.

Mother's Name: \_\_\_\_\_ Enrolled? Yes \_\_\_\_\_ No \_\_\_\_\_  
(Last, First, Middle) Mother's DOB: \_\_\_\_\_  
Mother's Current/Last Known Address: \_\_\_\_\_  
Mother's Current/Last Known Employer: \_\_\_\_\_

Father's Name: \_\_\_\_\_ Enrolled? Yes \_\_\_\_\_ No \_\_\_\_\_  
(Last, First, Middle) Father's DOB: \_\_\_\_\_  
Father's Current/Last Known Address: \_\_\_\_\_  
Father's Current/Last Known Employer: \_\_\_\_\_

Child(ren):  
Enrolled? Yes \_\_\_\_\_ No \_\_\_\_\_ (NAME) (Date of Birth) (DOB)  
Enrolled? Yes \_\_\_\_\_ No \_\_\_\_\_ (NAME) (Date of Birth) (DOB)  
Enrolled? Yes \_\_\_\_\_ No \_\_\_\_\_ (NAME) (Date of Birth) (DOB)

For Questions, please call \_\_\_\_\_ or e-mail \_\_\_\_\_

## INITIAL ISSUES FOR JURISDICTIONAL AGREEMENTS

### THREE AFFILIATED TRIBES

- ✕ Identify cases involving tribal Members.
- ✕ Plan for conversion.
- ✕ Determination of which cases to transfer.
- ✕ Availability parent locate services.
- ✕ Requests for Federal offset.
- ✕ Access to state FACSES system & costs.

### STATE OF NORTH DAKOTA

- ✕ Plan for reconciliation of financial balances.
- ✕ Use of prior Paternity establishments and in-hospital acknowledgments.
- ✕ How to send referrals.
- ✕ Timeframes for conversion
- ✕ Confidential access to FACSES.
- ✕ Registration of foreign support orders.
- ✕ Records management.

### STRUCTURE/FORMAT OF AGREEMENT

- ✧ Statement of purpose/Shared Vision.
- ✧ Definitions.
- ✧ Identification of Tribal Cases.
- ✧ Provisions for IV-D Services, including
  - ✧ Case Transfers/ Case Referrals.
  - ✧ Registration state Orders in Tribal Court.
  - ✧ Income withholding
  - ✧ Procedures financial management of cases.
- ✧ View-only access FACSES.
- ✧ Use of Parent Locate Services.
- ✧ Confidentiality and Security.
- ✧ Cross training staff.
- ✧ Handling of disputes.

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### INTERAGENCY-COOPERATIVE AGREEMENT- KEY COMPONENTS

- ✧ Operations. To promote the effective and efficient delivery of child support enforcement services in cases in which TAT and ND have a mutual interest, the parties agree to cooperate in the operation of their respective IV-D programs as more specifically provided in any addendum to this section, which is incorporated by reference into this Agreement.
- ✧ Enforcement Services. Each party shall provide child support enforcement services to cases within its jurisdiction as determined under Section V of this agreement and as provided in any addendum to this section, which is incorporated by reference into this Agreement.

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### PROVISIONS FOR IV-D SERVICES

It was decided that the basic Interagency Cooperation Agreement would be finalized, and that certain addendums would be added to the agreement as different areas were addressed.

- ✧ Access to ND Automated Case Information (FACSES).
- ✧ Locate Services.
- ✧ Case Transfer/Case Referral

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### ACCESS TO ND FACSES

- ✧ ND to provide computer to TAT DCSE - VPN
- ✧ Access by authorized TAT DCSE staff.
- ✧ Inquiry only access.
- ✧ Access will help conserve ND resources, by TAT doing their on queries, result in no cost to TAT.
- ✧ ND provided training on use of FACSES.

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### LOCATE SERVICES

- ✧ Core function of IV-D, locating parents and noncustodial parent's employer.
- ✧ FPLS - Federal Parent Locator Service.
- ✧ Quick Locate - simplified process to ask other party for information.
- ✧ Development of - Locate Referral Sheet.
- ✧ Provide Unique Identifiers - a parent's SS# or ND person # to use in search under FACSES.
- ✧ Restriction on sharing Internal Revenue Service Info.

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#### FACTORS TO CONSIDER

A Case Transfer/Case Referral Matrix is being developed, as well as a Matrix for the determination of Jurisdiction and Next Step Case Processing of shared cases.

TAT  
MEMBERSHIP

LIVES ON/OFF  
RESERVATION

PLACE OF  
CONCEPTION

### CASE TRANSFER/CASE REFERRAL

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## ESTABLISHMENT & REVIEW GRID

	Existing Order?	Does A Party #18 Reside in the Jurisdiction that Issued the Last Order?	Does the Opposing Party Reside on the Reservation?	Is the Opposing Party a Tribal Member?	Court(s) with Jurisdiction
1	No		Y	Y	Tribal
2	No		Y	N	Concurrent - S
3	No		N	Y	Concurrent - S
4	No		N	N	State
5	TAT	Y			Tribal
6	TAT	N			State
7	ND	Y	N		State
8	ND	Y	Y		State
9	Other	Y			Other
10	Other	N	Y	Y	Tribal
11	Other	N	Y	N	Concurrent - S
12	Other	N	N	Y	Concurrent - S
13	Other	N	N	N	State

## SUBJECT MATTER JURISDICTION - CASE PROCESSING

	Fune Area	CP TAT Member	CP lives on TAT Reservation?	NCP TAT Member?	NCP lives on TAT Reservation?	Conception Where?	Jurisdiction
1	P	Y	Y	Y	N	ON	TAT
2	P	Y	Y	Y	N	ON	TAT
3	P	Y	Y	N	Y	ON	Concurrent - Y
4	P	Y	Y	N	N	ON	Concurrent - S
5	P	Y	N	Y	Y	ON	TAT
6	P	Y	N	Y	N	ON	TAT
7	P	Y	N	N	Y	ON	Concurrent - Y
8	P	Y	N	N	N	ON	Concurrent - S
9	P	N	Y	Y	Y	ON	TAT
10	P	N	Y	Y	N	ON	Defers to Legal - S
11	P	N	Y	N	Y	ON	Concurrent - S
12	P	N	Y	N	N	ON	Concurrent - S
13	P	N	N	Y	Y	ON	TAT
14	P	N	N	Y	N	ON	Defers to Legal - S
15	P	N	N	N	Y	ON	Concurrent - S
16	P	N	N	N	N	OFF	State
17	P	Y	Y	Y	Y	OFF	TAT
18	P	Y	Y	Y	N	OFF	Concurrent - S
19	P	Y	Y	N	Y	OFF	Concurrent - Y
20	P	Y	Y	N	N	OFF	State
21	P	Y	N	Y	Y	OFF	Concurrent - Y
22	P	Y	N	Y	N	OFF	Concurrent - S
23	P	Y	N	N	Y	OFF	Concurrent - Y
24	P	Y	N	N	N	OFF	State
25	P	N	Y	Y	Y	OFF	Concurrent - Y
26	P	N	Y	Y	N	OFF	Concurrent - S
27	P	N	Y	N	Y	OFF	State
28	P	N	Y	N	N	OFF	State
29	P	N	N	Y	Y	OFF	State
30	P	N	N	Y	N	OFF	State
31	P	N	N	N	Y	OFF	State
32	P	N	N	N	N	OFF	State

## LEGAL ANALYSIS - PATERNITY GRIDS 1-8

### EXCLUSIVE TRIBAL JURISDICTION

#### Exclusive tribal jurisdiction

This is the scenario presented in North Dakota Supreme Court case of *McKenzie County v. V.G.*, and *McKenzie County v. C.G.* Despite the alleged father's periodic residence off the reservation, the Supreme Court held in both cases that the location of conception and membership of the parents made this a "reservation affair". Exclusive tribal jurisdiction.

Reservation Indians have the right to bring claims against non-Indians in state court, even when those claims arise in Indian country. See: *Three Affiliated Tribes v. Wold Engineering* (infringement test - *Williams v. Lee*, is not to be used as an offensive tool against Indians). However, since conception was on the reservation and both mother and alleged father reside on the reservation, the tribal court would also have jurisdiction. Concurrent jurisdiction.

Same as #3, except the tribe would have to exert long-arm jurisdiction over the nonresident alleged father. Concurrent jurisdiction.

This is the scenario presented in *Interest of M.L.M.* With conception on reservation and both the mother and alleged father being members of the tribe, the exercise of state court jurisdiction would infringe on the tribe's authority over claims between its members for on-reservation activity. Exclusive tribal jurisdiction.

The fact the alleged father resides off the reservation makes the closer question than #5, but the fact remains that tribes have authority over their members for on-reservation activity. Exclusive tribal jurisdiction.

Tribal jurisdiction is clear. A non-Indian may not use the infringement test against Indians. Concurrent jurisdiction.

Same as #7, except the tribe would have to exert long-arm jurisdiction over the nonresident alleged father. Exclusive state jurisdiction.



### INFRINGEMENT TEST

Under the infringement test as set forth by the United States Supreme Court in Williams v. Lee, 358 U.S. 217, 223 (1959), state court jurisdiction over certain claims is not allowed if it would "undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves."

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### LEGAL ANALYSIS - PATERNITY GRIDS 9-16

- 9. Tribal jurisdiction is clear. Because the mother is a non-Indian, it is closer question whether state courts have jurisdiction. However, all relevant conduct occurred on the reservation and the alleged father is entitled to be governed by the tribe's laws. Exclusive tribal jurisdiction.
- 10. Tribal jurisdiction is clear. State court jurisdiction is possible, notwithstanding the alleged fathers membership, because the mother is non-Indian and because the alleged father has chosen to live outside the reservation. Concurrent jurisdiction should be asserted.
- 11. Tribal jurisdiction is clear. State court would have jurisdiction because both mother and alleged father are non-Indian. Concurrent jurisdiction.
- 12. State court would have jurisdiction because a non-Indian may not use the infringement test against Indians. The tribe would have to exert long-arm jurisdiction over the nonresident alleged father. Concurrent jurisdiction.
- 13. All relevant conduct occurred on reservation and alleged father is entitled to be governed by the tribe's laws. Exclusive tribal jurisdiction.
- 14. As in #10, state court jurisdiction could be asserted because alleged father has chosen to live outside the reservation. Concurrent jurisdiction should be asserted.
- 15. Tribe could have jurisdiction because both parents conceived child on the reservation. State court has jurisdiction because both parents are non-Indian. Concurrent jurisdiction.
- 16. Same as #15 except the tribe would likely lack jurisdiction over a nonresident nonmember. Exclusive state jurisdiction.

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### LEGAL ANALYSIS - PATERNITY GRIDS 17-24

- 17. Indians going beyond reservation boundaries have generally been subject to state laws. However despite conception off the reservation, the exercise of state court jurisdiction in a paternity action would determine a child's eligibility for membership. Exclusive tribal jurisdiction.
- 18. State courts must be available to Indians. An Indian who lives outside the boundaries of a reservation is subject to state laws. Membership of both parents in the tribe likely gives the tribe jurisdiction despite the location of conception. Concurrent jurisdiction.
- 19. State courts would have jurisdiction because a non-Indian may not use the infringement test against an Indian. The residence of both parents on the reservation likely gives tribal court jurisdiction as well. Concurrent jurisdiction.
- 20. This is one of the scenarios in Roe v. Doe. State court has jurisdiction, tribal court lacks jurisdiction because the alleged father is not a member, does not reside on the reservation, and the conduct involved occurred off the reservation. Exclusive state jurisdiction.
- 21. An Indian may not use the reservation boundary as a shield for off-reservation conduct. In addition, state courts must be available to tribal members. It is likely the mother could invoke tribal jurisdiction as well. Concurrent jurisdiction.
- 22. Same as #21, only state court jurisdiction is clear because the alleged father has chosen to live outside the reservation. Concurrent jurisdiction.
- 23. State courts have jurisdiction because the alleged father is not entitled to invoke the infringement test. It is likely the mother could invoke tribal jurisdiction as well. Concurrent jurisdiction.
- 24. State courts must be available to Indians. Alleged father has no reservation contact and may not invoke infringement test against Indians. Exclusive state jurisdiction.

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#### LEGAL ANALYSIS – PATERNITY GRIDS 25-32

- ❑ Indians may not use reservation boundaries as a shield for off-reservation conduct. It is likely the mother could invoke tribal jurisdiction as well. Concurrent jurisdiction.
- ❑ Same as # 25. Concurrent jurisdiction.
- ❑ State jurisdiction is clear. Tribal court jurisdiction is doubtful because neither party is an Indian. Exclusive state court jurisdiction.
- ❑ Exclusive state jurisdiction.
- ❑ State court jurisdiction is clear. Indians may not use reservation as a shield for off-reservation conduct. Exclusive state jurisdiction.
- ❑ Same as #29. This one of the scenarios in *Roe v. Doe*. Exclusive state jurisdiction.
- ❑ Infringement test may not be raised as a defense by a non-Indian. Exclusive state jurisdiction.
- ❑ Exclusive state jurisdiction.

Legal Analysis – developed by James C. Fleming from the North Dakota Child Support Office.

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#### HISTORIC SIGNING OF COOPERATION AGREEMENT CAROL K. OLSON – EXECUTIVE DIRECTOR OF NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES AND ELLEN WILSON – DIRECTOR TAT DCSE



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#### SPECIAL THANK-YOU

This presentation which is based upon the cooperative efforts between the State of North Dakota and the Three Affiliated Tribes has been made possible through the invaluable support, skills and knowledge provided by the North Dakota Child Support Office under the direction of Mike Schwindt.

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