

DRAFT
August 20, 2008

CASE PROCESSING WORK PLAN

I. Purpose

The purpose of the Case Processing Work Plan is to provide guidance to Three Affiliated Tribes Division of Child Support Enforcement (TAT DCSE) and State of North Dakota Child Support Enforcement (ND CSE) staff for processing IV-D cases when the staff member needs to identify the appropriate court with jurisdiction to take an appropriate step in the case.

This work plan complements the April 10, 2007, cooperative agreement between the TAT and State of North Dakota.

II. Definitions

In addition to the terms defined in the cooperative agreement, the following definitions should be used:

Existing Order: An order issued by a tribunal with proper jurisdiction over the parties and the subject matter addressing paternity of a child or support for a child.

Member: A person who is, or is eligible to be, a member of the Three Affiliated Tribes of the Fort Berthold Reservation. Membership consists of all persons of Indian blood whose names appear on the official census of the three tribes as of April 1, 1935; and all children born to any member of the tribes who is a resident of the reservation at the time of the birth of said children.

Non-Indian: A person who is not eligible to be a member of a federally-recognized Indian tribe.

Non-member Indian: A person who is, or is eligible to be, a member of a federally-recognized Indian tribe other than one of the Three Affiliated Tribes.

Place of Conception: The location of the beginning of a pregnancy marked by the fertilization of an egg by a sperm cell.

Subject Matter Jurisdiction: The authority of a court to hear particular cases based upon all the inherent powers of any sovereign. The jurisdiction of the Three Affiliated Tribes of the Fort Berthold Reservation shall extend to Indian Trust and Tribal lands within the confines

of the Fort Berthold Reservation, as defined in the treaty of September 17, 1851; to lieu lands outside of such boundaries; and to such other lands, within or without such boundaries, as have been or may be hereafter added thereto under any law of the United States, except as otherwise provided by law.

III. Exclusive and Concurrent Subject Matter Jurisdiction

Depending on the parties and the nature of the proceeding, either a Tribal court or a state court may have exclusive subject matter jurisdiction to take an appropriate step in a case.

In conducting a jurisdictional assessment involving parties who belong to different Indian tribes, it may be necessary to conduct a jurisdictional assessment twice – once using the mother's tribe and considering the father as a non-member Indian, and once using the father's tribe and considering the mother as a non-member Indian. See Roe v. Doe, 2002 ND 136, 649 N.W.2d 566.

Often, when there is no existing order in a case, a Tribal court and a state court will share concurrent subject matter jurisdiction. In that event, subject matter jurisdiction belongs to the first court to validly exercise jurisdiction in the case. As a general rule, and as more fully explained in the attachments to this document, concurrent subject matter jurisdiction will often be resolved in favor of the court in which personal jurisdiction over the parties will be most easy to obtain.

After a Tribal court or state court validly exercises subject matter jurisdiction in a case where the courts have concurrent jurisdiction, the court retains exclusive jurisdiction to modify the order in the future unless otherwise provided under FFCCSOA or UIFSA. However, even if a court has exclusive subject matter jurisdiction to modify an order, another court may become involved to assist in enforcement of the order.

IV. Paternity Establishment

The decision whether a Tribal court or state court has exclusive or concurrent jurisdiction in a paternity case is influenced by a number of factors: whether the mother and alleged father are members of the same Tribe, whether one party is an Indian and the other is not, whether a party resides on a reservation or Tribal land, whether conception occurred on or off the reservation, whether the mother applied for public assistance from the State and the State IV-D agency is bringing the paternity action, whether there is a Tribal forum for a paternity action, and which court is making the initial decision regarding jurisdiction.

The Supreme Court of North Dakota has held that a Tribal court had exclusive jurisdiction to determine paternity when both parents and the children were

enrolled members of the same tribe, conception occurred on the reservation, and the alleged father lived on the reservation. M.L.M. v. L.P.M., 529 N.W.2d 184 (N.D. 1995).

See **Appendix A** for guidance on determining the appropriate court(s) in which a paternity action should be pursued.

V. Child Support Establishment

In many cases, paternity is not an issue because:

- The child was born during a marriage;
- A voluntary paternity acknowledgment exists for the child;
- The obligor is the child's mother; or
- A court has previously established the child's paternity but has not issued an order for child support.

When paternity is not an issue, the next stage of case processing is the establishment of a support order. Federal regulations governing both State and Tribal IV-D programs require the use of local law and procedures in establishing the support order. The action may be brought before a judicial or an administrative forum.

The North Dakota Supreme Court recently distinguished between paternity actions between enrolled Tribal members (over which prior North Dakota decisions have found exclusive Tribal jurisdiction) and support establishment actions between enrolled Tribal members. The court cited with approval the North Carolina decision of Jackson County Child Support Enforcement Agency v. Swayney, which also distinguished between paternity and support establishment actions. The North Dakota Supreme Court somewhat narrowed the reach of its decision by holding "Tribal courts and State courts have concurrent subject-matter jurisdiction to determine a support obligation against an enrolled Indian, where parentage is not at issue and the defendant is not residing on the Indian reservation when the action is commenced.

The factors to be considered in identifying subject matter jurisdiction for establishment of a child support obligation focus on the residence of the opposing party and whether the opposing party is a tribal member. The residence and membership of the moving party, or assignee of the moving party, is not considered significant because the moving party or assignee is choosing the forum and consenting to jurisdiction.

See **Appendix B** for guidance on determining the appropriate court(s) in which a child support order should be pursued.

VI. Medical Support Establishment

Jurisdiction to seek a medical support obligation is based on factors that are similar to those considered in seeking a child support obligation.

See **Appendix B** for guidance on determining the appropriate court(s) in which a medical support order should be pursued.

VII. Modification of Support

States and Tribes are subject to FFCCSOA. Like UIFSA, which Tribes are not required to adopt, FFCCSOA sets limits on when a “State” is permitted to modify another State’s support order. Therefore, both states and Tribes should be applying consistent rules regarding when another jurisdiction’s support order can be modified. Those rules are outlined below:

- If there is only one support order and an individual party or child resides in the issuing jurisdiction, that jurisdiction has continuing, exclusive jurisdiction (CEJ) to modify.
- If there is only one support order and no party or child lives in the issuing jurisdiction, the party seeking modification must register the order for modification in a jurisdiction – other than his or her own – that has personal jurisdiction over the nonmovant.
- If there is more than one support order entitled to recognition and more than one jurisdiction can claim CEJ, the tribunal must determine the controlling order. The jurisdiction that issued the controlling support order is the jurisdiction with CEJ to modify.
- If there is more than one support order entitled to recognition and no issuing jurisdiction can claim CEJ, a tribunal with jurisdiction over both parties must issue a new support order, which becomes the controlling order in the case.

See **Appendix B** for guidance on determining the appropriate court(s) in which modification of a support order should be pursued.

VIII. Support Enforcement

Pursuant to FFCCSOA, states and Tribes are required to recognize and enforce valid child support orders, i.e. orders entered with appropriate subject matter and personal jurisdiction. If such orders are premised on a finding of paternity, the state or Tribe must honor such paternity findings.

State and Tribal laws provide a variety of enforcement remedies. Some actions are directed against particular assets, such as personal or real property, and require that the court or agency have jurisdiction over the property. Such jurisdiction is called in rem jurisdiction, which is Latin meaning jurisdiction over the res, or thing. Other enforcement remedies are directed against the person,

such as civil contempt or criminal prosecution. Those remedies require in personam jurisdiction, which is jurisdiction over the person.

Many types of enforcement actions are mandated by Title IV-D of the Social Security Act for both state and Tribal IV-D programs, but some (such as tax refund intercept) are only available at the present time to state IV-D agencies.

See **Appendix C** for guidance on determining which CSE agency, TAT or ND, may be able to proceed against an asset or source of income to collect support.

IX. Personal Jurisdiction

Once subject matter jurisdiction, either concurrent or exclusive, is identified, the next matter to address is whether the appropriate jurisdiction(s) may obtain personal jurisdiction over the non-moving party.

Tribal codes typically assert personal jurisdiction in a civil action over any person who is a member of the Tribe. Tribal codes usually also assert personal jurisdiction over persons who are present, domiciled, or resident on the Tribal reservation or other Tribal lands.

State court jurisdiction generally requires minimum off-reservation contacts between the non-moving party and the state.

X. Service of Process

A final step in bringing a court action to establish paternity or support, or to modify support, is to serve process on the non-moving party. It is unclear whether personal service of process on a member Indian on the reservation is permitted in a state court action. However, registered mail poses less of a risk of infringing on tribal sovereignty and should be attempted.

If necessary, the programs should coordinate with each other to determine whether service of process can be completed with the assistance of the county sheriff (in TAT cases) or tribal law enforcement (in ND cases).

XI. Case Processing – Jurisdictional Assessments

Upon the receipt of an application for services by the TAT DCSE Case Managers/Investigators or the State of North Dakota Child Support Enforcement (ND CSE) staff, the application will be reviewed to determine whether the case is within the subject matter jurisdiction of their respective Court system.

Step One: The case worker or staff member shall initially determine if the matter is a shared case, in which the Tribe and state have an interest, or whether the case may be transferred to either program.

Step Two: If the case is not being transferred, and there is no existing support order or the order needs to be changed, then either **Appendix A** or **Appendix B** should be used to determine preference for state or tribal jurisdiction.

Step Three: If the case is not being transferred and there IS an appropriate existing support order, then **Appendix C** should be used to determine appropriate jurisdiction to proceed against an asset or source of income for collection of support.

Step Four: If an appropriate next step in the case is not within the jurisdiction in which the worker or staff member is employed, they shall refer the case to the appropriate IV-D agency.

Step Five: If the attachments to this document indicate that the state and Tribe have concurrent jurisdiction, the case manager and staff member should contact their counterpart in the state or tribal system to discuss which entity should proceed. The jurisdictional chart shall give the initial guidance. Concurrent-T to be a preference toward tribal case processing and Concurrent-S to be a preference for State case processing. It is preferred that only one jurisdiction commence with court proceedings at any one given time.

XII. Related Authorities

Tribal and State Jurisdiction to Establish and Enforce Child Support

Journey to Understanding - An Introduction to North Dakota Tribes

Smith v. Hall, 2005 ND 215, 707 N.W.2d 247

Rolette Co. Social Service Bd. v. B.E., 2005 ND 101, 697 N.W.2d 333

Roe v. Doe, 2002 ND 136, 649 N.W.2d 566

McKenzie Co. Social Service Bd. v. C.G., 2001 ND 151, 633 N.W.2d 157

M.L.M. v. L.P.M., 529 N.W.2d 184 (N.D. 1995)

McKenzie County Social Services Board v. V.G., 392 N.W.2d 399 (N.D. 1986)

2000 N.D. Op. Atty. Gen. F-07 (paternity of child conceived on reservation)

2000 N.D. Op. Atty. Gen. L-25 (garnishment of reservation wages)

1994 N.D. Op. Atty. Gen. L-245 (service on reservation)

**APPENDIX A: SUBJECT MATTER JURISDICTION and NEXT
STEP CASE PROCESSING for "SHARED" CASES**

	Func 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	Y	On	TAT
2	P	Y	Y	Y	N	On	TAT
3	P	Y	Y	N	Y	On	Concurrent - T
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 - ?
8	P	Y	N	N	N	On	Concurrent - S
9	P	N	Y	Y	Y	On	TAT
10	P	N	Y	Y	N	On	Defer 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	Defer to Legal - S
15	P	N	N	N	Y	On	Concurrent - S
16	P	N	N	N	N	On	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 - T
20	P	Y	Y	N	N	Off	State
21	P	Y	N	Y	Y	Off	Concurrent - T
22	P	Y	N	Y	N	Off	Concurrent - S
23	P	Y	N	N	Y	Off	Concurrent - T
24	P	Y	N	N	N	Off	State
25	P	N	Y	Y	Y	Off	Concurrent - T
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

1. Exclusive tribal jurisdiction.
2. This is the scenario presented in McKenzie County v. V.G., 392 N.W.2d 399 (N.D. 1986) and McKenzie County v. C.G., 633 N.W.2d 157 (N.D. 2001). 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.
3. Reservation Indians have a right to bring claims against non-Indians in state court, even when those claims arise in Indian country. Three Affiliated Tribes I, 467 U.S. 138 (1984); State v. Zaman, 946 P.2d 459 (Ariz. 1997) (infringement test 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.
4. Same as #3, except the tribe would have to exert long-arm jurisdiction over the nonresident alleged father. Concurrent jurisdiction.
5. This is the scenario presented in Interest of M.L.M., 529 N.W.2d 184 (N.D. 1995). 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.
6. The fact the alleged father resides off the reservation makes this a closer question than #5, but the fact remains that tribes have authority over their members for on-reservation activity. Exclusive tribal jurisdiction.
7. Tribal jurisdiction is clear. A non-Indian may not use the infringement test against Indians. Concurrent jurisdiction.
8. Same as #7, except the tribe would have to exert long-arm jurisdiction over the nonresident alleged father. Exclusive state jurisdiction.
9. Tribal jurisdiction is clear. Because the mother is a non-Indian, it is a 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 father's 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. The tribe may have jurisdiction because mother conceived the child on 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.
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, 649 N.W.2d 566 (N.D. 2002). 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 more 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 contacts and may not invoke infringement test against Indians. Exclusive state jurisdiction.
25. 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.
26. Same as #25. Concurrent jurisdiction.
27. State court jurisdiction is clear. Tribal court jurisdiction is doubtful because neither party is an Indian. Exclusive state court jurisdiction.
28. Exclusive state jurisdiction.
29. State court jurisdiction is clear. Indians may not use reservation as a shield for off-reservation conduct. Exclusive state jurisdiction.
30. Same as #29. This is one of the scenarios in Roe v. Doe, 649 N.W.2d 566 (N.D. 2002). Exclusive state jurisdiction.
31. Infringement test may not be raised as a defense by a non-Indian. Exclusive state jurisdiction.
32. Exclusive state jurisdiction.

APPENDIX B: ESTABLISHMENT AND REVIEW GRID

The grid below assumes that paternity is not an issue in the case because:

1. Child was born during a marriage
2. A valid voluntary paternity acknowledgment has been signed
3. The obligor is the child's mother
4. A court has previously established the child's paternity but has not issued an order for child support.

The grid below further assumes that at least one of the parties resides in North Dakota or on the Three Affiliated Tribes' reservation, or else neither jurisdiction would have an interest in the case beyond asking another state or tribal IV-D program for assistance.

	Existing Order?	Does A Party Still 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
3	No		N	Y	Concurrent
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
12	Other	N	N	Y	Concurrent
13	Other	N	N	N	State

A field is left blank on the grid above if the question either does not apply, or does not affect the conclusion.

APPENDIX C. CHILD SUPPORT COLLECTION TOOLSⁱ

Credit Bureau Reporting	Federal ⁱⁱ	
Contempt of Court	Person ⁱⁱⁱ	Has the obligor been properly served? ^{iv}
Criminal Prosecution, Federal	Federal ^v	
Criminal Prosecution, State/Tribe	Person	Nonpayment ^{vi} off reservation = State Nonpayment on reservation = Tribe
Deduction Order – Lump sum	Property	See Income Withholding
Deduction Order – Account	Property ^{vii}	Account off reservation = State Account on reservation – Member = Tribe Account on reservation ^{viii} – Nonmember or NonIndian = State/Tribe? ^{ix}
Domestic Relations Orders (QDROs)	Property	
Garnishment - Wages	Property	See Income Withholding
Garnishment – Nonwages	Property	See Writs of Execution
Income Withholding	Property ^x	Employer is tribe or tribally-owned business = Tribe, regardless of whether wages are earned on or off reservation Employer is not a tribe or tribally-owned business – wages earned on reservation - employee is Member = Tribe ^{xi} Employer is not a tribe or tribally-owned business – wages earned on reservation - employee is Nonmember or NonIndian = State/Tribe? Employer is not a tribe or tribally-owned business – wages earned off reservation = State
License Suspension, “Judicial”	Person	Sanction for contempt; state-issued license = State
License Suspension, “Administrative”	Property	State-issued license = State Tribal-issued license = Tribe
Liens on Personal Property	Property	Property off reservation = State Property on reservation – Member = Tribe Property on reservation – Nonmember or NonIndian = State/Tribe?
Liens on Real Property	Property	Property off reservation = State Property on reservation – Member (trust land) = Tribe Property on reservation – Member (fee land), Nonmember, and NonIndian = State/Tribe?

Lottery Offset/Casino Winnings	Property	State lottery = State Casino winnings = Tribe?
National Medical Support Notice	Property	See Income Withholding
Passport Denial	Federal	
Public Disclosure	N/A	No jurisdiction of obligor or assets required if case is open to IV-D
Tax Refund Intercept, Federal	Federal	
Tax Refund Intercept, State	State	
Work Activities	Personal	Sanction for contempt
Writs of Execution	Property	Property off reservation = State Property on reservation – Member (trust land) = Tribe Property on reservation – Member (fee land and other property), Nonmember or NonIndian = State/Tribe?

ⁱ This table assumes an obligation that is properly enforced by the North Dakota IV-D program, either because the support obligation accrues under a North Dakota civil file, the obligation has been registered for enforcement as a foreign judgment, or another state has requested enforcement. See UIFSA § 507 (N.D.C.C. § 14-12.2-34) (registration not required for administrative enforcement unless contested).

ⁱⁱ For certain collection actions required by Title IV-D, the appropriate agency is authorized to take the action without regard to whether the agency has jurisdiction over the obligor or the obligor's assets.

ⁱⁱⁱ Also known as "in personam" jurisdiction.

^{iv} UIFSA § 201 (N.D.C.C. § 14-12.2-04).

^v Jurisdictional analysis for federal prosecution for willful nonpayment of support is beyond the scope of this document.

^{vi} There is authority suggesting that failure to pay child support is a continuing offense, starting with the location where the obligor failed to pay and concluding with the location where the child was supposed to receive the funds. Accordingly, the proper location for a prosecution (assuming one parent lives on the reservation and one lives off) may depend on the practical question of where the obligor can be located.

^{vii} Also known as "in rem" jurisdiction.

^{viii} If a bank account has been opened at a branch of a bank that is located on the reservation, but the bank also has branches off the reservation, the appropriate focus is on the location of the bank at which the obligor opened the account, which can be presumed to be where the obligor lives or works.

^{ix} See 26 U.S.C. § 414(p)(6).

^x An exception exists if the jurisdiction of the employer has adopted UIFSA, in which case the employer is required to honor the income withholding order even if the issuing state has no jurisdiction over the wages. See UIFSA § 501 (N.D.C.C. § 14-12.2-33).

^{xi} Except for federal employees, whose income is subject to income withholding. 42 U.S.C. § 659; Office of Child Support Enforcement IM-02-01.