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The logo features the word "ERICSA" in a bold, white, sans-serif font inside a teal, rounded rectangular sign with a white border. The sign is mounted on two teal poles. Behind the sign are two orange triangular road signs pointing upwards. The background is a stylized landscape with green rolling hills, a grey road with white dashed lines curving into the distance, and a light blue sky with white clouds.

On the Road Again

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MAY 24 – 26, 2021

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Let's Talk: Tribal Cases

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Atty. Tish Keahna Kruzan, Red Cliff Tribal CSA

Atty. Jim Fleming, ND Child Support

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Did you know that there are over 60 tribes currently receiving IV-D funds to operate their own program? This workshop will be an interactive discussion on the challenges as well as successes in working tribal cases. Topics will include Tribal history, sovereignty, jurisdictional issues, tribal federal regulations, intergovernmental requirements, cooperation between programs, and much more. We also have representation from the recently awarded 1115 Intergovernmental grants to speak to the collaborative effort they're making in improving state and tribal case collaboration. We're joined by two representatives from state child support agencies along with two tribal child support agencies within the two respective states. We'll hear how they manage shared cases in differing state governments with one being a state-administered program and the other being a county-administered program and the successes and challenges of each.



History of IV-D

- State IV-D program authorized by Congress in 1975 as a welfare cost recovery program
- Tribal IV-D program authorized by Congress in 1996 under PRWORA (Personal Responsibility and Work Opportunity Reconciliation Act)

Both are required to provide the following services:

- Establish Paternity
- Establish Child Support Orders
- Modify Child Support Orders
- Enforce Child Support Orders
- Locate Absent Parents



Working with Tribal IV-D Programs

- Jurisdiction
- Income Withholding Orders
- Setting Support
- Medical Support
 - Indian Health Service
- Other Income
 - Per Capita
 - Oil and Mineral Dividends



Wisconsin and Tribal Protocol

- Teague Protocol
- Jurisdictional Allocation Conferences
- Tribal/State Protocol
- Transfer of Civil Cases to Tribal Courts
- State/Tribal Memorandum of Understanding



Wisconsin

- The WI Department of Children and Families contracts with 71 counties to administer the child support program.
- 11 Federally recognized Indian tribes in Wisconsin:
 - Bad River Band of Lake Superior Chippewa
 - Ho-Chunk Nation
 - Lac Courte Oreilles Band of Lake Superior Chippewa
 - Lac du Flambeau Band of Lake Superior Chippewa
 - Menominee Tribe of Wisconsin (*no longer PL 280)
 - Oneida Nation
 - Forest County Potawatomi
 - Red Cliff Band of Lake Superior Chippewa
 - St. Croix Chippewa
 - Sokaogon Chippewa (Mole Lake)
 - Stockbridge-Munsee Community

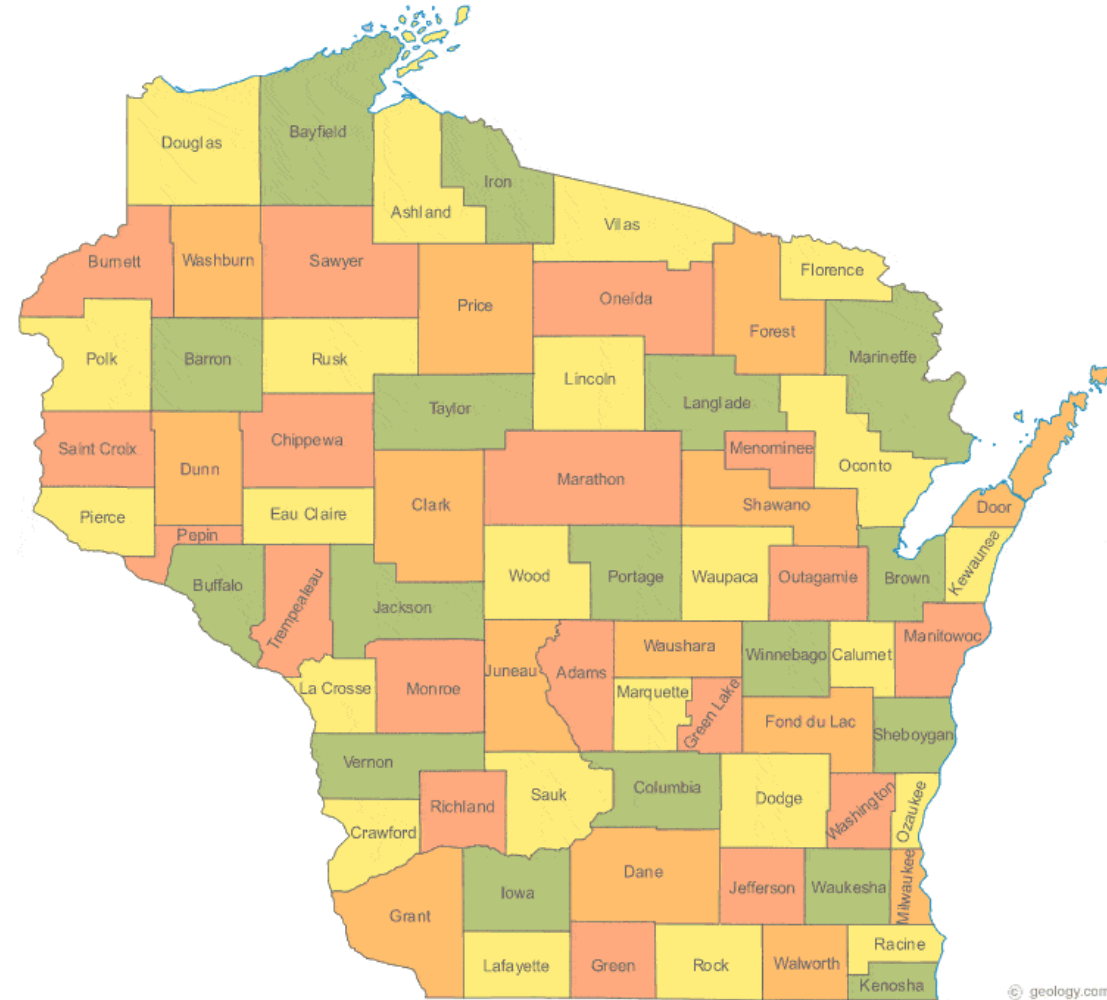


Nine Tribal IV-D Programs in Wisconsin

- Ho-Chunk Nation
- Lac Courte Oreilles Band of Lake Superior Chippewa
- Lac du Flambeau Band of Lake Superior Chippewa
- Menominee Tribe of Wisconsin (*no longer PL 280)
- Oneida Nation
- Forest County Potawatomi
- Red Cliff Band of Lake Superior Chippewa
- Sokaogon Chippewa (Mole Lake)
- Stockbridge-Munsee Community



Wisconsin Counties



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Wisconsin Tribes



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Public Law 280

- Public Law 280 is a federal law passed by Congress in 1953.
- Prior to Public Law 280, tribes had jurisdiction over civil and most criminal matters involving their people and territory, while the Federal government had limited concurrent jurisdiction.
- Public Law 280 transferred criminal and limited civil jurisdiction from the federal government to some state governments.
- Wisconsin was one of those states.



Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians, 236 Wis.2d 384 (2000)

- Jerry Teague (non-tribal member) was employed by Bad River and worked at the casino. He was terminated and sued the tribe in state court for breach of employment contracts.
- More than a year after Teague filed his complaint, the Bad River Band filed its own suit in tribal court.
- At the time, WI law did not provide any protocols for state and tribal courts to follow when both had jurisdiction.



Teague Holding

- The WI Supreme Court held:
 - (1) prior action pending rule did not apply to tribal court, which was a court of an independent sovereign, but
 - (2) principles of comity required that state and tribal courts confer for purposes of allocating jurisdiction between them, to avoid both the race to judgment and inconsistent results.
- The Court reversed and remanded the case, ordering the circuit court to hold a jurisdictional allocation conference with the tribal court.



Jurisdictional Allocation Conferences

- Principles of comity required that the state and tribal courts confer and allocate jurisdiction between themselves, in order to avoid a race to judgment and the inconsistent results that may occur.
 - Wisconsin Supreme Court has no jurisdiction over tribal courts within the state and vice versa.
 - State court was ordered to invite the tribal court to a meeting.
 - Judges to decide which should proceed to exercise its jurisdiction (“Teague Conference”).



Tribal State Protocol

- Wisconsin's Ninth and Tenth Judicial Districts developed state/tribal protocols to follow when state court and tribal court both have jurisdiction over a matter.
- The protocols do not apply to other tribal and circuit courts located outside of those districts.
- These were created in response to *Teague v. Bad River Band*, 236 Wis.2d 384, 612 N.W. 2d 709 (2000).
- [Ninth Judicial District State/Tribal Protocol](#)
- [Tenth Judicial District State/Tribal Protocol](#)



State-Tribal Justice Forum

- To promote and sustain communication, education and cooperation among tribal and state court systems.
- The Forum meets quarterly and includes five circuit court judges, five tribal judges, one tribal attorney, and one district court administrator.
- Committee formed by the WI Supreme Court.
- [State Tribal Justice Forum Committee](#)



Transfer of Civil Cases to Tribal Court

- Wis. Stat. s. 801.54: Authorizes the discretionary transfer of civil cases from state circuit court to tribal court. Became effective January 1, 2009.
- July 1, 2009, WI Supreme Court granted DCF's request to amend s. 801.54 to create an exception to facilitate transfer of post-judgment child support cases.
- Section 801.54(2m) authorizes the court, on its own motion or the motion of any party, after notice to the parties of their right to object, to transfer a post-judgment child support, custody or placement provision of an action in which the state is a real party in interest to a tribal court located in Wisconsin that is receiving funding from the federal government to operate a child support program under Title IV-D.



Case Transfer in Practice

- The statute provides some uniformity to case transfers statewide.
- Memorandums of Understanding are in place with tribal IV-D agencies to facilitate this process.
- The tribe identifies cases it would like transferred and sends a letter to the parties.
- The county then files a motion in state circuit court seeking a transfer of the case to the tribe.
- The parties have an opportunity to object.



The Case Transferred: Now What?

- After a case is transferred, the state court is required to enter a stay of proceedings in state court. Wis. Stat. s. 801.54(3).
- State court retains jurisdiction during the stay.
- State Court can modify the stay and take action in the interest of justice.
- After 5 years, the county clerk of court shall without notice, enter an order dismissing the case.



It is Not Always Easy

- Training staff at 71 county child support agencies on the different laws and practices of each tribe (e.g., IWO).
- Many different perspectives and personalities.
- Recent change to the State-County contract: added language requiring the county to cooperate with tribal IV-D agencies when transferring cases and to not cause unreasonable delays in transferring.



North Dakota and Tribal Protocol

- Transfer Process of State Cases to Tribes
 - Concurrent Jurisdiction
 - Jurisdiction Matrix
 - Federal Final Rule on Case Transfers to Tribes
- Intergovernmental Grant
 - Assessment
 - Results – Improvements to Case Processing
- North Dakota TOP – Tribal Offset Program
 - Consortia based federal tax offset program



North Dakota Jurisdictional Matrix

PATERNITY

	Conception Where?	Is CP a member of the tribe?	Does CP reside on the tribe's reservation?	Is NCP a member of the tribe?	Does NCP reside on the tribe's reservation?	Court(s) with jurisdiction
1	On	Y	Y	Y	Y	Tribal



North Dakota Jurisdictional Matrix

ESTABLISHMENT/REVIEW AND ADJUSTMENT

	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?	Were There Significant Incidents of Relationship in Jurisdiction of the Moving Party?	Court(s) with jurisdiction
1	No		Y	Y	N	Tribal



North Dakota Jurisdictional Matrix

ENFORCEMENT

CHILD SUPPORT COLLECTION TOOLS

Income Withholding	Property	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 (except federal employee) 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
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North Dakota Tribal Offset Program (TOP)

Consortia Based Federal Offset Program



Tribal Child Support Enforcement Act

- S.534, Senator Thune (R-South Dakota) Senator Wyden (D-Oregon) March 2, 2021
 - S.3154, Senator Thune (R-South Dakota) Senator Wyden (D-Oregon) Senator Crapo (R-Idaho) January 8, 2020
- Grants tribal child support programs direct access to the federal tax offset program for collection of past due child support
 - Ensures that all IRS confidentiality safeguards are met



Questions

Thank you!



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