



*Bridging Bright
Futures for Families*

**ERICSA
2024**

Grand Rapids

**ERICSA 61ST ANNUAL
TRAINING CONFERENCE & EXPOSITION
APRIL 7-11, 2024**

State Courts vs Tribal Courts: A Two Jurisdiction Perspective

Hon. Marsha Harlan
Hon. Nicholas Palos



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State Courts and Tribal Courts have some differences when it comes to child support proceedings, but there are some similarities as well. This workshop will compare and contrast these two jurisdictional tribunals. Topics to be covered include paternity establishment, support establishment, modifications, contempt proceedings, unique enforcement tools, and much more. Best practices for dealing with these courts will be disseminated



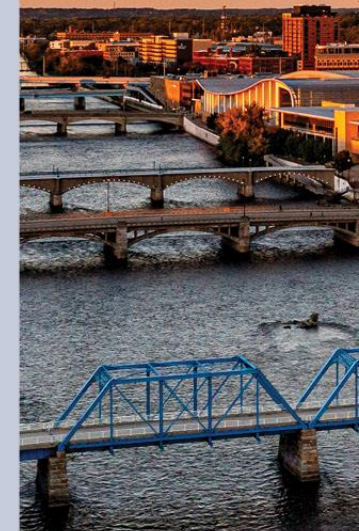
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- ❖ **THIS WILL BE AN INTERACTIVE SESSION, WITH THE CONVERSATION IN THE ROOM DETERMINING THE DIRECTION OF THE PRESENTATION**
- ❖ **OUR PROMISE TO YOU IS WE WILL COVER EVERYTHING IN THESE SLIDES, ALTHOUGH E MAY NOT DO EVERYTHING IN THE SAME ORDER (SEE ABOVE)**
- ❖ **FOR ATTORNEYS SEEKING CLE CREDIT FOR HIS SESSION, DON'T FORGET TO SIGN IN AND OUT OF THE SESSION**



Introduction

- Tribal Courts and State Courts have some differences when it comes to child support enforcement proceedings, but there are a number of similarities as well. This workshop will compare and contrast these two jurisdictional tribunals.
- Topics to be covered include paternity establishment, support establishment, modifications, contempt proceedings, unique enforcement tools, and much more.
- Best practices for dealing with these tribunals will be addressed as well.

CONCURRENT JURISDICTION

❖ The issue of concurrent jurisdiction between state and tribal courts is governed by statutes and case law.

❖ Congress enacted PL 280 in 1953 that extended to 6 states (including Wisconsin). The Act gave these states jurisdiction over many crimes and some civil matters when the cause of action arose in Indian Country.

❖ Federal courts have specifically found that tribal courts have concurrent jurisdiction over domestic relations actions as long as they are willing to assume jurisdiction.

❖ Full Faith and Credit for Child Support Orders mandates full faith and credit for child support orders between tribal or state courts.

TRIBAL AND STATE COURT PROCEDURES



Like States, most Tribes allow for consent agreements, which allow for judicial economy.



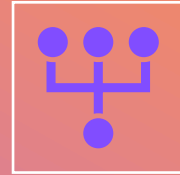
Hearings and court procedures may be similar between Tribes and States, depending on tribal principles and values.



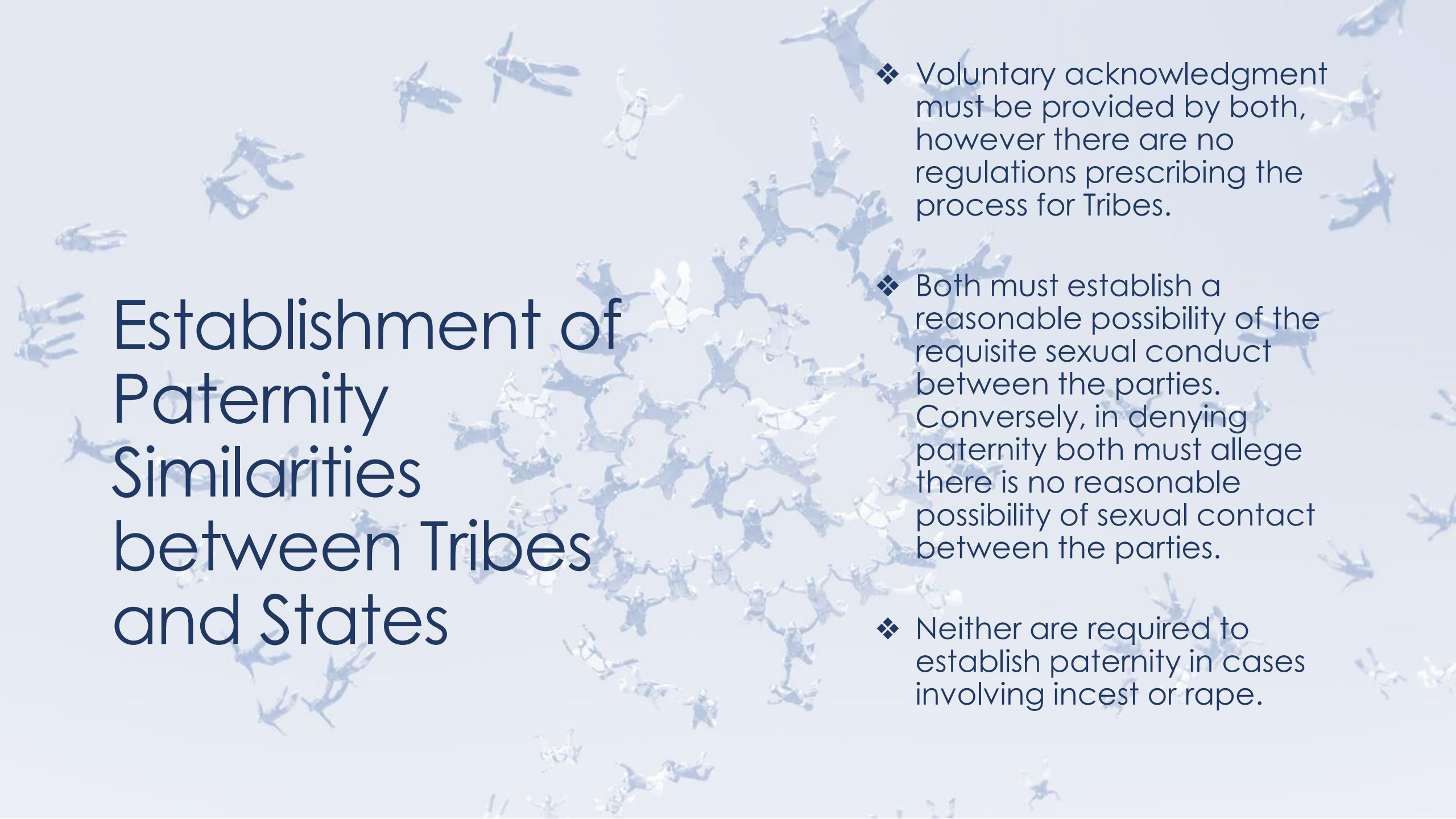
Due Process is required in State and Tribal Court, although under different laws.



Attorneys who are licensed by a State generally can appear in Tribal Courts. Some Tribal Courts allow lay advocates. In a Tribe's Traditional Court, attorneys may not be allowed. Some Tribal Courts require Bar admission.



Administrative tribunals are used by some Tribes.



Establishment of Paternity Similarities between Tribes and States

- ❖ Voluntary acknowledgment must be provided by both, however there are no regulations prescribing the process for Tribes.
- ❖ Both must establish a reasonable possibility of the requisite sexual conduct between the parties. Conversely, in denying paternity both must allege there is no reasonable possibility of sexual contact between the parties.
- ❖ Neither are required to establish paternity in cases involving incest or rape.

Establishment of Paternity Distinctions between Tribes and States

- ❖ States are required to provide for genetic (DNA) testing if paternity is contested.
- ❖ Tribes may be exempted from such testing if the testing is prohibited under tribal law.
 - ❖ We're starting to see some tribes require genetic testing in all paternity actions.
 - ❖ Often this is due to membership requirements of the tribe.

Jurisdiction over Paternity Establishment

❖ Factors to Consider:

- ❖ Tribal Membership
- ❖ Residence of the parties
- ❖ Where conception is likely to have occurred
- ❖ Whether the State is a Public Law 280 jurisdiction

REQUIREMENTS FOR ESTABLISHMENT OF SUPPORT ORDERS



The Federal Regulations for Tribes and States provide for similar provisions.



However, Tribes may accept “non-cash” payments to satisfy support obligations.



Caveat: “Non-cash” payments shall not satisfy assigned support obligations.

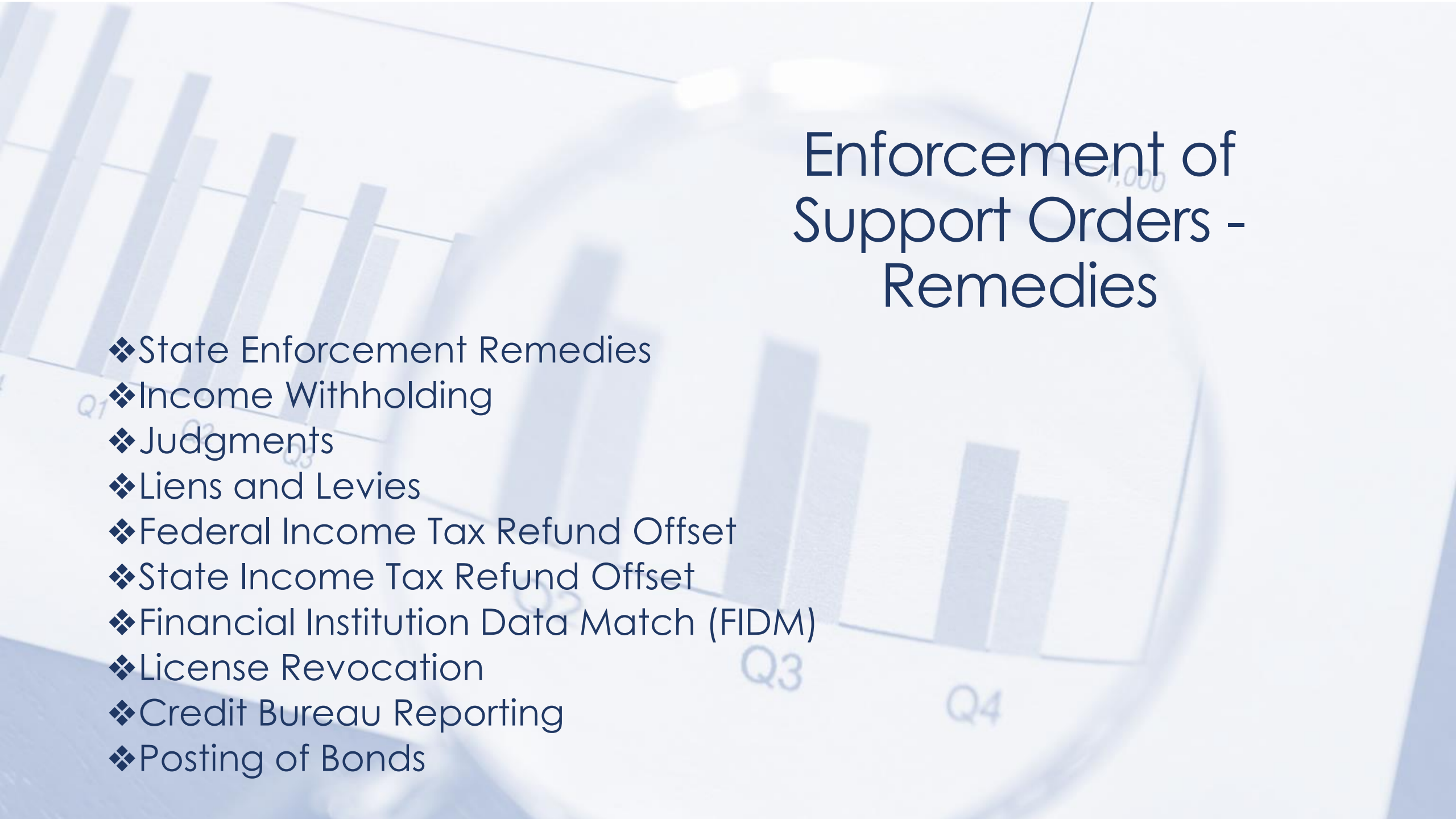
JURISDICTION TO ESTABLISH SUPPORT⁺ ORDERS

Factors to consider are the same as the factors to establish paternity.

An additional consideration may be whether public assistance is provided by the State or Tribe.

Tribes are not required to set or enforce medical support.

Indian Health Service is defined as medical support.



Enforcement of Support Orders - Remedies

- ❖ State Enforcement Remedies
- ❖ Income Withholding
- ❖ Judgments
- ❖ Liens and Levies
- ❖ Federal Income Tax Refund Offset
- ❖ State Income Tax Refund Offset
- ❖ Financial Institution Data Match (FIDM)
- ❖ License Revocation
- ❖ Credit Bureau Reporting
- ❖ Posting of Bonds

ENFORCEMENT REMEDIES CONTINUED...

TRIBAL ENFORCEMENT REMEDIES

Income Withholding

Tribal specific hunting and
fishing licenses

Recreational Casino Use
Restrictions

Per Capita Garnishment

- Monies from gaming revenue, land or oil right proceeds, etc.
- This varies from tribe to tribe and each tribe has discretion on whether or not these monies can be garnished for child support.
- Some tribes only allow for child support arrears while others only allow for current support.

Administrative Enforcement
through the State

- If the tribe is using a state system

MODIFICATION OF ORDERS



Both Tribes and States must address modification of support orders.



States are required to review cases for modification every 3 years. Requests for review can be made at the request of either party, due to existence of public assistance or the State's own procedure.



Tribes, for the most part, are left to determine their own review/modification procedures, but such procedures are required in their program plan.

Example: Red Cliff Band of Lake Superior Chippewa has a 24-month review period.

INTERGOVERNMENTAL ENFORCEMENT



Uniform Interstate Family Support Act, is required by every State, 42 U.S.C. Section 666(f), BUT Tribes are not required to adopt UIFSA.



Full Faith and Credit for Child Support Orders Act, 28 U.S.C. Section 1738B(b) applies to ALL Tribes and States.

Enforcement of Orders on Tribal Reservations

- ❖ Each tribal nation can have different requirements to register an order in their court.
- ❖ It's always best to give the clerk of court a telephone call and inquire as to what they require for registration of a foreign order or assistance with an inter-jurisdictional case.
 - ❖ Many tribal agencies do use Transmittal #1 and subsequent documents.
- ❖ It's also important to note that there are only 60 comprehensive tribes operating child support while there are over 550 federally recognized tribes.
- ❖ Even those without federal funding may have a law in place regarding family matters including child support.



Best Practices

- ❖ Be prepared.
- ❖ Know the Court Rules.
- ❖ Know the appropriate law.
- ❖ Do not argue another jurisdiction's law if there is case law on point. (In other words, don't argue state law in tribal court or tribal law in state court). Remember, these are real people's lives.

CONSULTATION - CORNERSTONE FOR SUCCESSFUL COLLABORATION



ESTABLISH A SHARED VISION



DEVELOP PERSONAL
RELATIONSHIPS



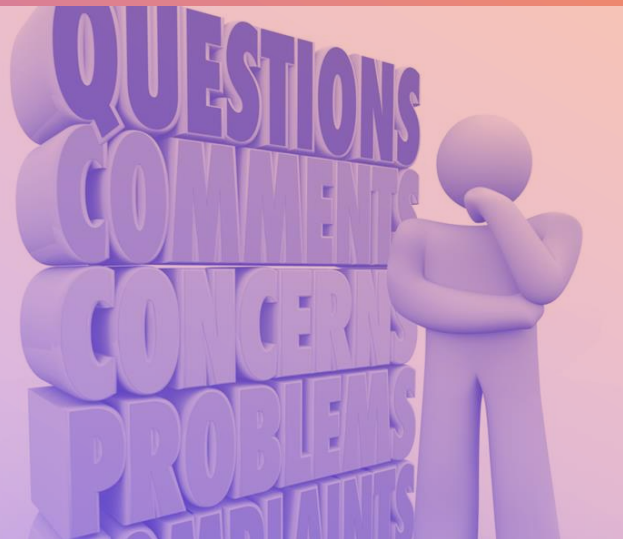
CREATE PROCESSES FOR
AVERTING AND RESOLVING
DISPUTES

The image features a decorative border with a teal line and black spikes. On the left, there are four interlocking gears: two blue and two green. On the right, there is a large yellow lightbulb with a black base, surrounded by three gears (one blue and two green).

FINAL THOUGHTS



AUDIENCE
ENGAGEMENT



QUESTIONS
COMMENTS
CONCERNS
PROBLEMS
COMPLAINTS



NOW IT'S
YOUR TURN

+ o



THANK YOU



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Presenter Name: Hon. Marsha Harlan, Tribal Judge



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