



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
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July 20, 2016

TO: Washington state tribes
Regional Administrators
Deputy Regional Administrators
Area Administrators
Supervisors

FROM: Jennifer A. Strus, Assistant Secretary
Children's Administration

SUBJECT: Addendum to CA Authority and Staff Role in Conducting Child Protective Services Investigations and the application of the Indian Child Welfare Act

The following guidance serves as an addendum to the [June 25, 2015 memorandum](#) that outlines the role of Children's Administration (CA) staff when conducting Child Protective Services (CPS) investigations of Indian children and families. Specifically, this addendum seeks to explain in greater detail CA's role when a family has an open case in tribal court but lives off reservation, and how CA should evaluate the interplay between a family's domicile and residence. This guidance is being issued in response to a discussion with tribal representatives during the July 13 CA Indian Policy Advisory subcommittee meeting.

CPS Investigation of Indian Children and Families who reside on a Reservation

CA staff can only conduct a CPS investigation on the reservation at the request of the tribe. If the tribe has a signed [memorandum of understanding \(MOU\)](#) with CA, staff should follow specific instructions contained in the MOU.

What is CA's responsibility when it receives a screened-in intake requiring a CPS response to Indian children/families who reside off-reservation, but there is an existing, open case in tribal court?

A family affiliated with a federally recognized tribe domiciled on the reservation, but who resides off reservation is subject to Washington state law; and there is no legal authority which allows CA to turn an open CPS investigation over to a tribe when the family resides off reservation.

Tribes have exclusive jurisdiction over child custody proceedings (as that term is defined in ICWA) involving an Indian child *who resides or is domiciled within that tribe's reservation*. 25 U.S.C. Sec. 1911(a); RCW 13.38.060(1). Tribes also have exclusive jurisdiction over child custody proceedings if the child is already a "ward of a tribal court," regardless of where the child resides or is domiciled. 25 U.S.C. Sec. 1911(a); RCW 13.38.060(2). **But ICWA does not include child protection investigations in its definition of "child custody proceeding." 25 U.S.C. Sec. 1903(a); 13.38.040(3).** Outside of a tribe's Indian country, nondiscriminatory state laws are presumed to apply to everybody, including Indians, unless there is express federal law that says otherwise. *Wagon v. Prairie Band Potawatomi Nation*, 546 U.S. 95,113 (2005). Thus, because there is no express federal law that says tribes have exclusive jurisdiction over child protection investigations when the individuals are located off-reservation, state law regarding child protection investigations applies to Indian children and families just as it applies to any other children and families.

This means that while a family may have an open case in tribal court, [RCW 74.13.031\(3\)](#) requires CPS to conduct an investigation or offer a Family Assessment Response as allowed in [RCW 74.13.031\(4\)](#) if CA receives a screened-in report regarding a child.

In circumstances when CA staff knows, or has reason to know, that the family has involvement with a tribal court, it is expected that CA will coordinate with the tribal social services program staff. This includes following any current [MOUs](#) in place with the tribe, and coordinating with tribal Indian Child Welfare staff to invite them to participate in the investigation. Upon completion of the investigation, CA staff must provide the results of the investigation to the family and tribe. In addition, CA should not file a dependency action in state court when the child is a ward of the tribal court unless requested by the tribe.

If you have questions please contact Bob Smith (smithrc@dshs.wa.gov).

Attachment: CA Authority and Staff Role in Conducting Child Protective Services Investigations and the application of the Indian Child Welfare Act memo (issued June 25, 2015)