

## DETERMINING JURISDICTION

### Native American Jurisdiction

CS 250.1

#### SUPERSEDES

CS 250.1, Native American Jurisdiction, April 11, 2003

#### General Information

All Montana Indian tribes with reservations have an established tribal court system. The Landless Band of Little Shell Chippewa has an office in Havre but no reservation or tribal court. The tribal codes of Montana's seven reservations include procedures to determine paternity, establish support and enforce support.

When a participant is a tribal member, eligible for enrollment or considered a member of a particular Indian Community, it may be an infringement upon tribal sovereignty to use the State's administrative or court processes rather than deferring to tribal court to take action. The following procedures are designed to assist you in determining whether the CSED can proceed, using our administrative processes, to establish paternity, establish a support obligation or enforce a support obligation.

#### Definitions

**Asset located on reservation:** any asset physically held, or located, on a Montana reservation. This includes bank accounts.

**Asset tribally owned:** any asset owned or controlled by a Montana tribe.

**Lives on reservation:** the individual lives on a Montana reservation, OR lives just outside a reservation in an area that is designated as ceded or considered a part of the reservation.

**NAJ:** Native American Jurisdiction

**Tribal Employer:** the employer is either a tribal agency (includes tribal government; a tribal incorporated business; or, other tribal institution, college, or school) or any other business located on a reservation and owned by a Native American individual or corporation.

#### NOTE:

When the Obligor/NCP **IS NOT** a tribal member, Tribal employer **DOES NOT** include the BIA or any other federal agencies or state schools.

**Tribal Member:** an individual who is enrolled, enrollable, or considered by the Tribe to be a member of the Indian Community as verified by a particular tribe.

**Work performed on reservation:** the work is physically done within the boundaries of a Montana reservation. It **DOES NOT** include state or federal benefits such as unemployment insurance benefits, workers' compensation, or social security benefits.

#### Policy

All cases, involving Native American participants, are subject to all CSED actions and services until, and to the point at which, a jurisdictional barrier stops or temporarily interrupts such actions.

**CASE INITIATION** will be taken on Native American cases, the same as in any other case, according to the CSED Policy Manual at sections 601 - 606 for Paternity, sections 400 - 408 for Establishment, all of section 405 for Hearings, all of section 408 for Modifications, section 500 - 530 for Enforcement actions.

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**ENROLLMENT INFORMATION** will be gathered, for all participants of the case to allow the caseworker to make a jurisdiction determination, as described in this section.

**AFTER MAKING THE JURISDICTION DETERMINATION**, and depending on that determination, if there are no jurisdictional barriers and until the jurisdictional factors change, the case will proceed with all **subsequent case activities** as are required in the sections noted above and according to all other applicable policies of the CSED.

#### EXCEPTION:

**Occasionally there may be a special and/or limiting agreement** that has been entered into by the CSED and an individual tribe of this state that prohibits license suspension or other enforcement actions. If there is a question, consult your regional Native American Representative or legal staff.

#### Procedures for Technician/Caseworker/Intake Worker

1. Upon receiving DPHHS\_FA/CS-332 (TANF referral), A CFS/DOC/CSE-306 (forester care), an Non-TANF application, pending case, a case transferred from another CSED region, an incoming Interstate/UIFSA case, **OR** upon a change in the case activity status, the caseworker checks to determine if any of the case participants are verified or alleged to be a Native American. If yes, sets the case status indication on the Case Information Screen (CAS) screen to "K" and proceeds with this section.

The caseworker determines the case activity status (LOC, PAT, EST, or ENF) and proceeds as follows:

- a. Caseworker reviews the information found in the case file and the long arm jurisdiction questionnaire to determine if Montana has long arm jurisdiction. The caseworker applies the rules for the long arm jurisdiction analysis found at MCA 40-5-231.

If there is no long arm jurisdiction and a UIFSA is necessary, it is not necessary to continue with the Native American jurisdiction determination at this point. The caseworker proceeds with normal processing to submit to the other state's central registry. The other state will determine whether they have jurisdiction to proceed.

- b. If all participants are located within Montana, or if Montana has long arm jurisdiction over the Obligor/NCP in the other state, proceeds with this section.
- c. If there is information that indicates an action is filed or proceeding in a tribal court, the Caseworker sends an Information Request to Clerk of Court CS-217. In addition to asking for documents concerning custody, paternity or support orders for the parties of the case, the Tribal Court options must be chosen to inquire whether any action is pending between the parties, the nature of the action and the cause number. It is strongly recommended that the caseworker specifically request documentation of per capita monies distributed to the Obligee by assignment of the Obligor for the purpose of child support.

2. Researches all available resources on SEARCHS and TEAMS and in the case file to determine if enrollment information is available.
  - a. On SEARCHS, the information will be found on the PAR screen. However, it may be necessary to review the case files of other CSED cases for the same participant to investigate for the information as described in c., below.

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- b. On TEAMS, the tribal enrollment information is found on the ETMT screen. It is assumed that the OPA requires verification of the information before it is entered on the TEAMS system.
- c. Reviews the application document and the case file(s) for documentation already received from the Obligee/CP or the Tribe concerning enrollment information.

**In a through c above:** If information is located to verify enrollment that is not found on SEARCHS, the *information must be updated* on the PAR screen on SEARCHS.

3. If no information can be located to verify enrollment information for the parties of the case, the caseworker takes the following steps to obtain the information:
  - a. Sends the appropriate Native American addendum (Paternity Addendum CS250.1A or Establishment Enforcement Addendum CS250.1G) to the applicant/recipient of services or to the initiating state agency. Enter the appropriate case note found on the Native American Jurisdiction events menu. The system will automatically set a tickler for the return of the document.

If the Obligee/CP does not return the addendum, and the information cannot be located by any other manner, proceed with noncooperation recommendations against the TANF recipient or initiate the sixty-day closure notification to the Non-TANF applicant.
  - b. At the same time and if the referral documents indicate a specific tribal affiliation for any participant, the caseworker sends the Tribal Enrollment Letter (CS250.1B) to the tribe specified to obtain and verify enrollment. The letter has spaces to inquire on all participants. Do not send separate letters to the same tribal enrollment office for each participant. Include a self-addressed, stamped envelope. Enter the appropriate case note found on the Native American Jurisdiction events menu. The system will automatically set a tickler for the return of the document.
    - i. If documents are not received by the twenty-third day, mail a second request. It is not necessary to mail another self-addressed, stamped envelope with a second request of the Tribal Enrollment letter. Please use *Second Request* stamp on the document.
    - ii. If the Tribal Enrollment office does not respond to the second request, the Obligee/CP is responsible for providing the information. If noncooperation or closure actions have not been started, proceed as in 3a above.

#### Procedures for Technician/Caseworker

4. When a completed Addendum or Tribal Enrollment Letter is received, the caseworker uses the fact sheet to separate the facts for each participant of the case to facilitate jurisdiction analysis. This document **MUST BE** filed in the case file.
5. The caseworker determines the case activity based on the facts of the case.
  - a. If the case is paternity or order establishment, the caseworker proceeds at step 6.
  - b. If the case is enforcement, the caseworker proceeds to that section which begins with general information after step 9.

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#### Paternity and Establishment Cases

6. **Determine subject matter jurisdiction** by using the fact sheet and the Native American Jurisdiction chart for the corresponding case activity to determine if the CSED has subject matter jurisdiction to proceed, the tribe has exclusive jurisdiction, or the facts indicate that the matter is best deferred to the tribe or additional discussions are required with legal staff.
  - a. If the CSED has subject matter jurisdiction, caseworker proceeds to step 7.
  - b. If the CSED does not have subject matter jurisdiction, caseworker proceeds to step 8.
7. Before continuing with this section, the caseworker **MUST** determine whether the CSED has *long arm jurisdiction* to proceed with the service of notice documents upon any participants living on a reservation. The chart alerts the caseworker to situations when the rules for the long arm jurisdiction must be considered, reference MCA 40-5-231. If there is a question at this point, the caseworker should consult their supervisor, regional NAJ representative, or staff attorney.

#### If the CSED has long arm jurisdiction,

- a. **Over both Obligor/NCP and Obligee/CP**, proceed with all appropriate actions in the case according to the CSED Policy manual and the corresponding case activity status for both paternity and order establishment actions.
- b. **Over the Obligor/NCP only AND not over the Obligee/CP**, the caseworker takes the appropriate actions to issue and serve the NOCS on the Obligor/NCP.  
**At the same time**, the caseworker obtains a waiver of jurisdiction from the Obligee/CP before issuance of the NOCS to the Obligee/CP.

If a waiver cannot be obtained, proceeds with service of a "third party" version of the NOCS, using a two parent calculation and the financial information of both parents.

- An informational letter, a copy of the NOCS issued to the Obligor/NCP, a copy of the guidelines calculation, and a financial affidavit should be sent to the Obligee/CP.
- The caseworker enters the appropriate case note concerning mailing of the financial affidavit to the Obligee/CP, found on the Establishment events menu. The system will automatically set a tickler for the return of the document.

8. If the Tribe has exclusive subject matter jurisdiction, the caseworker:
  - a. Sends the NAJ LETTER TO CP RE: NO JURISIDITION (CS250-1F);
  - b. Sets the appropriate case status indicator on CAS; and,
  - c. Reviews the case every 180 days for changes in the jurisdictional factors such as changes in address or employment.

This **includes** a ten-day letter to the Obligee/CP for a status update on the progress in the Tribal Court. This is based on the requirement in the letter sent to the Obligee/CP in 8a above that notifies the Obligee/CP to seek the appropriate remedy through the Tribal Court.

9. When any of the subject matter or long arm jurisdiction factors change, repeat steps 4 through 8.

## Enforcement Cases

The major consideration in determining whether the CSED may proceed to enforce a support obligation is the location and source of the income or assets.

Assets that are subject to CSED authority include state unemployment benefits, state worker's compensation benefits and most state-issued licenses. **EXCEPTION:** The caseworker must always check for a special or limiting agreement that has been entered into between the CSED and an individual tribe of this state that specifically prohibits license suspension.

Income earned on a reservation and property located on a reservation, such as employment income, a bank account or vehicle, is generally not subject to withholding or seizure by the CSED if the employer/payor is a tribal government or a tribal member, or the asset is held by a tribe, tribal employer/payor or tribal member.

This area of the law and practice will continually be in a state of flux. When in doubt about whether the CSED may seize income or assets earned or located on a reservation, even if the obligor is nonnative, consult your regional NAJ representative or legal staff.

## Procedures for Technician/Caseworker

10. Determines jurisdiction over the source of income by using the fact sheet and the Native American Jurisdiction chart for Enforcement cases to complete the jurisdiction analysis.
  - a. The caseworker sets the appropriate case status indicator on CAS.
  - b. If it is determined that the *CSED has jurisdiction* over the income or assets, the caseworker proceeds to step 11.

**NOTE:**

If **new or additional sources of income or assets are found or a change occurs** in the source of the income or assets, the caseworker must determine jurisdiction over the source by repeating step 10 before proceeding.
  - c. If it is determined that the *CSED does not have jurisdiction* over the income or assets, the caseworker proceeds to step 13.
11. The caseworker reviews the support order to identify the tribunal or agency that entered the final order.
  - a. If the support order was entered in a **Montana** District Court, an administrative order entered by the CSED, or any order that is subject to immediate income withholding, the caseworker proceeds to step 12.
  - b. If the support order was entered by a **Tribal Court or another state**, the caseworker **incorporates the policy found at CS 510.3** concerning orders not subject to immediate withholding **before** proceeding to step 12.

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12. The caseworker executes all required enforcement actions, including submission for federal and state income tax offsets.

The **SERVICE OF NOTICES** (NOI, SNOI, NSD) requires that the caseworker must conclude if the asset targeted for garnishment meets the definitions at the beginning of this section as "**tribally owned**" or "**. . on reservation.**" (Due to the jurisdictional determination being based on the source of the income, the Obligor's enrollment status has no effect).

  - a. If the source is under tribal control, the CSED cannot proceed. The caseworker takes the actions as described at 13.
  - b. If the source is not considered to be under tribal control, the caseworker proceeds with issuance of the notice following standard enforcement policy.

If the Obligor is non-Indian and has assets located on a reservation, the caseworker may proceed to seize assets after it is verified that the assets are not tribally owned or controlled.
  - c. **VERY IMPORTANT.** If the caseworker discovers that CSED has an existing order to withhold in place and the source of income is tribally controlled, (as in 12a above) the matter should be discussed with the regional NAJ representative or legal staff before modifying or terminating the order.
13. The caseworker notifies the Obligee/CP that the CSED does not have the authority to take enforcement actions due to lack of jurisdiction over the source of the income.
14. The caseworker reviews the case every 180 days for changes in the jurisdictional factors such as changes in address or employment.
  - a. This **should include** a ten-day letter to the Obligee/CP for a status update on the progress in the Tribal Court. This is based on the requirement in the letter sent to the Obligee/CP in 8a above that notifies the Obligee/CP to seek the appropriate remedy through the Tribal Court.
  - b. When any of the subject matter or long arm jurisdiction factors change, repeat step 10.

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#### Native American Jurisdiction Determination Paternity and Establishment Cases

Tribal membership must be verified as enrolled, an enrollable descendent,  
or considered a member of the Indian community.

	CP is tribal member living OFF reservation with child(ren)	CP is tribal member living ON reservation with child(ren)	CP is non-tribal member or non-Native Am. living OFF reservation	CP is non-tribal member or non-Native Am. living ON reservation
NCP is tribal member living OFF reservation	State Jurisdiction	State Jurisdiction over NCP only. *(see below) CP	<b>State Jurisdiction</b>	State Jurisdiction over NCP only. *(see below) CP
NCP is tribal member living ON reservation	Possibly Exclusive Tribal Jurisdiction #(see below)	Exclusive Tribal Jurisdiction	Possibly Exclusive Tribal Jurisdiction #(see below)	Exclusive Tribal Jurisdiction
NCP is non-tribal/Non-Native American living OFF reservation	State Jurisdiction	State Jurisdiction over NCP only. *(see below) CP	State Jurisdiction	State Jurisdiction over NCP only. *(see below) CP
NCP is non-tribal/non-Native American living ON reservation	Need waiver or long arm over NCP --- State jurisdiction over CP	Need long arm over both parties or a waiver of Jurisdiction. If not, is tribal exclusive	Need waiver or long arm over NCP --- State jurisdiction over CP	Need long arm over both parties or a waiver of jurisdiction. If not, is tribal exclusive

- If there is any Tribal Court Order concerning the participants of the case, it is probable that the tribal court retains exclusive jurisdiction. If you have questions, consult your regional legal staff.
- In third party custodian situations, determine if the custodian is a tribal member or tribal entity. The placement location of the child is not considered when Tribal Social Services is the custodian, assume the child is placed within a reservation.

\* The caseworker needs to complete long arm jurisdiction analysis or obtain a waiver of jurisdiction from the designated party before proceeding with appropriate actions.

# The caseworker must determine if all the conception and birth facts occurred off the reservation. If yes, the State has concurrent jurisdiction and caseworker should proceed. If no, the tribe has exclusive jurisdiction. If there is a question, consult your regional legal staff.

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Native American Jurisdiction Determination  
Enforcement Cases

Tribal membership must be verified as enrolled, an enrollable descendent,  
or considered a member of the Indian community@.

Location of assets or income	Obligor <i>is a</i> tribal member@ of any tribe	Obligor is alleged but <b>NOT verified as a tribal member@</b> of any Tribe	All other non-Native American Obligor
Assets are located <b>ON</b> or work is done <b>ON</b> a reservation for a <b>tribal employer *</b>	<b>No State jurisdiction</b> to garnish income or to levy against the asset	<b>No State jurisdiction</b> to garnish income or to levy against the asset	<b>No State jurisdiction</b> to garnish income or to levy against the asset
Work is done <b>ON</b> a reservation for a <b>non-tribal employer *</b>	<b>State jurisdiction</b> to garnish non-tribal employer income, including unemployment, workers' compensation, Social Security, etc.	<b>State jurisdiction</b> to garnish income or to levy against the asset	<b>State jurisdiction</b> to garnish income or to levy against the asset
Work is done <b>outside</b> reservation boundaries or the asset is located <b>OFF</b> the reservation	<b>Garnish</b> the income or levy against the asset	<b>Garnish</b> the income or levy against the asset	<b>Garnish</b> the income or levy against the asset

\* Tribal employers may include employers that *appear* to be non-tribal. If an income source is questionable, clarify with the employer or check with legal.



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#### Case Status Code Indicators for use on the CAS screen

CODE	CODE DEFINITION
K	Case needs additional information to make a Native American jurisdiction determination. The use of this code should be limited only to use on new (PND) cases or cases in locate (LOC). This code stays in place until the enrollment information is verified and entered on PAR for the Obligor.
L	The Native American Jurisdiction review has been completed. The determination has been made that there is no jurisdiction to proceed any further on the case until circumstances change. This code should be utilized for cases only where an order has not been established, (PAT) and (EST).  <b>NOTE:</b>  CASES coded L will be placed onto line 3 of the OCSE-157 and, as a result, be excluded for performance incentive purposes.  <b>Therefore, use only</b> when all <i>sub</i> -cases fall within the standards of no jurisdiction to proceed.
N	The Native American Jurisdiction review has been completed. The determination has been made that the State has jurisdiction to proceed with actions. This is to be used in all enforcement (ENF) cases in which the State has jurisdiction to proceed with collection actions against a source of income. This is also used in (PAT) and (EST) cases where the State has jurisdiction to proceed with actions to establish paternity and/or a support order.
H	The Native American Jurisdiction review has been completed. However, these cases are on hold, or inactive, for a reason other than NAJ jurisdiction. Examples of this include the following: the Obligor is incarcerated, receiving SSI, on assistance, or is a minor.
M	The case has a child support order and the determination has been made that the source of income available for seizure/withholding is under exclusive Tribal jurisdiction. This code should only be used for cases in and (ENF) status.

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**Native American Facts  
Subject Matter and Long Arm Jurisdictional Determination**

Case No: \_\_\_\_\_ Case Activity: PAT  EST  ENF

	Obligor Name:	Obligee Name:	Child 1 Name:	Child 2 Name:	Child 3 Name:
Verified tribal member and tribal identifier	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
On reservation conception			Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
On reservation birth			Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Lives on or near reservation & what reservation	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Assets located on reservation	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Other off reservation ties to Montana	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>

Please note additional information about assets and ties to Montana in case notes and on the back of this sheet.

- CSED proceed/State Jurisdiction over all parties
- CSED proceed/State Jurisdiction over Obligor only, need Obligee waiver or use 3<sup>rd</sup> party
- Notice and Order Concerning Support (NOCS)
- Tribal Exclusive Jurisdiction/CSED cannot proceed until jurisdictional fact change

Abbr.	Tribal Identifiers	Abbr.	Tribal Identifiers	Abbr.	Reservation Codes
AI	Assiniboine	NC	Northern Cheyenne	BL	Blackfeet (BL)
AR	Arapaho	NP	Nez Perce	RB	Rocky Boy (CC)
AS	Assiniboine/Sioux	OT	Other (out of state)	FL	Flathead (KO, SA)
BD	Blood	PI	Piegian	CR	Crow (CR)
BL	Blackfeet	SA	Salish	NC	Northern Cheyenne (NC)
CC	Chippewa Cree	SH	Shoshone	FP	Fort Peck (AI, AS, and SX)
CR	Crow	SX	Sioux (out of state tribe)	FB	Fort Belknap (AI, GV)
FL	Flathead	KO	Kootenai		
GV	Gros Ventre	UU	Enrolled, tribe unknown		
LS	Little Shell (no reservation, landless Native Americans)				

Date of jurisdiction determination: \_\_\_\_\_,

by: \_\_\_\_\_