

Practice Brief 6: Jurisdiction, Tribal Service Systems, and CACs

Native Child Advocacy Resource Center

October 2022



As detailed in [“Practice Brief 4: Tribal Sovereignty and the CAC Model,”](#) Tribal sovereignty and self-determination constitute the foundational framework for Tribal legal systems, Tribal economic and community development initiatives, and Tribal human services systems and agencies. Tribal nations, as sovereigns, have a unique government-to-government relationship with the federal government, and the federal government, in turn, has a trust responsibility to provide for Tribes pursuant to treaties, statutes, and federal case law.

As a result, jurisdiction in child maltreatment cases involving Tribal children, children eligible for Tribal membership, or children otherwise defined as “Indian” under the relevant case law in the federal district where the maltreatment occurred, may differ from jurisdiction patterns in other cases a Child Advocacy Center (CAC) handles. Additionally, due to funding issues related to the U.S. government’s trust relationship with Tribes, human services systems in Tribal communities may also differ significantly from those in non-Tribal communities. CACs should therefore work to understand the unique jurisdictional and service system array in the local Tribal communities they serve and to incorporate this knowledge into their Multidisciplinary Team (MDT) membership, case review and coordination processes, and other CAC operations.

Jurisdictional Complexities

An MDT considering cases involving AI/AN children must clearly understand which federal, Tribal, and state entities including law enforcement, child protection, prosecutors, and courts have authority and under what circumstances. This will depend on the location of the maltreatment, the type of crime, and the Tribal status of both the victim and perpetrator.

When crimes against children occur on non-Tribal lands, jurisdiction for investigation and prosecution of the case falls to the state. When crimes occur on Tribal lands, jurisdiction may fall to the federal government (Bureau of Indian Affairs or Federal Bureau of Investigation), the state government (on Tribal lands where Public Law 83-280,¹ or PL-280 is in effect), or the Tribe. Which of these entities assumes jurisdiction may depend on whether the crime is a Major Crime as defined by the Major Crimes Act, as well as on the Indian status of both the perpetrator and the victim.

Child protection jurisdiction, as well as the applicability of the Indian Child Welfare Act (ICWA),² likewise varies depending on whether maltreatment occurs on Tribal or non-Tribal lands. When maltreatment occurs on Tribal lands, child protection jurisdiction may fall to a Tribal child welfare agency or the Bureau of Indian Affairs, depending on the specific Tribal location. When maltreatment of children defined by law as Indian occurs on non-Tribal lands, child protection jurisdiction falls to the state, but state child welfare agencies are answerable to the provisions of ICWA, which imposes additional requirements on the state, intended to promote the child's best interest by prioritizing their connections with Tribe, family, and culture. (See [“Practice Brief #3: Tribal Children and Forced Assimilation.”](#))

Service System Characteristics

MDT composition and case flows may be further affected by Tribal service system characteristics. Health care, mental health care, victim services, and other relevant services may be provided by the Tribe or by federal entities such as Indian Health Service (IHS), the Bureau of Indian Affairs Office of Justice Services (BIA-OJS) or BIA's Office of Indian Services (BIA OIS), depending on the location and Tribe. Tribes may require the federal agency to provide direct services in these areas, or may contract with one of more of the federal agencies for funding and then the Tribe provides the service.

What Does This Mean for CAC Operations?

It is critically important for CAC personnel to educate themselves on the Tribe or Tribes with which they work. As detailed in [“Practice Brief 2: Culturally Responsive Services.”](#) this includes developing intimate familiarity with each Tribe's unique history, culture, customs, and experience of colonization. There are 574 federally recognized Tribes in the United States, each with its own unique history, culture, and customs. CACs should also understand and map out the jurisdictional and service array in the Tribal areas they serve. On reservations occupied by more than one Tribe, multiple jurisdictional and service arrays may exist across law enforcement, child protection, prosecution, and courts.

CAC staff should then begin to build relationships with the Tribe and community members, as well as personnel in the relevant agencies with which they will engage. (See [“Practice Brief 1: Improving Child Advocacy Center Service Delivery by Building Relationships with Indigenous Communities.”](#)) If federal jurisdiction applies to cases involving Tribal children in your CAC’s service area, it is important to build relationships with federal agencies including the FBI, BIA-OJS, and U.S. Attorney’s Offices. In addition to law enforcement, child protection, prosecution, and courts, CACs may need to build relationships with personnel in youth services, mental health, medical care, victim services, and related fields. NCARC also recommends seeking out Tribal elders, who are often informal community leaders and key sources of guidance for understanding local contexts and dynamics. These external contacts will allow CACs to sustain connections to the community and to relevant agencies regardless of personnel changes.

In a Tribal community or a community where a majority of the service population consists of Tribal members, representatives of Tribal and federal jurisdictions and service systems should be core MDT members. A CAC that serves both non-Tribal and Tribal children should include Tribal and federal representatives without necessarily expecting them to be core MDT members, since they have no role to play on cases involving non-Tribal children over which they have no jurisdiction. NCARC recommends that MDTs maximize the engagement of each professional by organizing their case review in whatever way allows for Tribes to participate when cases involve their children, while ensuring that the appropriate federal or state representatives are present to contribute, as well.

MDT Roles and Case Flows When Working With AI/AN Children

Those who participate in an MDT for a case involving a Tribal child may change depending on which jurisdiction has the legal authority for investigation and prosecution, as well as provision of physical and mental health care services. NCARC recommends that the appropriate Tribal or federal personnel in each category be included on MDT teams. This will vary by locality.

Law enforcement. Many Tribes have their own law enforcement agencies responsible for investigating crimes which occur within their jurisdiction. Additionally, BIA-OJS and the FBI may have jurisdiction to investigate in cases involving Tribal children. If multiple law enforcement agencies (for example, Tribal and county or Tribal and federal) share jurisdiction, the MDT can play a key role in opening lines of communication and promoting collaborative decision-making.

Child protection. In locations where child welfare services on Tribal lands are provided by the Tribe or by the BIA, these agencies should be MDT members on cases involving Tribal children. They may also serve as important informants on other aspects of MDT or CAC operations, such as ensuring that children receive culturally responsive services and that Tribal sovereignty is honored in the case review and coordination process.

Recognition of Tribal sovereignty is reflected in Tribal and BIA child welfare agency policies and procedures, including standards for removal and placement preferences, which may differ from

those of state/county agencies. In addition, ICWA as well as state ICWA-related laws also apply, which provide legal notification requirements and placement preferences. CAC professionals should be fully aware of the child welfare laws and procedures in the Tribal communities where they work, and they should be prepared to discuss with Tribal child protection workers how those laws and procedures can be accommodated.

Data collection, management, and sharing may be different between state/county and Tribal/BIA child protection systems. Tribal and BIA data are generally not part of state child welfare databases and case management systems, and these data are not generally publicly available. CACs and MDTs need to work with Tribes and the child protection agencies that serve them to establish ways in which data may be collected, shared, and stored with Tribal permission.

Prosecutors. Tribal prosecutors are invaluable MDT members on cases involving AI/AN children and families. In addition to prosecuting cases, Tribal prosecutors often have significant expertise in areas that other MDT members do not. For example, Tribal prosecutors will typically understand the complexities of local jurisdiction and how to navigate cross-jurisdictional barriers. They may be able to provide necessary guidance about Tribal criminal codes and advise about prosecutions of perpetrators in Tribal court. When cases fall under ICWA, Tribal prosecutors (along with other Tribal legal professionals) can often provide expert advice about the MDT's responsibilities under the law.

Medical and Mental Health Providers. Generally, Tribal members are eligible for medical and mental health care through the federally operated Indian Health Service (IHS) and/or Tribal health departments, Tribal mental health agencies, and/or other Tribal entities such as Urban Indian Health clinics. In some locations, Tribes may provide both medical and mental health care, IHS may provide both, or the responsibilities may be split between the Tribe(s) and IHS.

Because Tribal members are eligible for government-funded care, they are sometimes restricted from accessing care through outside sources. In some cases, children and families may need pre-approval to be reimbursed for care provided off Tribal lands or in a non-IHS/non-Tribal facility. The process for obtaining pre-approval may vary from location to location and Tribe to Tribe. MDT members should familiarize themselves with local procedures and develop positive working relationships with leadership or other staff at these facilities to ensure timely access to services.

One way of fostering close working relationships with these organizations is to include them in training opportunities. For example, when CACs offer training to Sexual Assault Nurse Examiners or other medical providers, they might invite providers from local Tribal/IHS clinics or hospitals or hold additional trainings in Tribal/IHS facilities.

CACs may also consider ways of bolstering referral networks to include Tribal practitioners. A SANE nurse, physician, or mental health clinician from a Tribal or IHS clinic may be better positioned to serve Tribal youth in culturally responsive ways and may be better able to build the trust necessary for navigating these sensitive examinations. Additionally, inclusion of traditional healers on MDTs or as a referral resource may help meet the mental health needs of AI/AN

children. Traditional ceremonies and cultural activities, alone or in combination with other mental health supports, may be culturally appropriate and open the door to healing.

Victim Advocates. MDTs should seek to include victim advocates with local Tribal knowledge for cases involving AI/AN children and families. An understanding of the local Tribal service system and the ability to connect children and families to the appropriate resources and individuals within Tribal communities is essential to effective support. Culturally responsive one-on-one support is equally crucial to effective victim advocacy.

¹ Public Law 83-280 (PL-280), enacted in 1953, required six states (Alaska, California, Minnesota, Nebraska, Oregon, Wisconsin) to replace the federal government as the entity that shares concurrent civil and criminal jurisdiction with Tribes on Tribal lands. PL-280 also allowed other states to assume jurisdiction on Tribal lands on an optional basis. Thus, there are additional PL-280 jurisdictions in specific Tribal locations outside of the six states listed above.

² ICWA was passed in 1978 as a corrective to policies aimed at forcibly assimilating Tribes by removing their children from their homes and Tribes to be raised by non-Tribal families. The law protects the best interests of Native children by setting minimum federal standards for states in the handling of the removal and placement of Indian children. Standards for removing a child under ICWA are higher than state-mandated standards, and placement preferences are designed to encourage kinship care and connections to the child's Tribe and culture.