



Welcome to the 29th Annual AB 1058 Conference

TRIBAL CHILD SUPPORT AND BENEFITS TO CROSS-CULTURAL EXCHANGES: A focused discussion on In-Kind child support

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Loleta, CA (and retired SF Superior Court Commissioner)

Klamath River Yurok Tribe - Klamath, CA



Similarities

- Focus on needs of child(ren)
- Financial information critical centerpiece
- Title IV-D regulations largely the same
- Both systems have a court process

Differences

- Cultural
- Jurisdictional
- State law not applicable
 - Tribes have own codes, e.g. for calculating support, establishing paternity

Note: Both adhere to Full Faith & Credit principles

Cultural differences are visible in the language used:

CA Fam. Code §4053(e) "The guideline seeks to place the interests of children as the state's top priority."

CA Fam. Code §3020(a) "[I]t is the public policy of this state to ensure that the health, safety, and welfare of children shall be the court's primary concern in determining the best interests of children..." [for custody/visitation]

Cultural differences are visible in the language used:

Yurok Tribal Code, Parent and Child Relationship §13.30.10, includes, inter alia, besides a child and his or her natural parents, "a child and a person who have formed a parental relationship as defined by Yurok culture and tradition..."

Yurok Tribal Code, Child's Code §12.05.020(a) "...Traditionally, a child of the Yurok Tribe was raised collectively by the entire village." (b) [Yurok Tribe's Constitution] "was adopted to: '...[p]reserve and promote our culture, language, religious beliefs and practices, and pass them on to our children, our grandchildren..."

Cultural differences are visible in the language used:

Bear River Band Paternity and Child Support Code §4.20.01 "...Indian children are the most vital and valued resource to the continued existence, the future, and integrity of the Bear River Band... The Tribe has a compelling interest in promoting and maintaining the health and well-being of all Bear River Band children."

Jurisdiction

In General:

CA is a "Public Law 280 state" [Pub. Law 83-280 (1953)], one of six original designated states

Mainly shift of criminal jurisdiction over Indian country from federal to state authorities, and civil jurisdiction in some areas

Significant impact on tribal sovereignty and self-governance; created complex jurisdictional matrix/conflicts

Ongoing issues/concerns re: capacity & effectiveness of state law enforcement in Indian country

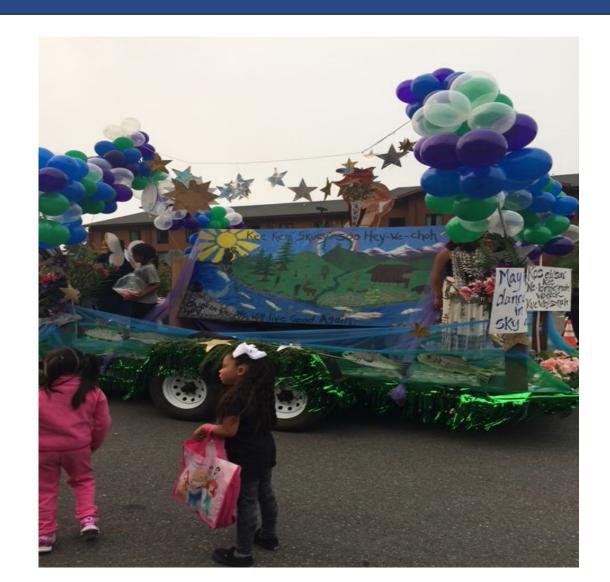
Jurisdiction

Title IV-D cases:

- Concurrent Jurisdiction
- Case Transfers: CA Rule of Court 5.372 (CA IV-D ←→ Tribal IV-D)
- Enforcement (Registrations, IWOs)

NOTE: FULL FAITH & CREDIT

(2017)



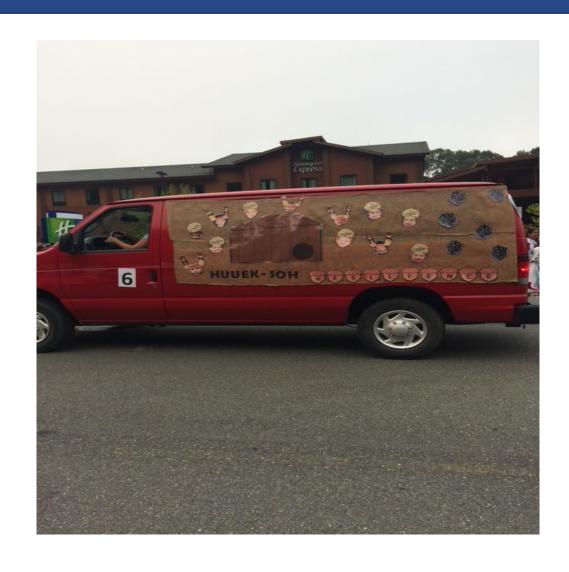


(2017)





(2017)





Paternity

- CA Fam. Code §§7600 et. seq. (Uniform Parentage Act)
- Yurok Tribal Code 13.30.010 et. seq.
- Bear River Band Paternity and Child Support Code §§4.20.05 et. seq.

Guideline Calculation

- CA Fam. Code §4055: CS = K [HN (H%)(TN)]
- Yurok Tribal Code 13.35.110 Combines net income of both parents x scheduled % factor based on #of children = combined total support obligation (needs of child(ren)); then figures the parent's pro-rata amount of that obligation and factors T/S % to reach that parent's support obligation
- Bear River Band Paternity and Child Support Code §4.20.25 -4.20.27: BCS = (BSA*A/C)*(1-V)

Some Observations on the Guidelines

Minimums: Unlike CA, Both tribal systems have minimum CS amounts

Yurok \$10/mo. [Yurok Tribal Code §13.35.170]

Bear River Band \$25/mo. [Bear River Band Pat. & CS Code §4.20.25]

Maximums:

Yurok <u>limits</u> CS amount to no more than 40% of net earnings, absent good cause (max. 50%) [Yurok Tribal Code §13.35.200]

CA recently added a specific *discretionary* deviation criteria if CS exceeds 50% of net income [CA Fam. Code, §4057(b)(5)]

Bear River Band code states whenever CS is > 35% of adjusted gross income, there is a presumption of substantial hardship for deviation purposes [Bear River Band Pat. & CS Code §4.20.37]

Additional observations

- CA guidelines are clearly the most complicated!!!
- Gross Income definitions similar but with some variations, e.g.:
 - Yurok requires the court to do an extra analysis before including a parent's disability benefits in gross income. [Yurok Code §13.35.220]
 - Bear River Band allows court to disregard OT or a second job "[w]hen income from a full-time job is consistent with income during marriage." [Bear River Band Pat. & CS Code §4.20.25]

Additional observations (continued)

- In-Kind variations between tribal laws:
 - Yurok Tribe allows full in-kind orders as a set-off [Yurok Code §13.35.260]
 - Bear River Band Tribe only allows in-kind support for up to 50% of one's total monthly child support obligation [Bear River Band Pat. & CS Code §4.20.27(8)]

(2019)







In-Kind Child Support

- Federal Law allows in Tribal system only see CFR 309.105
- CA has been given a waiver (pending) for several pilots re: in-kind support

"IT TAKES A VILLAGE..."

Creating a non-cash alternative option aka "In-Kind" child support in CA's CS system:

- > Empowers families to address child(ren)'s needs
- Respects varying cultural values among families
- Encourages collaboration and direct participation
- Provides better outcomes on multiple levels

Unintended Consequences of an Inflexible Monetary System

- Can undermine family well-being for families with low incomes, obligors who face structural barriers to financial stability
- Punitive nature of enforcement remedies in existing state system can disrupt informal agreements between parents and exacerbate existing financial challenges

Potential Benefits of a Flexible Non-Monetary System

- Foster healthier family relationships
 - Strengthen bond between PPS and child through direct engagement/provision of support
 - Improve co-parenting between parents; honor cultural values
- Better outcomes/greater compliance when families are allowed to devise their own solutions

San Francisco Pilot Project

- 18-month planning process
- Collaboration between LCSA, Court, FCS (Family Court Services) and OFLF (Family Law Facilitator)
- Conducted surveys & community focus groups
- Consultation with Yurok Tribe

- Collaborative Team worked on eligibility requirements, in-kind definition & types
- LCSA developed intake, internal case process
- FCS and OFLF developed mediation process, orientation and ground rules
- Court developed court case process

IN-KIND CHILD SUPPORT MODELS

Some considerations:

- Who can participate?
- What to allow?
 - Registries only? Direct Services? Goods?
- How to value? How to enter in CSE?
- Court Process... and so on...

San Francisco Pilot Project – HOW IT WORKS – **Eligibility**:

- Purely voluntary participation / pro-pers
- No DV
- No intergovernmental cases / no arrears only cases
- Pilot now allows aided cases (waiver recently submitted)!

Types of In-Kind Support Allowed:

- Direct Purchases
 - Food, clothing, household/school supplies...
- Registries and Gift Cards
- Direct Payments
 - Rent/mortgage, bills, car payments, tuition, pay down debt/store tabs, etc.

Types of In-Kind Support Allowed (continued):

- Direct Deposits
 - Education accts., savings, other accts.
- ☐ Direct Services / Barter
 - Transportation, Childcare, Cooking, Handyman, etc.
- Other (so long as can be properly valued)

(2024)





(2024)





(2024)











Yurok Tribe Salmon Festival (2024)





Valuation:

- ✓ Required to assign a dollar value
- ✓ Focal point = fair market value
 - Parents can reach agreement on value, which may not necessarily be FMV, but must be fair and reasonable (in pilot, court will review and determine whether to accept/approve)
- ✓ In both tribal court systems, if no agreement, court can assign FMV [Yurok Code §13.35.260; Bear River Band Pat. & CS Code §4.20.27(8)]

General Workflow Overview – 5 stages:

Stage 1: Outreach / Identification/ Pre-court preparation

Stage 2: Initial Court Hearing (pre-mediation)

Stage 3: Mediation (same day)

Stage 4: Post-mediation Court Hearing (same day)

Stage 5: Case monitoring

Initial Court Hearing Process

- Enter parentage Judgment (e.g. initial establishment case) or verify parentage has been established
- Determine Guideline Child Support Amount
- Send Parties to Mediation (FLF & FCS)
- Conduct return from mediation hearing (same day)
- Enter orders including requisite findings, specifically reserve jurisdiction & set future hearing dates for compliance monitoring

Court Compliance Monitoring Process

- Minimum of 3 monthly compliance review dates all set in advance at initial hearing to ensure order is working as intended; give opportunity to tweak order if needed
- A simple declaration from each parent (2-pg. form) must be filed one week prior to each review hearing
- Parties can mutually agree to skip the first two if all is well, but must attend third review date so court can decide if extended monitoring needed

Additional Resource Information

 San Francisco's In-Kind Child Support Pilot: Implementation Study | Urban Institute

by Heath Hahn, Eleanor Pratt, Paige Sonada, July 25, 2023

https://www.urban.org/research/publication/san-francisco-in-kind-child-support-pilot-implementation-study?utm_source=urban_ea&utm_campaign=san_francisco_in_kind_child_support_pilot&utm_id=social_safety_net&utm_term=social_safety_net&utm_content=urban_researcher

 Transforming Child Support into a Family-Building System

by Heather Hahn, Kathryn Edin, and Lauren Abrahams, March 2018, US Partnership on Mobility From Poverty

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A TRUE "WORK IN PROGRESS" PILOT

(Collaborative Team continues to meet regularly)

QUESTIONS?

COMMENTS?

THANK YOU!

