



## *Arizona Department of Child Safety*

**Douglas A. Ducey**  
Governor

**Gregory McKay**  
Director

June 1, 2017

The Honorable Douglas A. Ducey  
Governor  
1700 West Washington  
Phoenix, Arizona 85007

RE: Tribal Government Consultation Policy

Dear Governor Ducey:

Pursuant to Executive Order 2006-14, all Executive Branch agencies are required to develop and implement tribal consultation policies to guide their work and interaction with federally-recognized Tribes in Arizona.

While the Department of Child Safety (DCS) has been submitting a Tribal Consultation report since becoming a stand-alone agency, we have completed and submit for your review and approval the DCS Tribal Government Consultation policy.

If you have questions or concerns, please contact my office at (602) 255-2500.

Sincerely,

A handwritten signature in black ink, appearing to read "McKay", written over a large, empty oval space.

Gregory McKay  
Director

cc: President Steve Yarbrough, Arizona State Senate  
Kristine FireThunder, Executive Director, Governor's Office of Tribal Relations  
Holly Henley, State Librarian, Arizona State Library, Archives, and Public Records  
Kenneth Poocha, Intergovernmental Tribal Liaison, Department of Child Safety



TITLE	POLICY NUMBER	
Tribal Government Consultation	DCS-12-02	
RESPONSIBLE AREA	EFFECTIVE DATE	REVISION
Policy Unit	May 17, 2017	

## **I. POLICY STATEMENT**

The Department is committed to working with American Indian Tribes to improve the quality, availability, and accessibility of human services to children, youth, and adults. This policy ensures that the Department of Child Safety engages in open, continuous, and meaningful consultation with the 22 Tribes in Arizona. This consultation consists of information exchange and mutual understanding prior to taking any action that will, or has the potential to, have a direct impact on the American Indian Tribes in Arizona. Trust among the Department and the 22 Tribes in Arizona is an indispensable element in establishing a good consultative relationship.

## **II. APPLICABILITY**

This policy applies to all administrative and field operations staff that collaborates with or coordinates service delivery to any of the 22 Tribes in Arizona.

## **III. AUTHORITY**

The special relationship between the 22 Tribes in Arizona and the State of Arizona is affirmed in various statutes, memoranda, and Presidential and Gubernatorial Executive Orders including, but not limited to:

State of Arizona Executive Order 2006-14	Consultation and Cooperation with Arizona
Presidential Executive Order 13084	Consultation and Coordination with Indian Tribal Governments (May 14, 1998)
Presidential Executive Order 13175	Consultation and Coordination with Indian Tribal Governments (November 6, 2000)
Presidential Executive Memorandum	Government-to-Government Relations with Native American Tribal Governments (April 29, 1994)

Presidential Memorandum	Government-to-Government Relationship with Tribal Governments (September 23, 2004)
Presidential Memorandum	Tribal Consultation (November 5, 2009)
Social Security Act	Titles IV, XIX, XX, XXI
Public Law 67-85	The Snyder Act
Public Law 93-638, as amended	Indian Self-Determination and Education Assistance Act (25 U.S.C. §§ 450 <i>et seq.</i> )
Public Law 93-644, as amended	Native American Programs Act (42 U.S.C. §§ 2991 <i>et seq.</i> )
Public Law 94-437, as amended	Indian Health Care Improvement Act (25 U.S.C. §§ 1601 <i>et seq.</i> )
Public Law 95-608	Indian Child Welfare Act (ICWA) (25 U.S.C. §§ 1901-1963)
Public Law 104-4	Unfunded Mandates Reform Act
Public Law 110-134, as amended	Head Start for School Readiness Act (42 U.S.C. §§ 9801 <i>et seq.</i> )
Public Law 110-351	Fostering Connections to Success and Increasing Adoptions Act (42 U.S.C. §§ 1305 <i>et seq.</i> )
Public Law 111-3, 123 Stat 8	Children's Health Insurance Program Reauthorization Act (February 4, 2009)
Public Law 111-5, 124 Stat. 119	American Recovery and Reinvestment Act (February 17, 2009)
Public Law 111-148	Patient Protection and Affordable Care Act (42 U.S.C. §§ 18001 <i>et seq.</i> )

#### IV. DEFINITIONS

American Indian: An individual who is a member of a federally recognized American Indian Tribe; a political designation rather than a reflection of an individual's ethnic heritage. See also, Native American.

American Indian Tribe(s): Federally recognized entities with which the United States government maintains an official government-to-government relationship, usually established by a federal treaty, statute, court order, federal administrative action, congressional legislation, or executive order. These tribes usually possess tribal sovereignty and retain their inherent powers of self-government, the degree of which may vary from one tribe to another. This definition also applies to an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 479a.

Communication: The exchange of ideas, messages, or information by speech, signals, writing, or other means.

Consultation – An enhanced form of communication, which emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties which leads to mutual understanding and comprehension. Consultation is a deliberative process which results in effective collaboration and informed decision making with the ultimate goal of reaching consensus on issues.

Critical Event: A planned or unplanned event (e.g., issues, policies, rules, legislation, or budgets) that has or may have a substantial impact on American Indian Tribe(s) and their members; it may come from any level within state or federal government.

Department or DCS: The Arizona Department of Child Safety.

DCS Tribal Liaison: The DCS Tribal Liaison acts as the DCS contact person with American Indians and other tribal entities and assists in building a positive relationship between the Department and American Indian Tribes in Arizona.

Government-to-Government Relationship: A unique legal and political relationship that is grounded in the U.S. Constitution between federally recognized tribes and the federal government. Implicit in this relationship is the recognition of tribal sovereignty as individual nations within the U.S., and the U.S. government's obligation to protect tribal self-governance, assets, resources, lands, and treaty rights. While federally recognized tribes generally are not subordinate to states, they can have a government-to-government relationship. It is important that both tribes and state recognize the benefits of understanding intergovernmental processes and potential avenues for collaboration.

Indian Child Welfare Act - P.L. 95-608; 25 U.S.C. §§ 1901-1963 (ICWA): A law of the United States enacted and declared by Congress to protect the best interests of Indian children and to prevent the breakup of American Indian families. These minimum Federal standards promote the stability and security of American Indian Tribes by providing standards for the removal of American Indian children from their families and the placement of such children in foster or adoptive homes, which will reflect the unique values of Indian culture, and provide assistance to Indian tribes in the operation of child and family service programs. *See also* 25 C.F.R. part 23.

Joint Tribal/State/Federal Workgroups and/or Task Forces: A group composed of individuals who are elected tribal officials or their designees, and representatives from federal or state agencies who will work on a particular policy, practice, issue, and/or concern.

Native American: Broadly describes the people considered indigenous to North America. *See also*, American Indian.

Sovereignty: The inherent authority of indigenous tribes to govern themselves within the borders of the United States of America.

Treaty: A legally binding and written agreement that affirms the government-to-government relationship between two or more nations.

Tribal Officials: Elected or duly-appointed officials of American Indian Tribes or their designees.

## **V. POLICY**

A unique government-to-government relationship exists between American Indian Tribes and federal and state governments. Since the formation of the Union, the United States has recognized American Indian Tribes as sovereign nations. As a state agency responsible for administering federal programs, these regulations play a significant role in this *Tribal Government Consultation* policy. This relationship is grounded in the U.S. Constitution, numerous treaties, statutes, federal case law, regulations, and executive orders as well as political, legal, moral, and ethical principles, and is derived from the political relationship that American Indian Tribes have with the federal government.

This policy does not supersede any contract or intergovernmental agreement (IGA) between the Department and an American Indian Tribe that provides rights or time frames conflicting with those contained herein.

## **A. General Requirements**

1. Pursuant to the special relationship between the American Indian Tribes and federal and state governments, the guiding principle of this policy is to ensure that the Department provides consultation prior to taking any action that will, or is reasonably believed to, have the potential to affect a tribal community or its members. Either the Department or a Tribe may identify that an action may significantly affect one or more American Indian Tribes.
  - a. Such actions refer to policy, rules, legislation, or provision of services that may have substantial tribal implications and direct effects on one or more American Indian Tribes, the relationship between the State of Arizona and American Indian Tribes, or the distribution of power and responsibilities between the State of Arizona and American Indian Tribes.
  - b. Reasonable and concerted effort shall be made early and often to request feedback and recommendations regarding Department issues (e.g., legislative changes, contract changes, changes in intergovernmental agreements, etc.).
2. The DCS Tribal Liaison is responsible for the Department's implementation and ongoing operation related to the requirements of this policy and shall act as the principal point of contact for tribal issues.
3. Department staff with a role in the development or implementation of policy, rules, legislation, or the provision of services that may substantially affect American Indians in the State of Arizona shall coordinate with the DCS Tribal Liaison to ensure the required consultation takes place in a timely and effective manner.
5. The Department shall ensure that the consultation process and activities are conducted within the scope of this policy and result in a meaningful outcome for both the Department and American Indian Tribes. Prior to the adoption of any final policy or rules that substantially affect American Indian Tribes in Arizona, the proposed outcome of a consultation shall be publicized statewide and circulated for review and comment to affected American Indian Tribes and Tribal entities within the State when appropriate, practicable, and permitted by law.
6. This policy shall not waive or diminish any tribal government rights, including treaty rights, sovereignty immunities, or jurisdiction.

## **B. Communication**

It is the intent of the Department to increase the knowledge and understanding that American Indian Tribes have of the Department's programs and policies, while at the same time increasing the awareness that Department staff have of tribal programs and policies. To ensure consistent application of this policy, the Department shall, through the DCS Tribal Liaison:

1. Build meaningful relationships with American Indian Tribes by engaging in open, continuous, and relevant collaboration.
2. Establish and maintain effective communication channels with Tribal Officials and their appointed leadership of the Social Services Department and any other necessary tribal program leaders for each American Indian Tribe in Arizona.
3. Dialogue with American Indian Tribes to discuss potential changes to policy, rules, legislation, or provision of services that may have a significant impact on the American Indian Tribes in Arizona, particularly regarding any critical events that have occurred or may occur.
4. Coordinate a quarterly communication and consultation meeting to which the American Indian Tribes in Arizona are invited regarding the development of new policy, rules, regulations, or services with substantial tribal implications.
5. Conduct additional consultation meetings as described in section VI.A if an American Indian Tribe identifies a Department issue that may have a significant impact on American Indian Tribes or their members in Arizona.

## **C. Consultation**

Examples of actions that may trigger consultation include any legislative proposal, new rule adoption, policy change, or a change in the provision of services that the Department or an American Indian Tribe determines may significantly affect Tribes in Arizona.

1. Consultation occurs whenever the Director and Tribal Official(s), and/or their designees, engage in oral or written communication to substantively discuss an issue and requires communication from all involved parties rather than a unilateral communication of a change in policy, rule, or service. Consultation with a single American Indian Tribe shall not

substitute for consultation with other Tribes on issues that may affect more than one Tribe.

2. The Department views tribal consultation as a joint effort between the American Indian Tribes, the Department Director, and the Department's Tribal Liaison to promote the objectives of the *Tribal Government Consultation* policy. Together, these entities shall promote consistent implementation of the policy and work to ensure that the policy plays a meaningful role in addressing issues affecting American Indian Tribes in the State of Arizona.
3. The Department shall establish and cultivate working relationships with key persons in tribal governments, and acknowledge the unique relationship between the state government and tribes of Arizona to ensure consistency with the principles of tribal sovereignty as described by federal law.
4. The Department shall participate in the U.S. Department of Health and Human Services (DHHS) regional consultations and, as requested, in consultation meetings sponsored by DHHS agencies, the Indian Health Service, the Inter Tribal Council of Arizona, or American Indian Tribes.
5. The Department shall provide an opportunity for American Indian Tribes to submit written comments during any period of ongoing consultation. Written comments may be submitted electronically or by mail in the format most conducive for the American Indian Tribe, American Indian organization, or other entity.
6. The Department's Tribal Liaison will strive to meet annually and individually with each of the 22 American Indian Tribes in Arizona, in their respective communities.
7. The DCS Tribal Liaison or other designated Department staff will provide follow-up, as appropriate, to the extent that issues of general application are discussed in such meetings.
8. DCS Administration will provide a written response to the American Indian Tribes regarding comments received and the outcome of the consultation process. The Department may post relevant information on its website.
9. If a Tribal Official and/or their designee requests additional information or provides feedback regarding an issue, the DCS Tribal Liaison shall communicate, verbally or through written correspondence, with the official and/or their designee, to provide a timely and substantive response. Face-to-face, telephonic, or web-based consultation sessions



may be scheduled. Such sessions may be scheduled as a single statewide meeting, or in conjunction with other statewide meetings.

**D. Joint Tribal/State/Federal Workgroups**

1. The Department may establish or participate in workgroups, task forces, other groups or committees with American Indian Tribes and others to address issues affecting American Indian Tribes in Arizona.
2. Interaction with joint tribal/state/federal workgroups will not take the place of tribal consultation. Instead, this interaction is intended to enhance the consultation process by gathering individuals with extensive knowledge of particular policy, practice, issues, or concerns to work collaboratively and offer recommendations for consideration by the Department.

**VI. PROCEDURES**

The Department, through the DCS Tribal Liaison, consults with American Indian Tribes in Arizona about policy issues, legislation, rules, and provision of services that may have a significant impact on the Tribe(s). Consultation occurs whenever the Director and Tribal Official(s), and/or their designees, engage in oral or written communication to substantively discuss an issue and requires communication from all involved parties rather than a unilateral communication of a change in policy, rule, or service. Consultation with a single American Indian Tribe does not substitute for consultation with other American Indian Tribes on issues that may affect more than one Tribe.

**A. Initiating an Issue**

The Department or an American Indian Tribe may identify an issue that may substantially affect one or more American Indian Tribes in the state.

1. Tribe-Initiated Issues
  - a. When an issue arises and an employee of an American Indian Tribe contacts an employee of the Department, those individuals discuss the issue and attempt to resolve it.
  - b. An American Indian Tribe or any employee thereof may also elect to bring any issue directly to the attention of the Tribal Liaison. The DCS Tribal Liaison shall review the request and respond within five (5) business days. The DCS Tribal Liaison may refer the request to the appropriate individual within the Department for resolution.

c. When the DCS Tribal Liaison cannot resolve the issue with the impacted Tribe(s), the Tribe(s) may request a face-to-face consultation session. These sessions may be scheduled as a single statewide meeting or in conjunction with other statewide meetings.

d. An American Indian Tribe may also elevate issues to the DCS Director through formal correspondence or the *Formal Request for Tribal Consultation* (DCS 1185A)

The DCS Director or the Director's designee shall:

- i. Send notice to the Tribe(s) within ten (10) working days indicating that the request has been received, the next communication or action that will occur, and the timeframe for that next action. The *Acknowledgment of Tribal Consultation Request* (DCS-1186A) form may be used for this purpose.
- ii. Send the *Acknowledgement of Tribal Consultation Request* to DCS Correspondence Control, which creates an action item for the DCS Tribal Liaison within two (2) business days.

2. Department-Initiated Issues

If a Department employee has identified an issue, the Department employee shall contact the DCS Tribal Liaison. The DCS Tribal Liaison reviews the issue with the Tribe and schedules a consultation if requested by either party.

When it appears that a new or revised DCS policy may be needed, DCS Administration considers whether it is a policy change that is likely to have a direct effect on Indian Tribes and will follow the Consultation procedures as identified in section V.C.

**B. Considering Tribal Implications**

1. Issues with substantial tribal implications

When the DCS Tribal Liaison determines that an issue may have substantial implications for the Tribes, the DCS Tribal Liaison notifies the 22 American Indian Tribes in Arizona that the issue will be included on the next Tribal Consultation Meeting agenda. When urgent issues do not permit waiting for the next Tribal Consultation Meeting, the Tribal Liaison will schedule a meeting as soon as possible. The DCS Tribal Liaison directly notifies Tribal Officials, explaining the background of the issue, and specifies the following:

- a. The subject issue(s) for resolution.
- b. The applicable program(s), policy, rule, regulation, statute, or authorizing legislation.
- c. The related concerns such as state-tribal relations, programs, complexity, time constraints, funding, and budget implications.
- d. The affected or potentially affected American Indian Tribe(s).

2. Soliciting Feedback on Significant Issues

The Department may also provide written notice and a solicitation for feedback to non-tribal and other American Indian organizations such as the Advisory Council on Indian Health Care, the Inter Tribal Council of Arizona, the Indian Health Service Area Offices in Arizona, Phoenix Indian Center and Urban Indian Health Programs, and sister state agencies such as the Arizona Health Care Cost Containment System, the Arizona Department of Health Services, or the Governor's Office on Tribal Relations. The Department may also collaborate with community organizations such as Casey Family Programs, which provides technical assistance and training in the American Indian child welfare area to American Indian Tribes. Such communications do not substitute for direct communication with the American Indian Tribes in Arizona.

**C. Reports**

- 1. The DCS Tribal Liaison will prepare an annual report at the end of the state fiscal year describing all actions undertaken as a result of Department/Tribal consultation activities. The DCS Tribal Liaison shall submit the report to the Department Director for review and approval.
- 2. The report is distributed as follows:

- a. Submitted electronically to the Governor and the Arizona Legislature.
- b. Submitted electronically to the Governor's Office on Tribal Relations, which shall make the report available to Tribal Officials of American Indian Tribes in Arizona.
- c. Posted to the Department's Internet Web site at: <https://dcs.az.gov/>

## **VII. FORMS INDEX**

[Formal Request for Tribal Consultation \(DCS-1185A\)](#)

[Acknowledgment of Tribal Consultation Request \(DCS-1186A\)](#)