

# TRIBAL PROGRAM NEWS

## TCCD Project News

by Diane Henkels and Trish Carey

Greetings and Happy New Year!

### Criminal Law Revisions

Project staff has put out a second draft of the revisions to the tribe's Criminal Offense and Rules of Criminal Procedure. The new draft incorporates comments made by tribal members and staff during the round of community input.

We made changes throughout the draft code, including alcohol, tobacco, and drugs; disposition of offenders (how to treat those found guilty of violating the tribe's criminal law); provisions dealing with peyote, including the criminal provisions of the Domestic and Family Violence Ordinance; organizing the draft code by grouping major crimes together and creating a section specifically for offenses against the family. Like all the provisions, the policy statements found at the beginning of each part of the draft code also are up for review.

### Family Welfare Code

In addition, project staff are working on a Family Welfare Code. This code will include several tribal laws already in existence, including the Garnishment Ordinance, the different provisions of the juvenile code, foster home standards, name change, domestic and family violence. We are including in the first draft a draft on juvenile justice, and a draft domestic relations.

Besides compiling these laws in one comprehensive code and adding a few new sections, the project will revise certain sections of existing code to reflect changes in tribal services relating to family welfare. For example, the juvenile code sections will be amended to address a 4E agreement with the

state of Oregon that funds foster care as provided for by federal law.

### ICWA

In the last few issues of Siletz News, we showed how the tribe's criminal law is subject to the Indian Civil Rights Act. Similarly, the Indian Child Welfare Act, known as ICWA (pronounced "ickwaa") (25 U.S.C. §§ 1901-1933) is an important federal law that applies to Indian people, specifically, Indian children and their families.

ICWA reinforces the exercise of tribal sovereignty. The underlying premise of ICWA is that Indian tribes, as sovereign governments, have a vital interest in any decision on whether Indian children should be separated from their families. Indian tribes have a legitimate interest in preserving and protecting the Indian family as the wellspring of its own culture.

The purposes of the tribe's Constitution express a similar goal: "Promote our cultural and religious beliefs and to pass them on in our way to our children, grandchildren, and grandchildren's children forever."

A recognized expert on the Indian Child Welfare Act, Craig Dorsay, wrote a chapter on ICWA in the book "Child Custody and Visitation, Law and Practice" and includes background and policy. In 1968, the year the Indian Civil Rights Act was enacted, the federal government began a survey of the Indian child custody problem.

Congress found that an alarmingly high percentage of Indian families were being broken up by the often unwarranted removal of their children by non-Indian public and private agencies, and that these Indian children were generally being placed in non-Indian homes. Approximately 85 percent of Indian children in foster care were living in non-Indian

homes and 90 percent of non-related adoptions of Indian children were made by non-Indian couples.

Standards applied to foster care or adoptive parents were discriminatory and made it virtually impossible for most Indian couples to qualify as foster or adoptive parents because they are based on middle-class values. These children had to cope with problems of adjusting to a social and cultural environment much different than their own.

Three policies were expressly incorporated into ICWA to protect the best interests of Indian children and promote the stability and security of Indian tribes and families: establishing minimum federal standards for the removal of Indian children from their families, placing Indian children in homes that reflect the unique values of Indian culture, and providing assistance to Indian tribes in the operation of child and family service programs.

Both the tribal court and the child and family service program play important roles in Indian child protection under ICWA. For example, ICWA provides that an Indian tribe has exclusive jurisdiction over child custody proceedings if the Indian child lives on the tribe's reservation or if the child is a ward of tribal court.

Also, the state must give full faith and credit to all tribal court orders and judgments given according to ICWA. This means that any state court, including Oregon state courts, must recognize Siletz Tribal Court orders and judgments pertaining to Indian child welfare the same as they would any other state court orders and judgments.

Also under ICWA, the objective of every Indian child and family service program is to prevent the breakup of Indian families and, in particular, to ensure that the

### Siletz Tribal Court and Code Development

permanent removal of an Indian child from the custody of his parent or Indian custodian is a last resort. ICWA sets strict rules, which the Siletz ICW Department must follow.

The purpose of the CTSI Family Welfare Code is to provide the written legal framework for Tribal Court, the tribe's ICW Department, Tribal Police, and tribal membership, as represented by Tribal Council, to work together to protect the interests of the tribe and the tribe's families. We thank you for your comments so far and hope to have more in the next few months as drafts come out for public comment.

The most recent drafts may be found in project binders in each area office and in the lunchroom of the tribal administration building. Also, copies may be obtained by request from project staff at 1-800-922-1399, ext. 212, or 541-444-8212, or e-mail Diane Henkels (dianeh@ctsi.nsn.us) or Trish Carey (trishc@ctsi.nsn.us).

Finally, we welcome Julee Welch, who began her work as the project law clerk in early January. Julee also is a third-year student at Northwestern School of Law in Portland.

### Siletz Tribal Court and Code Development