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MEMORANDUM

April 16, 2026

SUBJECT: Court ordered visitation and tribal courts
(CSHB 307() ; Work Order No. 34-LS1411\N)

TO: Representative Rebecca Schwanke
Attn: Katrina Church-Chmielowski

FROM: Margret Bergerud 
Legislative Counsel

You asked whether HB 307 (Work Order No. 34-LS1411\N), if passed, would apply to tribal courts and whether it would affect children who are subject to the Indian Child Welfare Act (ICWA).¹ Your questions are discussed below.

Bill summary.

Section 1 of HB 307 adds a new section, AS 25.20.113. This section requires a court to order compensatory visitation between a child and a person if court-ordered visitation did not occur because the Department of Family and Community Services (department) was investigating the person with whom the visitation was ordered for allegedly subjecting the child to a condition listed in AS 47.10.011 (in other words, a condition which would qualify the child as a child in need of aid if substantiated), the allegation was ultimately unsubstantiated, and there was no other good cause for deviating from the court-ordered visitation. The compensatory visitation ordered by the court must be substantially similar in time and duration to the lost visitation time.

Section 2 of the bill amends AS 25.20.140(b) to increase the amount of damages that may be awarded to a prevailing party in an action against a child's custodian for failure to comply with a visitation order. Currently, a custodian may not be held liable for more than one failure for each continuous period of visitation. Under this amendment, a prevailing party may be awarded \$200 for each failure arising during a single continuous period of visitation.

Tribal courts.

Tribes in Alaska are sovereign governments, with the same power as any sovereign, such as writing their own laws and establishing their own courts. States do not have the power to require tribes to follow their laws when a tribal court is hearing a case within its

¹ 25 U.S.C. 1901 - 1963.

jurisdiction.² This means that in civil cases in tribal court, the state cannot require state civil laws to be followed. The general rule is that "Indian tribes retain those fundamental attributes of sovereignty . . . which have not been divested by Congress or by necessary implication of the tribe's dependent status."³ The passage of HB 307 would not affect tribal courts.

ICWA.

The primary purposes of ICWA include restricting the removal of Indian children from their families and promoting the placement of those children in foster and adoptive homes that "reflect the unique values of Indian culture."⁴ ICWA specifically applies to custody proceedings that remove an Indian child from a parent or custodian for placement into foster care, terminate parental rights over an Indian child, involve the temporary placement of an Indian child into foster care after the termination of parental rights over the child, and involve the permanent placement of an Indian child for adoption.⁵ ICWA generally does not apply to custody proceedings between a child's parents. Because the proceedings contemplated in HB 307 relate to visitation of a child rather than the removal and placement of a child outside the child's home, they are not the type of proceedings that involve ICWA.

Please reach out with further questions.

MAB:boo

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² *See, e.g., Williams v. Lee*, 358 U.S. 217, 200 (1959) ("Congress has also acted consistently upon the assumption that the States have no power to regulate the affairs of Indians on a reservation."); and *Worcester v. Georgia*, 31 U.S. 515 (1832) ("The treaties and laws of the United States contemplate Indian territory as completely separated from that of the states; and provide that all intercourse with them shall be carried on exclusively by the government of the union.").

³ *John v. Baker*, 982 P.2d 738, 751 (Alaska 1999) (quoting *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 146 (1982)).

⁴ 25 U.S.C. 1902.

⁵ 25 U.S.C. 1903(1).