

**New Mexico Public Defender Department  
State-Tribal Collaboration Act  
Communication and Collaboration Policy**

The State-Tribal Collaboration Act (“STCA”) reflects the commitment of the state to work together with tribal leaders from the 22 sovereign nations, tribes, and pueblos in New Mexico for mutual benefit and cooperative and productive state-tribal relationships. The STCA formalizes a process through which state agencies and nations, tribes and pueblos can work together to better collaborate and communicate on issues of mutual concern.

The STCA recognizes the unique sovereign status of the 22 sovereign nations, tribes and pueblos within the state and represents the ongoing efforts and commitment by the state and the tribes to strengthen and increase state-tribal collaboration and communication to better serve their citizens.

Native Americans residing in New Mexico are citizens of their respective tribes and are also citizens of the state of New Mexico. This makes them eligible for state services and programs just as other state citizens are eligible for these benefits. As such, state and tribal governments have a shared interest in providing mutually beneficial and efficient services for the state’s Native American citizens. By working together both the state and tribes can find better ways to provide services in such a manner that uses resources more effectively and efficiently.

This policy is organized as follows:

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## I. Background

- A. In 2003, Governor Bill Richardson and 21 of 22 Indian Nations, Tribes and Pueblos of New Mexico adopted the *2003 Statement of Policy and Process* (Statement), to “establish and promote a relationship of cooperation, coordination, open communication and good will, and [to] work in good faith to amicably and fairly resolve issues and differences.” The Statement directs state agencies to interact with the tribal governments and provides that such interaction “shall be based on a government-to-government relationship” aimed at furthering the purposes of meaningful government-to-government consultation.
- B. In 2005, Governor Bill Richardson issued Executive Order 2005-004 mandating that the Executive State agencies adopt pilot tribal consultation plans with the input of the 22 New Mexico Nations, Tribes and Pueblos.
- C. On March 19, 2009, Governor Bill Richardson signed the State Tribal Collaboration Act into law. The STCA reflects the commitment of the state to work together with tribal leaders on a true government-to-government basis. The STCA institutionalizes the intergovernmental relationship through several interdependent components and provides a consistent approach through which the State and the Nations, Tribes and Pueblos can work together to better collaborate and communicate on issues of mutual concern.
- D. In the fall of 2009, pursuant to the STCA, the SAFER New Mexico Group, comprised of the Department of Public Safety, Department of Homeland Security and Emergency Management, Department of Military Affairs, Corrections Department and the Public Defender Department, met with representatives from New Mexico’s Indian Nations, Tribes and Pueblos to develop an overarching policy that:
  1. Promotes effective collaboration and communication between the state agency and New Mexico Indian Nations, Tribes and Pueblos;
  2. Promotes positive government-to-government relations between the state and New Mexico Indian Nations, Tribes and Pueblos;
  3. Promotes cultural competence in providing effective services to American Indians or Alaska Native; and
  4. Establishes a method for notifying employees of the state agency of the provisions of the STCA and the Policy that the Agency adopts.
- E. The Policy meets the intent of the STCA and defines the Agency’s commitment to collaborate and communicate with the Tribes.

## **Section II. Purpose**

The purpose of this policy is to formalize and strengthen the government-to-government relationship that exists between the 22 sovereign Nations, Tribes, and Pueblos and the Agency in accordance with the requirements of the STCA. This Policy is meant to enhance communication and mutual cooperation, identify issues of mutual concern, and design and implement solutions, programs and services that meet the needs of Native Americans. This Policy establishes a process that can assist in resolving potential conflicts, maximize inter-governmental relations and enhance an exchange of ideas and resources between the entities for the greater good of all New Mexico's citizens.

## **Section III. Principles**

The state and the tribes recognize that several underlying principles contribute to building and maintaining successful and effective government-to-government relationships. At the core of these principles lie cooperation, mutual understanding, respect, communication, process and institutionalization.<sup>1</sup> Proper mechanisms to provide the best forum for the state and tribes to collaborate and communicate on various issues may vary among the state agencies based on the agency structure, needs and available resources. These principles provide the basis for establishing collaboration and communication processes that will ensure durable, effective working relationships to the benefit of all the citizens of the state.

- A. Recognize and Respect Sovereignty – The State and Tribal Governments are sovereign governments. Government sovereignty must be respected and recognized in government-to-government consultation and collaboration between the Agency and Tribal Governments. Tribal Governments have the inherent sovereignty to govern their own internal Tribal affairs. The recognition and respect of sovereignty is the basis for government-to-government relations and this policy. The State of New Mexico and the Agency recognize and acknowledge the Tribal trust responsibility of the Federal Government to American Indian and Alaska Native Tribes.
- B. Government-to-Government Relations – The Agency recognizes the importance of full and open one-on-one communication, collaboration, and cooperation with New Mexico's 22 Nations, Tribes, and Pueblos. The Agency further recognizes that the 22 Tribal governments, as sovereign entities, may have an interest in the Agency's policies and programs that affect tribal interests or tribal members. The Agency further recognizes the value of dialogue between Tribal Governments and the Agency with regard to those policies and programs.
- C. Efficiently Addressing Tribal Issues and Concerns – The Agency recognizes the value of tribal input into the Agency's programs and services. Thus it is important that tribal interests are reviewed and considered in the Agency's policy development process. The Agency will make every effort to address and understand past, present and future tribal

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<sup>1</sup> Johnson, Susan et al. Models of State Cooperation between States and Tribes. National Conference of State Legislatures, 2002.

concerns. Once identified, concerns will be addressed on matters that have a potential to significantly affect protected tribal resources, tribal rights or tribal lands.

- D. Mutual Resolution – The Agency and Tribal Governments shall work in good faith to address and mutually resolve concerns. The Agency recognizes that good faith, mutual respect, and trust are fundamental to meaningful collaboration and communication policies.
- E. Collaboration – In order to maximize the use of limited resources, the Agency and New Mexico's 22 Indian Nations, Tribes and Pueblos are encouraged to collaborate on programmatic activities, training, workshops, and areas of mutual interest or concern. The Agency shall strive to facilitate discussion with other parties, intergovernmental organizations, and county and local governments to mutually resolve concerns.
- F. Communication and Positive Relations – The Agency shall strive to promote positive government-to-government relations with the Tribes by: 1) interacting with the tribes in a spirit of mutual respect; 2) seeking to understand the varying tribal perspectives; 3) facilitating communication, understanding and appropriate dispute resolution with the tribes; and 4) working towards a shared vision in areas of mutual interest, through the government-to-government process.
- G. Informal Communications – The Agency and Tribal Governments recognize that formal consultation may not be required in all situations or interactions. The Agency may seek to communicate outside the consultation process. These communications do not negate the authority of the Agency and Tribal Governments to request formal consultation.

#### **Section IV. Definitions**

- A. The following definitions shall apply in this Policy:
  - 1. American Indian/Alaska Native – Pursuant the STCA, this means:
    - a) Individuals who are members of any federally recognized Indian nations tribe, or pueblo;
    - b) Individuals who would meet the definition of "Indian" pursuant to 18 USC 1153; or
    - c) Individuals who have been deemed eligible for services and programs provided to American Indians and Alaska Natives by the United States public health service, the bureau of Indian affairs or other federal programs.
  - 2. Collaboration – Collaboration is an ongoing process in which two or more parties work together to achieve a common set of goals. Collaboration may occur between the state and tribes and their respective agencies or departments and may involve other Indian organizations if needed. Collaboration is the timely and accurate day-to-day communication and joint efforts that lay the groundwork for

mutually beneficial relations, including identifying issues and problems, generating improvements and solutions, and providing follow up as needed.

3. Communication – Verbal, electronic or written exchange of information between the state and tribal governments.
4. Consensus – Consensus is reached when a decision or outcome is mutually satisfactory to the Agency and the Tribes affected and adequately addresses the concerns of those affected. Within this process it is understood that consensus, while a goal, may not always be achieved.
5. Consultation – Consultation operates as an enhanced form of communication that emphasizes trust and respect. It is a decision making method for reaching agreement through a participatory process that: a) involves the Agency and Tribes through their official representatives; b) actively solicits input and participation by the Agency and Tribes; and c) encourages cooperation in reaching agreement on the best possible decision for those affected. It is a shared responsibility that allows an open, timely and free exchange of information and opinion among parties that, in turn, may lead to mutual understanding and comprehension.

Consultation with Tribes is uniquely a government to government process with two main goals: a) to reach consensus during decision making; and b) whether or not consensus is reached, the parties have considered each other's perspective and honored each other's sovereignty.

6. Cultural Competency – Refers to an individual or organization's ability to interact effectively with people of different cultures. Operationally, cultural competency is the act of integrating knowledge about individuals and groups of people into specific standards, policies, practices and attitudes that are used in appropriate cultural settings to increase the quality of services.
7. Culturally Relevant – Describes a condition where programs or services are provided according to the clients' cultural backgrounds.
8. Linguistic Competency – Refers to one's capacity to communicate effectively and convey information in a manner that is easily understood by diverse audiences including persons of limited English proficiency, those who have low literacy skills or are not literate, and individuals with disabilities.
9. Government to Government – Describes the relationship between the State, Tribes and the Federal government.
10. Indian Organizations – Indian organizations that represent or provide services to Alaska Natives and/or Native Americans living on tribal lands, and/or urban areas, and/or off tribal land.

11. Internal Agency Operation Exemption – Refers to internal agency operations and processes not subject to this Policy. The Agency has the authority and discretion to determine what internal operations and processes are exempt from this Policy.
12. Internal Tribal Government Operations Exemption – Refers to certain internal tribal government operations not subject to this Policy. Each Tribe has the authority and discretion to determine what internal processes are exempt from the processes contained in this Policy.
13. Participation – Describes an ongoing activity that allows all interested parties to engage one another through negotiation, compromise and problem solving to reach a desired outcome.
14. SAFER New Mexico – Is a block of Executive State agencies composed of: the Public Defender Department, Department of Military Affairs, Corrections Department, Department of Public Safety and the Department of Homeland Security and Emergency Management.
15. State Sovereignty – Each state is a sovereign entity in our federal system and has governmental powers except to the extent the states have agreed in our constitutional framework to the supremacy of federal laws and treaties.
16. Tribal Implications – Refers to state legislation, regulations and other policy statements or actions that have substantial direct impact on one or more Indian Nations, Tribes or Pueblos, or on the relationship between the state and tribal governments.
17. Tribal Officials – Elected or duly appointed officials of Indian Tribal governments or authorized intertribal organizations.
18. Tribal Sovereignty – Native American tribes are recognized in federal law as possessing sovereignty over their members and their territory. The sovereignty tribes possess is inherent, which means that it comes from within the tribe itself and existed before the founding of the United States. Tribal sovereignty is not absolute, but rather is subject to certain limits resulting from the unique relationship of the tribes to the United States. Under federal law, tribes retain all aspects of their original sovereignty except those that have been given up by treaty or taken away by congressional action or divested by implication of their dependent status. In addition to inherent sovereignty, tribal governments may also exercise authority delegated to them by Congress.
19. Tribes – The New Mexico Indian nations, tribes or pueblos 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 as updated periodically.

## Section V. General Provisions

### A. Collaboration and Communication

1. Tribal Liaisons. To promote state-tribal interactions, enhance communications and resolve potential issues in improving the delivery of agency services and support to Native Americans, Tribal Liaisons from each SAFER New Mexico participating agency will work with Tribal Leaders, staff and their programs in developing policies or implementing program changes specific to each agency.
2. Informal Communications. The Agency and the Tribes recognize that consultation meetings may not be required in all situations or interactions involving state-tribal relations. Tribal members may communicate with other agency employees outside the consultation process, including the Tribal Liaisons and Program Managers to ensure programs and services are delivered to their constituents. While less formal mechanisms of communicating may be more effective at times, this does not negate the State's or the Tribe's ability to request formal consultation on a particular issue or policy.
3. Role of Tribal Advisory Bodies. The Agency may solicit advice and recommendations from Tribal advisory organizations or committees to involve Tribes in policy development prior to the more formal consultation contained in this Policy. The Agency may convene such Tribal advisory organizations/committees to solicit advice and recommendations on certain departmental policies and program matters that directly impact the Tribes. Input derived from such activities will not be defined as tribal consultation.
4. Role of Work Groups. The Agency Head, in consultation with recognized Tribal officials, may appoint an agency-tribal work group to develop recommendations and provide input on Agency policies, programs and/or services as they might impact Tribes and American Indians/Alaska Natives. The Agency or the Work Group may develop procedures for the organization and the implementation of work group functions. ( See Attachment A for an example of Work Group Procedures)
5. Tribal Consultation.
  - a) The Agency shall endeavor to:
    - i) Communicate with each Indian Nation, Tribe or Pueblo and establish for each:
      - (1) Preferred methods of communication (formal and informal);
      - (2) Issues or areas of tribal interest relating the Agency's programs or activities;
      - (3) Appropriate tribal contacts relating to each program area interest;

- (4) Tribal interest in collaborative or cooperative opportunities with the Agency.
- ii) Conduct face-to-face meetings between the appropriate state and tribal policy and/or technical level staff to increase understandings of any proposed actions and enhance development of effective outcomes and solutions.
- b) Applicability – Tribal consultation is most effective and meaningful when conducted before taking action that impacts Tribal Governments and people. The State and Tribes acknowledge that a best case scenario may not always exist, and that the parties may not have sufficient time or resources to fully consult on a relevant issue. If a process appropriate for consultation has not already begun, this Policy recommends initiating consultation as soon as possible thereafter.
- c) The principle focus for government-to-government consultation is with tribal governments through their respective elected or duly appointed tribal officials. Nothing herein shall restrict or prohibit the ability or willingness of tribal officials and the Agency Head to meet directly on matters that require direct consultation. The Agency and Tribes agree the principle of leader-to-leader communication, collaboration and cooperation is always the first step in government-to-government consultation in accordance with the STCA.
- d) Areas of Consultation – The Agency shall make a good faith effort to review all proposed policies, rulemakings, or other aspects of programmatic actions that may have tribal impacts and determine whether tribal consultation should be called to provide Tribal Governments with an opportunity for an exchange of information and opinion prior to making a decision. The Agency shall endeavor to notify Tribal Governments and inquire whether Tribal consultation should occur. Tribal Officials have the discretion to decide whether to engage in the consultation process.
- e) Procedures –
  - i) Initiation –
    - (1) Consultation may be initiated by the Governor of the State of New Mexico.
    - (2) Consultation may be initiated by the Agency either requesting consultation or alerting Tribal Governments as early as possible to allow for sufficient consultation of programmatic actions that the Agency determines to warrant consultation. Additional procedures for consultation may be developed to assist in the implementation of the



Consultation Plan. Consultation shall be held wherever practical, including Tribal Government locations.

(3) Consultation may be initiated at the request of Tribal Governors or Presidents or duly authorized Tribal Officials.

(4) Consultation shall be required when applicable Federal, State, or Tribal law or regulations require consultation.

ii) Written Notification – Written notification for consultation by the Agency or Tribal Governments shall:

(1) Identify the proposed programmatic action to be consulted upon and provide information relating to the programmatic action.

(2) Identify personnel who are authorized to consult on behalf of the Agency or Tribal Government(s).

iii) Delegation – The Agency Head may delegate consultation compliance oversight to the Agency Deputy Secretary or other senior Agency staff. A Tribal Governor or President may delegate consultation compliance oversight to a Tribal Official or delegated representatives. The Agency and Tribal Governments will be responsible for ensuring the implementation of the Agency’s Tribal Collaboration and Communication Policy.

(1) Consultation shall be between the Agency and Tribal Officials or their delegated representatives with authority to negotiate on their behalf. Consultation on a Programmatic Action requiring compliance with applicable Federal, State, or Tribal laws, shall be undertaken and coordinated by the Agency Secretary, Agency Division Directors and Bureau Chiefs, Agency Offices of General Counsel, and authorized Agency staff. Agency staff is encouraged to maintain regular informal communication and cooperation with Tribal Governments, Tribal Officials, and Tribal environmental staff.

(2) The Agency and Tribal Governments shall identify and update points of contact on an annual basis.

f) Consultation Process –

i) Notification –

(1) Within 10 days of receipt of a written request for consultation by one or more Tribal Governments delivered to the Agency Head, the

Agency shall contact the Tribal Government(s) to schedule a Tribal consultation meeting before final agency action.

- (2) Upon a written invitation for consultation by the Agency Head to one or more Tribal Governments:
  - (a) The Tribal Government(s) shall accept the invitation within 10 days. If no Tribal Government accepts the invitation, the State shall issue a second written invitation to the Tribal Government(s).
- (3) If no Tribal Government accepts the second invitation within 5 days, the Agency will conclude that Tribal consultation is not required and may proceed with the proposed action. The second invitation must indicate that if the Tribal Government chooses not to accept the invitation within 5 days, that the Agency will conclude that no consultation is required.

ii) Consultation –

- (1) The Agency shall contact the Tribal Government(s) within 10 days of receipt of a request for consultation to schedule a meeting. The Agency encourages meeting with all interested Tribal Government(s) at one time, but will meet with individual Tribal Governments at the request of the Tribal Governor, President, or other delegated Tribal Official.
- (2) The Tribal Government(s) may submit written comments to the Agency within 10 days after the initial meeting. The Tribal Government(s) also may request an additional meeting with the Agency.
- (3) The Agency shall schedule additional meetings as deemed necessary by the Agency or as requested by the Tribal Government(s).
- (4) Tribal consultation shall be deemed complete when the initial meeting has been conducted and the Tribal Government(s) have been satisfied, or at the conclusion of the final meeting.

iii) Limitation on Consultation –

- (1) The Agency's State Tribal Collaboration and Communication Policy shall not diminish any administrative or legal remedies otherwise available by law to the Agency or a Tribal Government.
- (2) The Agency's State Tribal Collaboration and Communication Policy does not prevent the Agency and Tribal Governments from entering

into Memoranda of Understanding, Intergovernmental Agreements, Joint Powers Agreements, professional service contracts, or other established administrative procedures and practices mandated by Federal, State or Tribal laws or regulations.

- (3) Final Decision Making Authority: The Agency retains the final decision-making authority with respect to actions undertaken by the Agency and within the Agency's jurisdiction.

## **B. Cultural and Linguistic Competency**

1. Develop an Agency mission statement that articulates the principles, rationale, and values of cultural and linguistically competent service delivery.
2. Support ongoing professional development and in-service training for all organizational levels for building knowledge, awareness and skills in the area of cultural and linguistic competence.
3. Review or create policies to assure that new staff is provided with training, technical assistance and other supports necessary to work within culturally and linguistically diverse communities.
4. Require Agency representatives and designated supervisors to attend periodic training in tribal culture, relations, and legal status designed to create an awareness of the unique nature of tribal governments and an understanding of and sensitivity to, Native American issues.

## **Section VI. Dissemination of Policy**

- A. The Agency shall provide access to electronic copies of the Policy to all Agency staff, and provide to all new employees during their orientation period.
- B. The Agency shall ensure that all employees in key positions will attend training on the Agency's State Tribal Collaboration and Communication Policy.
- C. This Policy shall also be incorporated into the Agency's Policy and procedure manual.

## **Section VII. Amendments and Review of Policy**

The Agency shall meet periodically with the tribes to evaluate the effectiveness of this Policy.

## **Section VIII. Effective Date**

The Agency's State Tribal Collaboration and Communication Policy shall become effective upon the date all necessary signatures and/or approvals to this Policy are obtained.

**Section IX. Sovereign Immunity**

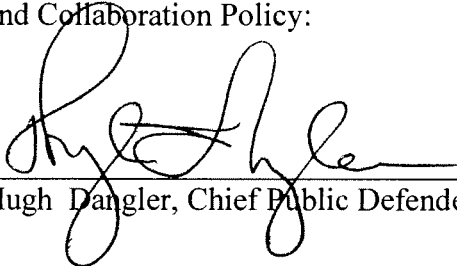
The Agency's State Tribal Collaboration and Communication Policy shall not be construed to waive the sovereign immunity of the State of New Mexico or a Tribal Government, or to create a right of action by or against the State of New Mexico or a Tribal Government or its officials for failure to comply with the Agency's State Tribal Collaboration and Communication Policy. The Agency and Tribal Governments shall have the authority and discretion to designate internal operations and process excluded from the Agency's State Tribal Collaboration and Communication Policy.

**Section X. Confidentiality**

The Agency and Tribes shall keep confidential any documents, materials, or information collected from either party, or generated in connection with programs in which there are tribal and agency interests, to the extent allowed by law.

**Section XI. Closing Statement/Signatures**

The New Mexico Public Defender Department hereby adopts the State-Tribal Communication and Collaboration Policy:

  
\_\_\_\_\_  
Hugh Dangler, Chief Public Defender

12/18/09  
\_\_\_\_\_  
Date

## ATTACHMENT A

### Sample Procedure for State-Tribal Work Groups

DISCLAIMER: The following illustration serves only as sample procedures for State-Tribal Work Groups. The inclusion of this Attachment does not mandate the adoption of these procedures by a work group. Whether these, or alternative procedures, are adopted remains at the sole discretion of the Agency Head and/or as duly-delegated to the Work Group.

- Collaboration Through the Use of Work Groups:
  1. Establishment of Work Groups –The Agency and tribes may choose to establish a work group and/or task force to develop recommendations. The work group shall, to the extent possible, consist of members from the Agency and the Tribes.
  2. Membership on Work Groups – If a Work Group is established, tribal membership on work groups must be requested. The Agency participating in the Work Group shall widely publicize the solicitation with the intent to reach all tribes, and request the tribes appoint tribal members in writing for work groups. Membership should be based on Tribal and Agency members. As state and tribal leadership changes, work group membership shall be designated as appropriate.
  3. Meeting Notices – Written notices announcing meetings shall identify the purpose, work group, task force preliminary responsibility, time frame and other specific tasks. All meetings shall be open and widely publicized by Agency offices and tribal offices.
  4. Work Group Procedures – The work group may establish procedures to govern the meetings. Such procedures will include, but are not limited to, the following:
    - a) Selection of tribal and state co-chairs to represent the work group and to serve as lead coordinators to ensure the tribal consultation policy is adhered to;
    - b) Defining roles and responsibilities of individual work group members;
    - c) Process for decision-making to arrive at a final product, which may consist of direct participation in work groups or providing timely and written comments from tribal and state agencies or both;

- d) Process for determining drafting and dissemination of all final work group products, including data sharing materials subject to policy, procedures and/or federal or state statutes; and
  - e) Defining an appropriate timeline; and
  - f) Attendance of meetings related to the work group. Members of the work group shall make good faith effort to attend all meetings.
5. Work Group Responsibility – The work group will develop final recommendations for Agency and tribal review and/or approval.
  6. Work Group Parameters – Parameters shall determine the lines of authority, responsibility and boundaries, definition of issues and delineation of negotiable and non-negotiable points.
  7. Work Group Final Products – Once the work group has created a final draft recommendation or policy, it will initiate the following process to facilitate implementation or additional consultation:
    - a) Distribution – The work group will distribute the draft recommendation to the Tribal Governor or President, the Agency Secretary and Agency tribal liaison for review and comment.
    - b) Comment – The Tribes and the Agency will return comments to the work group, which will meet in a timely manner to discuss the comments and determine the next course of action.
      - i) If the work group considers the policy to be substantially complete as written, the work group will forward the proposed policy to the Agency and the Tribes for final approval.
      - ii) The work group will record any contrary comments, disagreements and/or dissent in the final report.
      - iii) If, based on the comments, the work group determines that the policy should be rewritten; it will reinitiate the consultation process to redraft the policy.
      - iv) If the Agency and the Tribes accept the policy as is, the work group will accomplish the final processing of the policy.
  8. Recommendations – The Agency and Tribes should seriously consider any work group final recommendations for actions or implementation.

9. Implementation – Once the collaboration process is complete and the Agency and Tribes have finalized the recommendation, the Agency and Tribal work group co-chairs shall be responsible for broadly distributing the final recommendation to the Agency 's departments and Tribal leaders.
10. Evaluation – At the conclusion of the work group collaboration process, the work group participants will participate in an evaluation of the work group collaboration process. The evaluation will measure outcomes and make recommendations for improving the work group collaboration process.