

The United States Supreme Court has stated in dicta that “[j]udgments of tribal courts, as to matters properly within their jurisdiction, have been regarded in some circumstances as entitled to full faith and credit in other courts.” Santa Clara Pueblo, 436 U.S. at 65 n.21 (citing United States ex rel. Mackey v. Coxe, 18 How. 100, 15 L.Ed. 299 (1856); Standley v. Roberts, 59 F. 836 (8th Cir. 1894)). In the absence of an applicable federal statute, many tribes and states have enacted legislation or court rules to govern the recognition of foreign judgments.

SDCL 1-1-25 When order or judgment of tribal court may be recognized in state courts is applicable:

No order or judgment of a tribal court in the state of South Dakota may be recognized as a matter of comity in the state courts of South Dakota, except under the following terms and conditions: (1) Before a state court may consider recognizing a tribal court order or judgment the party seeking recognition shall establish by clear and convincing evidence that: (a) The tribal court had jurisdiction over both the subject matter and the parties; (b) The order or judgment was not fraudulently obtained; (c) The order or judgment was obtained by a process that assures the requisites of an impartial administration of justice including but not limited to due notice and a hearing; (d) The order or judgment complies with the laws, ordinances and regulations of the jurisdiction from which it was obtained; and (e) The order or judgment does not contravene the public policy of the state of South Dakota. (2) If a court is satisfied that all of the foregoing conditions exist, the court may recognize the tribal court order or judgment in any of the following circumstances: (a) In any child custody or domestic relations case; or (b) In any case in which the jurisdiction issuing the order or judgment also grants comity to orders and judgments of the South Dakota courts; or (c) In other cases if exceptional circumstances warrant it; or (d) Any order required or authorized to be recognized pursuant to 25 U.S.C., § 1911(d) ¹ or 25 U.S.C., § 1919. ²

¹ 25 U.S.C. 1911(d): An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

² 25 U.S.C. 1919: States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.