

Interim Tribal and State Relations Committee

February 21, 2006

Senator Bob Stenehjem, Chairman

Senator Stenehjem, members of the Tribal and State Relations Committee, I am Mike Schwindt, Child Support Enforcement Director with the Department of Human Services. I am here to provide an overview of interaction of child support enforcement services between the tribes and the state.

We are pleased that the Committee is studying this area and are committed to collaborating with tribes to provide child support enforcement services for tribal children wherever they or their parents may live.

One of the biggest challenges for the North Dakota child support enforcement program is the jurisdictional issues that arise between the tribes and the state in an environment overshadowed by the federal government. This quite often results in a decreased level of service to tribal kids and parents, coupled with enforcement actions that would be different if we knew the full case history. In our experience, tribal courts face the same challenge when tribal members move off the reservation and are reluctant to pay child support.

I won't go way back into the history book except to say that at one point, we did provide services on the reservations, but that ceased some years ago. More recently, the federal government began an effort to directly fund tribal child support projects. Nationally, five tribes were funded under an interim process and all federally recognized tribes are now able to consider participating in the program. Included in the October 2005 round of federally funded tribal programs was Three Affiliated Tribes.

For background, we will quantify the in-state tribal orders and caseloads, address a number of subjects and recent governmental interactions, and provide our best estimate as to what the near term future holds.

Legal issues. The federal government treats tribes as separate governments. From what I hear and see, tribes are very protective of that status. Treaty rights and the right to consultation also key touchstones as is sovereign immunity.

In looking at the state constitution and laws, tribes are considered to be separate from the state even though they geographically are included within the state borders. Thus, tribal members enjoy dual citizenship and are entitled to services from both the tribe and the state. This also raises the possibility of concurrent jurisdiction depending on a series of case specific facts on subject matter and residence. Suffice to say for today, this area is complicated and we appeal cases to the North Dakota Supreme Court to help define the areas where we can and cannot go. I am also pleased that I have been able to participate in the Supreme Court's Committee on Tribal and State Court Affairs, chaired by Judge Donovan Foughty.

Caseloads. As part of our total caseload, we include about 1,100 court orders issued by tribal courts within North Dakota. We also handle court orders issued by other tribes throughout the country but do not track those separately. We have about 5,000 additional cases, primarily with the Devils Lake and Bismarck Regional Child Support Enforcement Units, where our options can be limited because we lack jurisdiction to take the next step to obtain or enforce a court order.

Federal. The federal government is the major player in addressing tribal child support, primarily through its authority to control intergovernmental operations and the ability to fund or not fund programs. Most recently, the federal role has impacted on child support in several ways:

- The Office of Child Support Enforcement has underwritten a Tribal/State workgroup that has addressed a number of subjects and looked for solutions for problems.
 - An offshoot of that workgroup has been the updating of the **“Tribal and State Court Reciprocity in the Establishment and Enforcement of Child Support.”** This draft document provides a compendium of federal and state actions and laws as well as puts the program in context with tribal laws and heritage.
- Regulations were modified so that tribes can obtain funding to start their own child support programs. These March 2004 regulations authorize up to \$500,000 over a two-year period for a tribe to develop and implement the needed infrastructure and provide 14 core services, either through staff or contract. Already, we can see tribes are moving to begin operating their own programs. More on that later.
- Federal laws prescribe that states must enact UIFSA (Uniform Interstate Family Support Act), which governs reciprocity among states. However, tribes are not subject to this law; instead, they, as we, are to follow FFCCSOA (Full Faith and Credit for Child Support Orders Act, 28 USC 1738B), which says that a court (tribal or state) which first enters a support order over parties within its jurisdiction retains "continuing, exclusive jurisdiction" in the case until none of the parties reside in that jurisdiction.
- As a consequence, when dealing with tribes, we have anomalies that are not productive. For example we have a requirement that we issue income-withholding orders to employers, but tribes are not required to honor them. Thus, the income withholding order, our

most effective enforcement tool, is a source of irritation and frustration. This is but one example of the inconsistencies between the two programs.

State. Within our CSE program, we do not distinguish between people based on where they live since many of our customers live in other states or on reservations. However, because of jurisdiction issues, our ability to provide services for customers living out of state or on a reservation is limited. All too often, we will take enforcement actions that, in hindsight, are not what should have been done. The reason for that is simple – we don't know the up-to-date status of the case; we only know what our records show.

For out of state customers, a wide array of mechanisms and broad authority cutting across jurisdictional areas have been refined and accepted under UIFSA. Thus, when we learn an obligor has a job in Hawaii, we can issue an income withholding order and the employer will honor it. The same does not happen with tribal governments. Instead, if the employer chooses to not honor the order, we need to go into tribal court, get the order registered, and proceed from there.

To help with that, we now have attorneys licensed to practice in each of the tribal courts in North Dakota. While this is a new step, I'm pleased to say that the initial feedback has been positive.

We also provide each reservation with payment information each month. We have asked that the reservations provide the same data to us so that we can keep our ledgers current and limit enforcement to what is needed. We still have a ways to go with that area.

As noted earlier, Three Affiliated Tribes has been federally funded and we are working with them to help get their program operational. Our role is as a helper. To accomplish that, we have provided caseload data and will be working with the Tribe in determining who is in the better position to provide services. Once that is determined, I expect we will contact customers to let them know where their cases stand and hopefully, may be able to eventually close cases where we are not able to help.

Mr. Chairman, my testimony is only a quick overview on the subject. We can provide a significant amount of additional information but prefer to know more specifically what your preferences are to avoid providing irrelevant data.