



State-Tribal Relations Committee

61st Montana Legislature

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TO: State-Tribal Relations Committee members
FROM: Jeremy Gersovitz, Staff Attorney
RE: Implications of recent changes to Title IV-E of the Social Security Act
DATE: December 28, 2009

Mister Chair, members of the committee--I have been asked for the following background on recent changes to Title IV-E programs and how they interface with State-Tribal relations.

A little over a year ago, on October 7, 2008, President George W. Bush signed his name to H.R. 6893, the Fostering Connections to Success and Increasing Adoptions Act of 2008. It became Public Law 110-351. Under this child welfare bill tribal governments, for the first time, could apply to have their own Title IV-E foster care, adoption assistance and kinship programs.

Through this new program, tribes nationwide stand to directly receive up to some \$65 million annually from the federal Department of Health and Human Services. Implementation grants to aid tribes in submitting a IV-E plan (maximum \$300,000/year for up to two years) and technical assistance (\$3 million per year in total in fiscal year 2009 and succeeding years) began this year. (Note that should a tribe ultimately decide it lacks the wherewithal to run the program within two years of receiving the funding, the implementation grant must be reimbursed in its entirety though there are certain waiver provisions.)

For the most part, the tribes would have to meet the same strictures (ie. financial management) for administering the foster care, guardianship, adoption and independent living services as do the states currently.

An alternative to this direct funding is, of course, a tribal-state agreement. This state has Title IV-E contracts with six of the seven federally recognized tribes and a Title IV-E agreement with the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation. It should be pointed out that according to a National Association of Public Child Welfare Administrators' report on how the states are implementing the Fostering Connections Act, Montana's Child and Family Services Division was said to "work[s] diligently to sustain and develop collaborative and meaningful partnerships with Tribal governments in the State. Montana is often cited as a national leader in this regard."

Public Law 110-351 also authorizes tribes to receive a share of a state allotment as part of an agreement that they will operate the Chafee Foster Care Independence Program (CFCIP). This self-sufficiency program is for youths who will probably remain in foster care till age 18, youths older than 16 who have traded foster care for adoption or kinship guardianship and young adults

(18-21) who have emancipated out of foster care. This direct allocation is calculated based upon the percentage of children in the state who are under a tribe's custody. The money would be deducted from the amount allocated to the state since the tribes can now seek reimbursement of a portion of their foster care maintenance, adoption and kinship guardianship assistance costs. Montana receives approximately half a million dollars under this program. The state currently has Chafee contracts with four tribal governments: Confederated Salish and Kootenai Tribes, Northern Cheyenne Tribe, Chippewa Cree Tribe and the Gros Ventre and the Assiniboine Tribes.

(CFCIP grant monies could not be used to alleviate the problems identified by the tribes at recent State-Tribal Relations Committee field meetings and which are discussed below.)

Public Law 110-351 specifically requires states engage in "good faith" negotiations with any tribe that requests to enter into an agreement through which the state would provide Title IV-E funds for the tribe to use in administering the program. Similarly, a state must negotiate in "good faith" with any tribe which wishes to receive a share of a state allotment as part of an agreement that they will operate the CFCIP.

Finally, it is respectfully submitted that committee members may wish to discuss legislative options such as:

- (1) general fund monies to cover the cost of drug testing for parents involved in dependent and neglect actions on the reservation which currently the tribes pay for.
- (2) general fund monies to advance the tribes the amount of the first month's costs of certain IV-E contracts, with the money to be ultimately reimbursed by the tribe at the conclusion of the contract.

However, committee members may be chary of engaging in efforts relative to the reimbursement issue due to a fear that this matter is better left to Title IV-E child welfare and related Indian Child Welfare Act services contract renewal negotiations between the various tribes and the state, which are slated to restart early in 2010. Should committee members examine the drug testing issue, they may wish to request three years of documentation of the tribe's past expenditures for drug testing of parents in dependent and neglect actions in order to estimate what covering this testing might cost the general fund. As the 2011 session is widely expected to be an exceedingly fiscally constrained one, committee members may also consider prioritizing these items should they decide to proceed with requesting a bill draft to fund either or both of them.