

**Comments to the  
Special Study Committee on State/Tribal Relations**

December 16, 2008  
Room 411 South, Capitol

Cyrus Behroozi, Administrator  
Division of Safety and Permanence  
Department of Children and Families

**Indian Child Welfare Act**

- Thank you Representative Mursau and Senator Coggs and other members for inviting me here today to speak to the importance of the Indian Child Welfare Act.
- My name is Cyrus Behroozi and I am the Division Administrator for the Department of Safety and Permanence. The Department of Children and Families launched on July 1, 2008. We are excited and honored to be the first state agency devoted exclusively to promoting the social and economic well-being of Wisconsin's families. Our goal is to ensure that anytime children and families are involved with us, their lives are getting better as a result. We want children to be safe and nurtured.
- As part of the new Department of Children and Families, the duties of the Division of Safety and Permanence include partnership with the tribes in matters involving Indian Child Welfare.
- When taking on my duties Secretary Bicha made clear to me that the codification of the Indian Child Welfare Act was a top priority.
- This represents an opportunity for Wisconsin to right a long overdue oversight and acknowledge in state law the importance of our tribal partners in child welfare matters involving Indian children.
- This bill represents not the thinking of just two parties, the State and the Tribes, but is the result of several hundreds of hours of negotiations among 12 parties – the Department and each of the 11 sovereign Tribes.
- The state and tribes have worked collaboratively for more than three years on the complicated task of determining the best way to put ICWA into Chapters 48 (the Children's Code) and 938 (the Juvenile Justice Code)
- Practitioners look to Wisconsin Statute to implement practices. WI law must represent ICWA if we are to successfully fulfill these requirements because we

still have problems with compliance with the Act and the disproportionate placement of Indian children into out-of-home care.

- The Federal Administration for Children and Families has begun to monitor that compliance. The lack of compliance was mentioned in the 2003 Wisconsin Child and Family Services Review and will be followed up in our next review in 2010.
- Specifically, in our 2003 Child and Family Services Review, the Administration for Children and Families noted as a key concern that the state of Wisconsin had not made sufficient efforts to ensure that all of our federally recognized tribes have input into the development of child welfare programs and policies. They explicitly noted that caseworkers were not adhering to the requirements of the Indian Child Welfare Act on a consistent basis. Ultimately, this could result in the loss of federal Title IV-B funding.
- Senator Jauch's Committee on Tax Fairness and Family Prosperity met on November 13<sup>th</sup> to have a listening session on the ICWA bill draft.
- It brought together the members of the workgroup as well as stakeholders
- The meeting began a conversation about the bill and most importantly each stakeholder group said that they are committed to having ICWA codified into state law
- There were representatives from the Wisconsin County Human Service Association, the State Bar, the Wisconsin Association of Corporate Counsel, the Wisconsin Counties Association, the Office of the State Public Defender, and the Wisconsin District Attorney's Association at the listening session.
- At the end of the hearing Senator Jauch stressed the importance of consensus and the need for the workgroup to work with stakeholders to reach an agreement on an ICWA draft.
- DCF is committed to working with all stakeholders and legislators to move the ICWA codification forward.
- The groups will meet again on January 7th to discuss the points of contention that were brought up at the listening session.
- The goal is for the draft to be introduced in both the Senate and Assembly in early in the year.
- Finally, passage of this legislation will speak directly to the priorities of this state in acknowledging our tribal partners in the most important arena of all: their children and families.

### **Tribal Out-of-Home Care Placement High-Cost Pool**

- 1983 Wisconsin Act 161 created a mechanism for County Departments of Social or Human Services to make payments for the costs of out-of-home placements of Indian children when those children are placed by a Tribal Court. Act 161 authorized a county to make payments for such an out-of-home placement if the county and a tribe entered into a written agreement
- Over the years, there have been occasions in which the out-of-home placements of a tribal child or children by a Tribal Court resulted in an unexpectedly or unusually high cost that exceeded the county resources allocated for out-of-home placements.
- For example, in 2007, an issue arose when two placements of Indian children were made into very expensive residential placements, resulting in costs approximately 800% of the normal expenditures
- The Department of Children and Families and tribal representatives recognized the dilemma facing counties in their commitment to adhere to the 161 Agreements, the limited financial resources available to counties, and the tribe's authority to order out-of-home placements through Tribal Court
- The Governor included the creation of a "high-cost" pool, funded at \$500,000 for the biennium, to respond to these types of situations in the future.
- The eligibility criteria for this high-cost pool are the following:
  - If a 161 Agreement is in existence, the application must be submitted jointly by the tribe and county
  - If there is no 161 Agreement, the application is to be submitted by the tribe
  - The child or children must have been placed by the tribal court of a Wisconsin tribe as a child in need of protection or services (not delinquent) into an out-of-home placement in Wisconsin
  - The anticipated cost must exceed 125% of the average out-of-home care costs for the previous three years
- Two counties/tribes have applied for funding under this program and both were determined to be ineligible. Based on discussions with the tribes, the Division of Safety and Permanence altered our policy and, on November 25, 2008, changed the eligibility threshold to 100% of the average out-of-home care costs for the previous three years

- As of today, those two applications still do not meet the maintenance of effort criterion of 100%. As a result, none of the available funding has yet been expended.
- We are hoping that the funding will remain available for the next biennium and, in conjunction with the Alternative Funding Workgroup, the Department will be revisiting the program and perhaps proposing some revisions that are more responsive to the needs of counties and tribes.

### **Alternative Funding Workgroup**

- The Alternative Funding Workgroup was established in June of 2007 by the Department and Tribes as a mechanism to examine issues related to funding and implementation of child welfare programs.
  - Specifically, the mission of the Workgroup is to “Explore, define, and recommend funding options for child welfare services to children and families subject to tribal jurisdiction (excluding delinquency), including administration, case management, prevention, protective services, and tribal court-ordered out-of-home care placements.”
- The Workgroup is in the final stages of preparing a report to the Leadership of the eleven tribes and the Departments of Children and Families and Health Services. It will be submitted to these parties in January 2009 and we will certainly share it with this Committee at that time.
- The report will discuss various issues and provide recommendations for consideration by the Tribes and the Departments. Among the issues discussed are the following:
  - *Title IV-E* The Workgroup has been working on a State/Tribal Agreement under which tribes could be reimbursed by the federal government on a pass-through basis through the Department.
    - A recent change in federal law will allow, for the first time, direct Tribal/Federal Agreements, but we are proceeding with the State/Tribal Agreement because it may be more advantageous for some tribes
  - *161 Agreements* Based on discussions in the Workgroup, the Division revised the existing policy memo to better reflect the intent and purpose of these agreements and to clarify the significant level of services already provided by tribes that relieves some stress from county services.