

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TRIBAL AND STATE RELATIONS COMMITTEE

Thursday, December 17, 2015
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Marvin E. Nelson, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Marvin E. Nelson, Dennis Johnson; Senators Joan Heckaman, Oley Larsen, Dave Oehlke

Members absent: Representatives Bill Amerman and Wayne Trottier

North Dakota Tribal Governments' Task Force members present: Scott J. Davis, Executive Director, Indian Affairs Commission; Steve Sitting Bear, representing Dave Archambault II, Chairman, Standing Rock Sioux Tribe; Tiffany Hodge, representing Mark Fox, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation; Bill Gorneau, representing Richard McCloud, Chairman, Turtle Mountain Band of Chippewa Indians; Myra Pearson, Chairperson, Spirit Lake Tribe

North Dakota Tribal Governments' Task Force members absent: Bruce Renville, Chairman, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation

Others present: See [Appendix A](#)

It was moved by Senator Oehlke, seconded by Senator Heckaman, and carried on a voice vote that the minutes of the September 28, 2015, meeting be approved as distributed.

CHILD SUPPORT

Chairman Nelson called on Mr. Jim Fleming, Director, Child Support Enforcement Division, Department of Human Services, for testimony ([Appendix B](#)) regarding federal income tax refund offset of delinquent tribal obligors and other child support enforcement updates. Mr. Fleming said tribal families are a significant component of the caseload for the child support program. He said the tribal family cases are usually the result of a referral from the temporary assistance for needy families (TANF) program or an application from one of the parents. He said, however, cases may be opened if the child is in foster care or at the request of another state or a tribal child support enforcement program. He said for sovereignty reasons, the jurisdictional issues in child support cases involving tribal families can be very complicated. He said the total caseload for the child support program as of November 2015 was 38,194, with 1,628 of those cases unable to move forward for jurisdictional reasons. He said this number is at a historically low level.

Mr. Fleming said although tribes have access to federal funding for child support programs, federal law does not give tribal child support programs direct access to the federal offset process. To overcome the lack of direct access, he said, the federal Office of Child Support Enforcement has suggested tribes enter an agreement with a state child support program so the tribal obligors can be added to the list of obligors submitted by each state for federal offset. He said when the Standing Rock Tribal Child Support Program expressed an interest in submitting its obligors for federal offset through the Department of Human Services, the department agreed to sponsor a consortium through which any tribal child support program can submit its obligors for offset. He said the Standing Rock Sioux Tribe and the Lac Courte Oreilles Tribe in Wisconsin are the first two members of this innovative consortium, with several other tribes expressing interest in joining as well. He said the tribes in the consortium pay the federal offset fee, and the department's child support automated system is sufficiently flexible to support this effort on a highly automated basis at no extra cost to the state or the tribe.

In response to a question from Chairman Nelson, Mr. Fleming said the department has the same enforcement tools available on the reservation as off the reservation. He said the agreements with the tribes include enforcement tools.

In response to a question from Senator Oehlke, Mr. Fleming said because the Three Affiliated Tribes of the Fort Berthold Reservation and the Standing Rock Sioux Tribe operate federally funded child support programs, participating in the consortium made sense. He said there is not a consortium with any South Dakota tribes.

Mr. Davis said the agreements in place are about children and families. He said the Turtle Mountain Band of Chippewa Indians and the Spirit Lake Tribe do not have an agreement with the state, but it should consider doing so. He said the agreement helps enforce child support orders even if the obligor leaves the jurisdiction.

In response to a question from Chairman Nelson, Mr. Fleming said because all states are required to adopt the Uniform Interstate Family Support Act, all states are networked. He said with an agreement, a tribal government can join that network.

TRIBAL YOUTH SERVICES

Chairman Nelson called on Judge Donovan Foughty, Northeast Judicial District, for testimony regarding the expansion of state capacity to accommodate tribal youth adjudicated in tribal court. Judge Foughty said a disparity exists in the juvenile delinquency services between state court and tribal courts. He said the Northeast Judicial District has two of the three most impoverished counties in the state--Benson and Rolette Counties. He said in the Human Services Region III, which includes Ramsey, Benson, Towner, Rolette, Cavalier, and Eddy Counties, along with the Turtle Mountain Band of Chippewa Indians and Spirit Lake Tribe Reservations, there are no adolescent psychiatric beds, no substance abuse treatment beds, no safe beds for heightened but not imminent risk adolescents, no detox, and no detention for delinquency. He said the area has actually lost treatment beds and detention for adolescents over the past 3 years. He said Human Services Region III has 6 percent of the state's population but has 38 percent of all TANF families. He said the region has 7 percent of the state's youth population but comprises 41 percent of all state youth who are on TANF. He said in Human Services Region III, 36 percent of children ages 0 through 17 live in poverty and another 15 percent live near the poverty level. He said the only counties in the state which have more actual people living in poverty than Rolette County are Cass and Ward Counties. He said in Human Services Region III, 65 percent of the total births are to unmarried women compared to the statewide rate of 32 percent.

Judge Foughty said when dealing with delinquent youth, the goal is to be able to offer the services necessary to keep them out of juvenile court. He said juvenile supervisors and juvenile probation officers try to keep youth out of court by using diversion programs. He said the juvenile diversion programs also involve the Department of Human Services. If a child does come before the judge, he said, the judge has probation officers to use or, if assessments or longer detention is needed, the Youth Correctional Center is an option. He said when a tribal youth commits delinquent acts, the tribal judge does not have the same options as the district judge. He said the tribal judge does not have access to the Division of Juvenile Services or the Youth Correctional Center. He said tribal youth are able to get some services from the Department of Human Services. He said in the tribal system the infrastructure does not exist to provide options other than detention. He said, in most cases, that detention is for a long period of time and is far from the tribal youth's home. He said in the state system the effort is always made to return the youth back to the youth's family. He said that does not happen in Indian country.

Judge Foughty said with a state and tribal agreement in place and with probation officers at the tribal level, the transition from the tribe to state services would be seamless. He said Native Americans are overrepresented in the state system. He said in Utah, if a tribal youth commits a delinquent act, the youth can be sent to a state youth correctional center. He said Utah provides services to delinquent tribal youth without cost to the tribe. He said he would like the state and tribal governments in North Dakota to work on similar agreements. He provided a copy ([Appendix C](#)) of a Utah tribal and state agreement.

In response to a question from Chairman Nelson, Judge Foughty said the cost of services for nontribal youth is not charged back to local government. He said Devils Lake is in the process of opening an attendant care facility. He said a youth foundation in Devils Lake is paying for the construction of the facility and the county is paying for the cost of attendant care with some passthrough money from the state.

Judge Foughty said a tribal youth taken into custody is either in the custody of the tribal court or the federal Bureau of Indian Affairs. He said in the tribal system the issue of family reunification is not addressed.

In response to a question from Senator Heckaman, Judge Foughty said the Devils Lake facility will be able to provide attendant care for up to four juveniles. He said the facility is intended to be short-term and will be able to conduct some assessments. He said in some cases the court may not be involved at all. He said the use of juvenile drug court in Devils Lake does not involve jurisdictional issues. He said drug court, which is very labor intensive, is an intense diversion program. He said he would love to have youth referred from tribal court to juvenile drug court.

In response to a question from Senator Oehlke, Judge Foughty said when tribal youth are sent out of state for detention, the costs are paid with federal foster care funds or by the Bureau of Indian Affairs. Chairperson Pearson said in some cases the tribe pays. Judge Foughty said as in the Utah agreement, a number of North Dakota people and agencies would have to be involved to make the process work efficiently.

Chairman Nelson called on Ms. Lisa Bjergaard, Director, Division of Juvenile Services, Department of Corrections and Rehabilitation, for testimony ([Appendix D](#)) regarding juvenile services in the state. Ms. Bjergaard said the Youth Correctional Center provides residential correctional services, education, and a variety of developmentally appropriate intervention programs for delinquent youth who are committed to the custody of the Division of Juvenile Services through the action of the district court. She said, in addition, there are contracts between the Department of Corrections and Rehabilitation and most North Dakota counties for the provision of secure pretrial detention services. She said the department also has a contract with the federal Bureau of Prisons which allows the placement of youth who are under federal jurisdiction.

Ms. Bjergaard said North Dakota Century Code Chapter 54-40.2 specifically outlines the process for creating agreements between public agencies and Indian tribes. She said she is not aware of any agreements that have been drafted according to this process, however, the Youth Correctional Center and several of the tribes have entered informal agreements for the provision of services, both detention and longer term correctional placement, at various times over the years. She said the agreements allow for the case-by-case analysis and placement of tribal youth at the Youth Correctional Center.

In response to a question from Senator Oehlke, Ms. Bjergaard said if an agreement was in place to allow for the use of state services, the tribal court would be able to access the same services as the state court. She said the costs of providing the services to tribal youth would need to be determined. She said she would have some ideas for the drafting of an agreement. She said it is important to provide services to all North Dakota youth who need support.

In response to a question from Chairman Nelson, Ms. Bjergaard said besides the Youth Correctional Center, the Division of Juvenile Services has residential partners in group home situations. She said the Division of Juvenile Services has about 200 youth in custody in any given day. She said the goal is to keep youth with their families when possible. She said the process includes case management services such as family therapy and substance abuse treatment.

In response to a question from Mr. Sitting Bear, Ms. Bjergaard said she has not considered which entity would be responsible for funding of the services. She said in the past agreements, the tribe covered the costs. She said for a tribal court to access the services at state expense, general fund dollars would likely have to be used. She said federal Title IV-E funding is only available for foster care services.

Senator Larsen said because tribal youth are North Dakota citizens the state should be responsible for the costs associated with services for tribal youth.

In response to a question from Senator Larsen, Ms. Bjergaard said the Division of Juvenile Services has previously serviced tribal youth without legislation. She said it was done with a memorandum of understanding. She said the earlier the intervention the better. She said she can make some cost estimates. She said effective interventions that strengthen families are worth the time and money.

In response to a question from Dr. Gorneau, Ms. Bjergaard said strengthening families helps to prevent repeat offenders.

Chairman Nelson said the committee needs to know which tribes would like to move ahead with this idea before the committee attempts to work out the details.

Ms. Bjergaard said there is a wide spectrum of youth issues addressed by the Division of Juvenile Services and the juvenile justice system. She said many options and services are available before a youth is sent to the Youth Correctional Center.

Chairman Nelson called on Chairperson Pearson for testimony ([Appendix E](#)) on tribal youth services. Chairperson Pearson said the issues facing tribal youth at the Spirit Lake Tribe include the need for a juvenile detention facility, officer shortages, and the lack of support and financial resources for tribal courts.

Mr. Davis said the Spirit Lake Tribe has made big steps in its court system and efforts to address public safety. He said last week the tribe exercised sovereignty by allowing the state to execute felony warrants on tribal land. He

said the tribe has done what was necessary to ensure public safety. He said extradition will save and protect lives. He said this was a difficult decision for the Spirit Lake Tribe because it meant giving up some of the tribe's sovereignty.

Chairman Nelson called on Mr. Kenny Baker, Jr., Tribal Council, Spirit Lake Tribe, for testimony. Mr. Baker said the tribe has had issues when working with the state child support enforcement office. He said he was recently made aware tribes can handle their own child support enforcement. Regarding the youth services issues, he said tribal members are tax paying citizens of the state. He said Judge Foughty has long been a champion of tribal issues. He said the state and tribes need to set aside differences for the benefit of the children. He said drug abuse is a tremendous problem on the reservations.

Senator Heckaman said the committee should receive information regarding the percentage of individuals incarcerated in state and county facilities who are Native American.

USE OF ALCOHOL TAX FOR TREATMENT COSTS

Chairman Nelson called on Ms. Phyllis Howard, Director, Health Equity Office, State Department of Health, for testimony ([Appendix F](#)) regarding the option of using alcohol taxes to offset the costs of transporting patients to treatment facilities. Ms. Howard said alcohol tax could provide a potential source of substantial revenue for tribes who need funds to transport patients from the reservations to access health care at quality health facilities in the states.

Chairperson Pearson said the casino on the Spirit Lake Reservation does not sell or serve alcohol. She said there are only two bars on the reservation.

In response to a question from Senator Larsen, Ms. Howard said Medicaid pays for transportation for medical appointments.

Chairperson Pearson said district representatives assist people to get to medical appointments. She said transportation is especially costly when it is necessary to transport an individual out of state. She said the reservation's Indian Health Service (IHS) only has one car and driver and is not allowed to transport out of state. She said out-of-state transportation costs are covered by the tribe. She said it is difficult to get help from the Bureau of Indian Affairs and IHS.

Mr. Sitting Bear said although Standing Rock has programs to provide shuttle services to larger cities and some funding available for medical expenses, the tribe does not have access to transportation to treatment facilities.

Mr. Davis said under the new Bureau of Indian Affairs rules, officers are no longer going to transport to or from treatment facilities. He said there are liability and jurisdictional issues when a tribal member needs treatment and is off the reservation when found or arrested. Even though the Three Affiliated Tribes has a Public Law No. 638 exemption that allows the tribe to handle some of its own services, he said the tribe must follow the Bureau of Indian Affairs rules. He said tribes may need to look to a third party to provide transportation to treatment facilities.

Chairman Nelson called on Ms. Maggie D. Anderson, Executive Director, Department of Human Services, for testimony regarding transportation costs. Ms. Anderson said transportation is a covered benefit under traditional Medicaid and Medicaid Expansion. She said the Sanford Health Plan, which has the contract for Medicaid, is continuously adding transportation providers. She said transportation is covered for any Medicaid-covered service. She said the transportation provider must be a Medicaid service provider to be paid for providing transportation services.

In response to a question from Senator Heckaman, Ms. Anderson said Medicaid will pay out-of-state transportation as long as the treatment is prior authorized and the person is Medicaid eligible.

TRIBAL STATE HEALTH SERVICES COMMITTEE

Chairman Nelson called on Ms. Anderson for testimony ([Appendix G](#)) regarding the activities of the North Dakota Tribal State Health Services Committee. Ms. Anderson said the committee started meeting several years ago for the purpose of consultation on Medicaid program updates and changes. She said the meetings have evolved into broader discussions covering all areas of human services. She said those in attendance include tribal health directors, tribal council members, representatives of IHS, members of the Great Plains Tribal Chairman's Health Board, the Indian Affairs Commission, and representatives of the State Department of Health, tribal community health programs, and the North Dakota State University Master of Public Health Program. She said group-identified priorities include Department of Human Services website refresh and updates, single point of entry and no wrong door, prevention, substance use disorder treatment, hands-on training for third-party billing, more communication between tribes, and engaging members of the group in other efforts.

Mr. Davis said the Tribal State Health Services Committee is the venue for health and human services issues. He said communication and planning are key. He said tribal members are invited to attend.

In response to a question from Senator Larsen, Ms. Anderson said the new Medicaid eligibility system will be rolled out in February.

Mr. Davis recognized Mr. Cornelius Grant for his public service as a member of the North Dakota Indian Scholarship Board for 40 years.

TASK FORCE ON SUBSTANCE EXPOSED NEWBORNS

Chairman Nelson called on Ms. Claire Ness, Attorney General's office, for testimony ([Appendix H](#)) regarding the activities of the Task Force on Substance Exposed Newborns. Ms. Ness said 2015 Senate Bill No. 2367 was passed to create the Task Force on Substance Exposed Newborns. She said the purpose of the task force is to systematically address neonatal abstinence syndrome. She said the task force is represented by a broad range of professions and experience.

Mr. Davis said the Three Affiliated Tribes reported 50 babies per year born with neonatal abstinence syndrome and 100 babies per year at Spirit Lake. He said most of the babies born to tribal members are born in nontribal hospitals with the exception of Turtle Mountain. He said of the 104 babies born at the Turtle Mountain hospital last year, 33 tested positive for neonatal abstinence syndrome.

Ms. Ness said some pregnant women do not get prenatal care because they do not want to be tested. She said the testing of babies is based upon hospital policy and whether the baby show signs of neonatal abstinence syndrome. She said infant withdrawal symptoms differ based upon the substance. She said opiate abuse is common.

In response to a question from Senator Oehlke, Ms. Ness said pregnant women fear criminal sanctions, charges of child abuse, the loss of custody, and forced treatment. She said immunity from prosecution may be an option to discuss. She said an increase in public information on options for pregnant women is important.

TRIBAL EDUCATION ISSUES

Chairman Nelson called on Ms. Valerie Fischer, Director, Adult Education, Department of Public Instruction, for testimony ([Appendix I](#)) regarding tribal education issues. Ms. Fischer said the college and career readiness standards are the new standard for the general educational development (GED) test. She said the GED test is a difficult test with a high standard.

In response to a question from Chairman Nelson, Ms. Fischer said about 40 percent of high school seniors could not pass the GED test. She said those individuals who have taken the new GED series are more ready for the test and have not needed remedial instruction in college. She said individuals who pass the new GED series are ready for college.

In response to a question from Dr. Gorneau, Ms. Fischer said the return on investment for those who can pass the GED test is huge. She said the department does a lot with its adult education budget.

In response to a question from Mr. Davis, Dr. Gorneau said under tribal codes, a tribal youth can legally drop out of school at age 18. He said under state law, that age is 16.

In response to a question from Senator Heckaman, Ms. Fischer said she can provide information on the numbers of those individuals who cannot access GED classes but can access distance learning programs. She said out of respect for the tribal codes, there is a concern about accepting students in the distance learning program before age 18.

In response to a question from Mr. Sitting Bear, Ms. Fischer said conducting GED classes at a community college to get a GED certificate helps to give the adult student an idea of what college will be like. She said the colleges often encourage individuals who complete the GED test at the community college to attend that college. She said financial incentives are offered as well. She said 35 percent of individuals who pass the GED test enroll in college within a year. She said the average is 3.5 years between passing the GED test and enrolling in college.

Chairman Nelson called on Ms. Lucy Fredericks, Director, Indian/Multicultural Education, Department of Public Instruction, for testimony ([Appendix J](#)) regarding the status of reallocated funds and other tribal education issues. Ms. Fredericks said the Third Annual Indian Education Summit will be held July 12-13, 2016, at the State Capitol. She provided information on the North Dakota Native American Essential Understandings Project, the Native

American needs assessment, and the 2015-2016 reallocated funded award to schools by the Department of Public Instruction.

Mr. Davis said an issue that may be of interest to the committee and how it pertains to tribal schools is the federal legislation that replaced No Child Left Behind legislation with the federal Every Student Succeeds Act. He said there are 12,192 tribal youth enrolled in K-12 statewide including 1,450 in the Bismarck-Mandan area.

GOVERNMENT-TO-GOVERNMENT RELATIONS

Chairman Nelson called on Mr. Baker for comments. Mr. Baker said GED has been beneficial at Spirit Lake. He said the tribal council provides a tribal benefit of about \$7,000 to each tribal individual who graduates from high school or who successfully completes the GED. He said he would like to see a mandatory study of the history of the tribes in all schools in the state. He said a knowledge of the history of the tribes would benefit the entire state.

Mr. Davis said a Supreme Court committee has been working on the federal Indian Child Welfare Act audit. He said as a result of the audit, efforts are being made to get qualified expert witnesses for foster care and adoptive proceedings. He said courts can request the names of qualified expert witnesses from the tribes.

Ms. Erin Shanley, Judicial Systems Administrator, Indian Affairs Commission, said qualified expert witness testimony is needed for foster care and adoptive proceedings that involve Native American children. She said the qualified expert witness must be a member of that tribe and be knowledgeable on customs and traditions of that tribe and on child raising.

No further business appearing, Chairman Nelson adjourned the meeting at 2:30 p.m.

Vonette J. Richter
Assistant Code Revisor

ATTACH:10