

**Testimony**  
**Interim Tribal and State Relations Committee**  
**Representative Merle Boucher, Chairman**  
**September 17, 2007**

Chairman Boucher, 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 update of the interactions between the tribes and the state on child support enforcement services.

Current status. As members of the prior interim committee may recall, we are committed to working with tribes to provide child support enforcement services for tribal children wherever they and their parents may live.

- Three Affiliated Tribes has been federally funded as a start-up project and is well on the way to becoming operational. We have participated in a series of phone calls with the Tribe and their consultants to understand each other's needs and work on solutions. I am pleased to report that we now have a signed cooperative agreement (Attachment) and continue to define the data transfer and case handling processes between the programs.
- The Tribal Council for the Turtle Mountain Band of Chippewa Indians hosted Ramsey County officials and the Department last year to discuss tribal/state interactions. I understand the Tribe has done some research to determine what changes they may want to consider in this area. Most recently, we have been in preliminary discussions with the tribal court to discuss data sharing.
- The Spirit Lake Tribal Council also extended an invitation for a meeting with Ramsey County officials and the Department last year. We recently began discussions with the tribal court on handling income withholding orders and payments through the state disbursement unit so that we can work better with customers.
- Our recent interactions with the Standing Rock Sioux Tribe have been fairly limited except for our providing payment data to the tribal court. We are hopeful that in the near future we will regularly exchange more information with the Tribe.

The Child Support program now has attorneys licensed to practice in the four tribal courts. Additionally, with the advent of state administration in

July, we are working out arrangements where the regional child support units (RCSEUs) with the tribally licensed attorneys assist with cases from the other RCSEUs.

Challenges. 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. Again, 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.

We are moving ahead with case handling that recognizes the impact on jurisdiction of state and tribal courts when people move on and off the reservation. For example, last year a state court granted our motion to vacate an amended judgment after we learned that a tribal court had already assumed jurisdiction over the case and modified the original state court judgment. The goal is to make sure there is always a court available to establish and enforce child support obligations for tribal children, whether that is a state court or a tribal court. In a more recent case, a tribal court accepted a "waiver" of arrears from a custodial parent. When we informed the tribal court that nearly all the arrears were assigned to the state, the court reversed its decision and reinstated the arrears.

We continue to be concerned about the incomplete data we have on some cases. As tribal obligors retire and draw social security or other pensions, we will be intercepting these payments to apply to outstanding arrears carried on our books. Unfortunately, in many cases, payments may have been made through tribal court or directly to the other parent but we don't know about it. Consequently we have been and will be taking money from people when we shouldn't – we just don't have a full set of facts. We will act on our best information but the outstanding balances are not subject to the statute of limitations or bankruptcies so these cases will need to be reconciled.

Working together. I'm pleased that the tribal/state child support interactions have been positive as evidenced by the signed cooperative agreement with the Three Affiliated Tribes. Later this month, Ellen Wilson, Three Affiliated Tribes Child Support Director, and I will be making a joint presentation at the Western Interstate Child Support Enforcement Council conference in Boise.

We have not reached an impasse on any point. Our goal is to work through the issues as best we can, involving the state and federal

resources at our disposal to better serve the kids and families while, at the same time, supporting each tribe wherever we are able.

That concludes my testimony. I'd be happy to answer questions.

## **INTERAGENCY COOPERATIVE AGREEMENT**

### **I. Statement of Purpose/Shared Vision.**

This intergovernmental cooperative agreement (Agreement) is entered into between the Three Affiliated Tribes (TAT), acting through its child support enforcement office, and the State of North Dakota (ND), acting through the Child Support Enforcement Division of the Department of Human Services.

Each party is a sovereign government, receives federal funding for operation of a child support enforcement program that conforms to Title IV-D of the Social Security Act, and is authorized by federal, state, and tribal law to enter into this agreement.

The Parties desire to cooperate with each other and share resources and expertise to ensure that parents and children receive necessary child support enforcement services.

The Parties share a direct interest in protecting the cultural diversity of their citizens and the Three Affiliated Tribes has a direct interest in preserving the values, traditions, and tribal laws unique to the Tribe.

The Parties are committed to excellence, both in their delivery of child support enforcement services and in their interaction with each other.

The Parties agree that to the greatest extent possible, only one party at a time should be providing child support enforcement services to a case.

In carrying out this Agreement and any addendum, ND shall strive to provide a comparable level of services to TAT as those provided by ND to other states or sovereign nations, yet recognize the differences of law governing the parties.

The Parties desire that this Agreement remain flexible and subject to further modification as circumstances change and as TAT moves forward in implementing its program.

### **II. Definitions.**

Unless the context indicates otherwise, the definitions below apply to this Agreement:

Agreement: This document, plus any addendum or amendment properly attached to this agreement under Section XI of this document.

Application Case: A IV-D case which is being pursued in a jurisdiction based on an application for services from a parent or a parent's representative.

Assistance Case: A IV-D case which is being pursued in a jurisdiction based on an assignment of the child's right to support as a condition of receiving public assistance.

Case Closure: A process under which federal regulations allow a jurisdiction to stop enforcing a IV-D case.

Case Referral: A process in which one party requests assistance from the other but does not close its IV-D case.

Case Transfer: A process in which one party requests assistance from the other and closes its IV-D case.

FACSES: (Fully Automated Child Support Enforcement System) – the child support computer system operated by ND.

FFCCSOA: (Full Faith and Credit for Child Support Orders Act) – 28 U.S.C. § 1738B, a federal law applicable to TAT and ND.

IV-D: The title of the Social Security Act which creates and governs the federally funded child support enforcement program.

Jurisdiction: Legal authority to take an action; depending on the context, the term can include authority over a subject matter, a person, or property.

N.D.C.C.: (North Dakota Century Code).

NonIV-D: A case that is not open to IV-D in which ND receives payments, maintains payment records, and issues income withholding orders.

Locate: Case activity under IV-D in which efforts are made to learn the location or identity of a person, the person's employer, or the person's assets.

Registration: A process under which a tribal or state order is filed with the appropriate authority in the other jurisdiction in order for the order to be enforced in that jurisdiction.

Reservation: The geographical area subject to the governance and control of TAT.

Residence: Actual domicile of a person, even if legal residence is in a different location or jurisdiction.

Shared Case: A case in which both TAT and ND have an interest.

Tribal Member: A person who has met the requirements necessary to be a member of the Three Affiliated Tribes, any other federally recognized tribe, or who is regarded by the community as a member of a tribe.

UIFSA: (Uniform Interstate Family Support Act) - N.D.C.C. ch. 14-12.2, a uniform law adopted by ND, but not required to be adopted by TAT, which governs interstate enforcement of child support.

### **III. Term of Agreement.**

This Agreement commences when both signatures have been obtained and remains in effect until terminated in writing upon thirty days' notice by either party.

### **IV. Agreement Managers.**

**IV-A.** The agreement manager for ND is Mike Schwindt or his successor as director of the State Child Support Enforcement Office.

**IV-B.** The agreement manager for TAT is Laurie Alberts or her successor as the Federal Programs Executive Officer.

**IV-C.** The agreement managers are authorized to negotiate and sign addenda to Sections VI or VII of this Agreement, but may not otherwise modify this Agreement or enter into addenda which would violate federal, state, or tribal laws or regulations or exceed the budget authority of either party.

**IV-D.** Each party agrees to notify the other within fifteen days of any change in its agreement manager.

### **V. Jurisdiction.**

**V-A.** Nothing in this Agreement shall be construed as a waiver of sovereign immunity of TAT or ND.



**V-B.** The parties agree to comply with the Full Faith and Credit for Child Support Orders Act (28 U.S.C. § 1738B). ND agrees to comply with the Uniform Interstate Family Support Act (North Dakota Century Code chapter 14-12.2).

**V-C.** The parties agree to develop work aids for ND and TAT employees to efficiently and consistently analyze cases and to assist in the determination of the appropriate jurisdiction for case activity, recognizing that case law is sometimes unclear and that the parties may respectfully disagree on the scope of each other's jurisdiction.

**V-D.** Any activity that raises jurisdictional concerns will be communicated promptly between the agreement managers for further discussion.

## **VI. Scope of Agreement - Operations.**

To promote the effective and efficient delivery of child support enforcement services in cases in which TAT and ND have a mutual interest, the parties agree to cooperate in the operation of their respective IV-D programs as more specifically provided in any addendum to this section, which is incorporated by reference into this Agreement.

## **VII. Scope of Agreement – Enforcement Services.**

Each party shall provide child support enforcement services to cases within its jurisdiction as determined under Section V of this Agreement and as provided in any addendum to this section, which is incorporated by reference into this Agreement.

## **VIII. Compensation.**

The services provided under this Agreement shall be at no cost.

## **IX. Communication and Training.**

**IX-A.** The parties agree to communicate with each other on a regular basis to discuss issues of mutual concern and to resolve any questions or disputes that arise.

**IX-B.** ND agrees to invite TAT employees to attend state-wide training or events of interest to TAT employees. TAT agrees to invite ND employees to attend similar meetings or events.

**IX-C.** ND agrees to facilitate cooperation between TAT and the regional child support enforcement units or other state agencies.

**X. Confidentiality and Security of Information – Safeguarding.**

The parties will maintain the confidentiality of all information concerning recipients of child support enforcement services and will use the information only for purposes directly connected with administration of the child support enforcement program or as otherwise required by state and federal law.

**XI. Review and Modification of the Agreement.**

This document, including any addendum or amendment, is the entire agreement between the parties with regard to child support enforcement. This Agreement may be amended or assigned by mutual written consent of the parties, which shall be attached to this Agreement. Any assignee must agree to honor this Agreement.

**XII. Contingencies.**

During the term of this Agreement, it is understood that each party's participation is contingent on laws authorizing the activities described in this Agreement and on the availability of funds to carry out those activities. Either party may terminate this Agreement as provided in Section III if laws are amended or funding is reduced to the point that the party, in its sole discretion, determines that continuation of the Agreement is no longer permitted or feasible.

**XIII. Disputes.**

In the event of a dispute concerning this Agreement that cannot be resolved between the parties, either party may ask a mutually-acceptable third party or the North Dakota Indian Affairs Commission to mediate the dispute.

**XIV. Performance Standards.**

The parties agree to work together to identify methods of evaluating the impact of this Agreement on the delivery of child support enforcement services, including the use of federal performance standards.

**XV. Compliance.**

In carrying-out this Agreement, the parties agree to comply with Title IV-D of the Social Security Act, the Code of Federal Regulations governing the Child Support Enforcement Program, other applicable federal regulations and requirements, and applicable state and tribal laws.



**XVI. Maintenance of Records.**

Each party will retain all fiscal and case records relating to this Agreement for as long as required under federal, state, and tribal laws and regulations.

Laurie Alberts

(Date)

4/10/07

Laurie Alberts, Federal Programs Executive Officer, Three Affiliated Tribes

Carol K. Olson

(Date)

4/10/07

Carol K. Olson, Executive Director, North Dakota Department of Human Services