

**TESTIMONY OF THE
NATIONAL INDIAN CHILD WELFARE ASSOCIATION,
ASSOCIATION ON AMERICAN INDIAN AFFAIRS,
AND NATIONAL CONGRESS OF AMERICAN INDIANS

FOR THE HOUSE WAYS AND MEANS SUBCOMMITTEE
ON HUMAN RESOURCES**

REGARDING

IMPROVING PROGRAMS DESIGNED TO PROTECT AT-RISK YOUTH

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The National Indian Child Welfare Association, the Association on American Indian Affairs, and the National Congress of American Indians jointly submit this statement to the Ways and Means Subcommittee on Human Resources concerning child welfare policy and the reauthorization of programs under Title IV-B Subparts 1 and 2 of the Social Security Act. Our primary focus will be on issues specific to American Indian and Alaskan Native (AI/AN) children and families.

First, we thank the Subcommittee for its ongoing attention to the unique needs of tribal families and children consistent with the federal trust responsibility for tribal governments. In particular, we thank you for your past efforts with regard to tribal provisions in the 2006 IV-B reauthorization of the Promoting Safe and Stable Families Program and in the 2008 Fostering Connections to Success Act. As tribal governments exercise their sovereignty in the area of child welfare, we have seen improved outcomes for tribal children and families. Tribes have an important relationship with their children and families; they are experts in the needs of AI/AN children, best suited to effectively serve those needs, and therefore most able to improve child welfare outcomes for these children.ⁱ Furthermore, many states find tribes to be an essential part of the child welfare system because of the help and relief they offer states by providing the most appropriate services and placements for tribal children.ⁱⁱ

Tribes face great obstacles in their efforts to provide preventive child abuse and neglect services in their communities and Title IV-B funding has been an invaluable resource for tribal child welfare programs. For these reasons, we make the following recommendations: 1) Title IV-B, Subparts 1 and 2 be reauthorized and monies under Title IV-B, Subpart 2 continue to be reserved for the Regional Partnerships to Improve Outcomes for Children Affected by Parental Substance Abuse Grants; 2) Title IV-B, Subpart 2 funding for Court Improvement Programs (CIP) include a Tribal CIP, for tribes who administer Title IV-B and/or Title IV-E; 3) Title IV-B plan requirements should promote tribal-state cooperation and coordination and data collection requirements should be expanded, with tribal consultation, to better track outcomes data on AI/AN children; and 4) That reauthorization of Title IV-B programs be seen as one step in a large child welfare financing reform process which makes prevention a priority and will include tribes in these discussions.

Title IV-B, Subpart 1: Stephanie Tubbs Jones Child Welfare Services (CWS) program. Since regulations were revised in 1996 to expand eligibility to all tribes, the CWS program has been a consistent and stable source of non-discretionary funding available to tribal governments operating child welfare services. These types of funding sources are needed to provide a base level of support so that all tribal governments can provide the necessary child welfare-related services to their communities. While these funds alone are not sufficient to fund a base level program, combined with other funds, such as those from the Bureau of Indian Affairs, they increase the capacity of tribal governments to operate needed services and collaborate with state partners. In 2010, CWS was a significant source of funding for over 300 tribal social welfare programs, supporting the provision of child abuse and neglect investigations, case worker visits, and permanency planning services to children in their communities. Studies show that culturally competent care results in better outcomes for children and families involved in the child welfare system.ⁱⁱⁱ

Title IV-B, Subpart 2: Promoting Safe and Stable Families (PSSF) program. Thanks to changes made in 2006, with the support of this Subcommittee, PSSF has become an even more important source of revenue available to support tribal child welfare services. In 2006, PSSF was reauthorized with an increase in the tribal allocation from 1% and 2% under the mandatory and discretionary portions respectively, to 3% and tribal *consortia* were made eligible to apply for this funding. In general, tribal programs must comply with all of the IV-B, Part 2 requirements, although the Secretary is granted authority to exempt tribes from a few administrative requirements that “would be inappropriate,” including the requirement that “significant portions” of the money be used for each of the purposes specified in the statute. This provision was a recognition that it would be inefficient to require that the relatively small amount of funding received by tribes be equally divided among four different subject areas. Before these changes were implemented, 93 tribes and tribal organizations were grantees.^{iv} Because of the changes made in 2006, 121 tribal entities received funding to support their family preservation, family support, time-limited family reunification, and adoption promotion and support programming in 2010 and the amounts received were significantly increased from pre-2006 levels.^v PSSF is one of only a few federal

funding streams that can be used to prevent out-of-home placement and for foster care prevention services. This funding is a particularly valuable tool for tribal child welfare because family preservation and family reunification work aligns with traditional Native cultures and practices.

Title IV-B, Subpart 2: Regional Partnerships to Improve Outcomes for Children Affected by Parental Substance Abuse Grants. In 2006, the Child and Family Services Improvement Act (P.L. 109-288) reserved a portion of Title IV-B PSSF mandatory funding for competitive grants to support regional partnerships to “improve safety, permanency, and well-being of children who are in an out-of-home placement or are at risk of such placement because of a parent’s or caretaker’s abuse of methamphetamine or another substance.”^{vi} Tribes were made eligible for this funding, and of the 53 funded programs, 6 are led by tribal governments or tribal organizations. Five tribal entities received \$2.5 million in grants to be used over five funding years, and one received a \$1.5 million grant to be used over three years. This funding has provided these tribal entities with the opportunity to be trailblazers and to create and implement successful and culturally competent model programming that meets the unique needs of families facing problems where child welfare and substance abuse intersect. This funding source is the *only* available federal funding which recognizes and specifically targets this intersection. This issue is of particular concern to AI/ANs whose substance abuse rates are higher than the national averages.^{vii}

Recommendation: *We support the reauthorization of both the Title IV-B, Subpart 1 Child Welfare Services program and the Title IV-B, Subpart 2 PSSF program with the 3% tribal set aside. Reauthorization will support tribal self-determination and continue to provide AI/AN children the best possible child welfare services. In reauthorizing the law, it is important that provisions providing flexibility to the Secretary as to the application of certain administrative requirements to tribes, including the “significant portion” mandate, be retained. We also ask that mandatory funding continue to be reserved from Title IV-B, Subpart 2 PSSF for the Regional Partnerships to Improve Outcomes for Children Affected by Parental Substance Abuse grant program. Substance abuse continues to be a major problem in tribal communities, and this funding is a very important source of government funding for tribes seeking to find and create solutions to this difficult problem.*

Tribes’ direct access to Title IV-B programs, as mentioned above, and more recently to Title IV-E of the Social Security Act is reflective of this Subcommittee’s commitment to including tribes in child welfare programs where they were previously overlooked. We commend this Subcommittee for these efforts, and take this opportunity to recognize a new area where Title IV-B programs should include tribes to better provide for AI/AN children and families.

Commissioner Bryan Samuels of the Administration for Children, Youth, and Families (ACYF), in his testimony before this Subcommittee on June 16, 2011, recommended that the Court Improvement Programs (CIP) created with mandatory and discretionary Title IV-B PSSF funding also include a Tribal CIP. We have made this recommendation in previous testimony submissions to the Department of Health and Human Services (DHHS) and make it again. Indian tribes, national child welfare organizations, the Pew Commission, and dependency court judges alike have also been advocating for tribal eligibility for CIP funding for many years. Tribes are not currently eligible for any of the dollars reserved for the CIP. This previous oversight is most likely due to the fact that these funds were only made available to states with Title IV-E Foster Care and Adoption Assistance programs, a program to which tribes have only recently been provided direct access. Tribes are now eligible, through the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351), to apply for and administer Title IV-E directly.

It is important that tribes be included in the complementary CIP funding through a Tribal CIP program. Title IV-E programs have a large number of legal requirements, including obtaining various judicial determinations, and therefore require fully operational dependency court systems. Additionally, although Title IV-B programs have somewhat less prescriptive legal requirements, tribal child welfare programs operating within the Title IV-B framework require the involvement of capable and responsive tribal courts.

Yet tribal justice systems are chronically underfunded and continue to face the complex issues of justice with far fewer resources than their state counterparts. Tribal court improvement is critically needed, especially in the area of family courts dealing with issues of abuse and neglect. There is no other funding stream available to tribes for dependency courts.¹ In order for tribal courts to gain stability, advance new practices, and improve outcomes for children, they need access to funding that supports capacity building and innovative practices, such as that available under the CIP funding. Thus, the support available through the CIP would be a particularly valuable resource for tribes. It would provide the opportunity for tribal courts to gain specialized child welfare knowledge and capacity, empowering tribal courts to better promote safety, permanence, and the well-being of tribal children.

Recommendation: *We recommend that all tribes with Title IV-B and Title IV-E programs be included in and eligible for CIP funding under Title IV-B Subpart 2. Since the enactment of the Fostering Connections Act, only 11 tribes have received development grants to begin the planning process and capacity building to apply for and administer Title IV-E directly. This is a long process and it will be many years before most tribes take advantage of this opportunity. Yet tribal families and children could greatly benefit from inclusion in the CIP now. Hundreds of tribes that operate child welfare programs using (at least in part) Title IV-B funding could effectively utilize CIP funding to improve their court systems and better integrate their child welfare programs with the governing legal system. As stated by ACYF, CIP has been a “catalyst for promoting improved outcomes for children and families involved in child welfare.” Tribal children have been excluded from this program that is making significant improvements to child welfare systems nationally. Our recommendations to include IV-B and IV-E tribes in the CIP would correct this unfortunate oversight.*

In 1994, Title IV-B, Subpart 1 was amended to require states to submit a description in their state plans describing their implementation of the Indian Child Welfare Act. A major review of Child and Family Service Plans (CFSP) performed several years after the enactment of these provisions found that many plans were being approved without states addressing these requirements or having done so in a vague and incomplete way.^{viii} These plans only require the collection and reporting of data on a limited number of ICWA requirements. In 2005 the Government Accountability Office (GAO) found that states were collecting little to no data on ICWA implementation, resulting in inconsistent practices and policies in many areas.^{ix} A lack of data makes it almost impossible to accurately measure whether children are receiving federal protections or how to address challenges in implementation. The tools for reform—support, training, and technical assistance—can only be effective when systematic problems and issues can be recognized, isolated and analyzed.

Other organizations recognize the need for child welfare outcomes data specific to AI/AN children. Recently, the American Public Human Services Administration (APHSA) and its affiliate, the National Association of Public Child Welfare Administrators (NAPCWA), recommended that additional information be collected by the Statewide Automated Child Welfare Information Systems (SACWIS) that would allow state systems to better define specific measures to evaluate how AI/AN children are faring in the child welfare system and ways to improve outcomes. The exact information collected and the outcomes assessed should be determined collaboration with tribes. A few states have, with their own resources, begun the process of tracking more detailed and appropriate information with great success, both in collection and in the implementation of changes that have benefitted the AI/AN children under their jurisdiction.

Moreover, while Title IV-B, Subpart 1 requires states to consult with tribes for the development of these plans, recently tribes have indicated that this is not a good use of their time because there is little focus on the outcomes or issues that matter to them and they are often not invited to participate until most

¹ The Bureau of Indian Affairs Division of Tribal Justice Support provides funds to less than 1/3 of all tribes through the Tribal Priority Allocation; this is used to support criminal, civil, and some appellate courts' administrative costs and salaries. The Department of Justice only offers competitive grants under the Tribal Court Assistance Program which are not specifically for dependency courts and the requirements provide minimal room for programming beyond sexual abuse protocols. Funding programs available from the Office of Juvenile Justice and Delinquency Prevention are limited to matters of juvenile justice and delinquency and cannot be used for dependency courts. There are also very limited funds available under Title II of ICWA and Title IV-B, PSSF, but very few tribal court systems have benefitted directly from these programs.

of the process has already been decided. We would note that the Fostering Connections to Success Act had a number of provisions mandating tribal-state cooperation and collaboration in the context of Title IV-E. We believe that the same principles should govern the implementation of Title IV-B.

Recommendation: *We recommend that the reauthorization of Title IV-B include changes to the existing Title IV-B plan requirement pertaining to ICWA, 42 U.S.C. 672(b)(9). The changes that we are recommending would expand data reporting requirements in regard to AI/AN children along the lines recommended by APHSA and NAPCWA, and seek to better incorporate into Title IV-B the cooperative and collaborative tribal-state relationships promoted by the Title IV-E amendments in the Fostering Connections to Success Act. To determine the particulars of these proposed changes, we believe that it is necessary to consult with both tribes/tribal organizations and with states which have worked closely with tribes on these issues and successfully implemented more robust data collection and tracking systems. This will help ensure that the unique needs of AI/AN children are being protected as ICWA and other applicable laws require and that state child welfare systems are adequately supported in their efforts to implement these laws.*

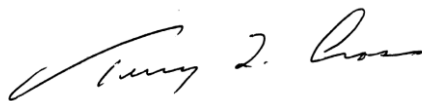
Finally, like many others who have submitted testimony, we take this opportunity to reiterate the need for broad child welfare finance reform. To date, states and tribes have been able to leverage the available Title IV-B dollars to support important prevention programs and services known to keep children out of the system and in their homes. The reality, however, is that the majority of federal child welfare funding is not available for the in-home and prevention services most needed but rather for out-of-home care that may not be the most effective or appropriate.

Recommendation: *Although we recognize the importance of Title IV-B reauthorization, we believe that it should not be seen as a single act, but rather another step towards a reformed child welfare finance system that provides children and families a better chance to avoid out-of-home placement while also being ensured of a safe and loving permanent family. It is, of course, critical that the needs of tribes and AI/AN people be carefully considered and addressed as part of developing a revised financing system.*

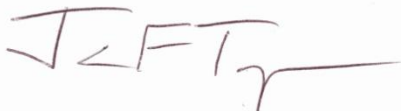
Thank you for considering our recommendations and for allowing us to share our experience and knowledge in regard to these critical issues affecting our young people. We recognize that these are challenging budgetary times and appreciate the efforts of this Subcommittee to make sure that America's at-risk youth are not forgotten. This Subcommittee's continued commitment to abused and neglected care and prevention through the Title IV-B programs is essential to the well-being of hundreds of thousands of AI/AN children and families nationwide.

We look forward to working with you on reauthorization of the Title IV-B child welfare programs.

If you have questions or comments regarding this testimony, please contact NICWA Government Affairs Director David Simmons at desimmons@nicwa.org or AAIA Executive Director Jack Trope at jt.aaia@verizon.net.



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A handwritten signature in black ink that reads "Jacqueline Johnson Pata". The signature is written in a cursive style with a large initial 'J'.

Jacqueline Johnson Pata
Executive Director—National Congress of American Indians

ⁱ National Indian Child Welfare Association & Pew Charitable Trusts (2007). *Time for reform: A matter of justice for American Indian and Alaska Native children*. Philadelphia, PA: Pew Charitable Trusts.

ⁱⁱ United States Government Accountability Office (2005). *Indian Child Welfare Act: Existing information on implementation issues could be used to target guidance and assistance to states*. (GAO Publication No. 05-290.) Washington, D.C.

ⁱⁱⁱ Red Horse, J. G. Martinez, C. & Day, P. (2001). *Family preservation: A case study of Indian tribal policy*. Seattle, WA: Casey Family Programs.

^{iv} National Indian Child Welfare Association & Pew Charitable Trusts (2007). *Time for reform: A matter of justice for American Indian and Alaska Native children*. Philadelphia, PA: Pew Charitable Trusts.

^v Stolfus, Emilie (2011). *Congressional Research Service: Report for Congress, Child welfare: Funding for child and family services authorized under Title IV-B of the Social Security Act*. (CRS Publication No. 7-5700.) Washington, D.C.

^{vi} Ibid.

^{vii} Office of Applied Studies (2007). Substance use and substance use disorders among American Indians and Alaska Natives. *National Survey on Drug Use and Health: The NSDUH Report*. Rockville, MD: Substance Abuse and Mental Health Administration.

^{viii} Casey Family Programs & National Indian Child Welfare Association (2001). *Title IV-B Child and Family Services Plans: An evaluation of specific measures taken by states to comply with the Indian Child Welfare Act*. Seattle, WA: Author.

^{ix} United States Government Accountability Office (2005). *Indian Child Welfare Act: Existing information on implementation issues could be used to target guidance and assistance to states*. (GAO Publication No. 05-290.) Washington, D.C.