

The Total Title IV Solution

Sovereignty and Self-Governance in the Provision of Child and Family Services:

Securing Direct Federal Funding for Tribal Administration of
Title IV-A, IV-B, IV-C, and IV-E Services

Prepared by the Lakota People's Law Project

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Self-Governance of Child and Family Services for Lakota Indian Tribes

For years, countless Lakota, Dakota, and Nakota family members have shared their stories about how the state of South Dakota violates our rights. And their stories constitute more than just a series of isolated incidents. As the testimonials and data presented here demonstrate, the removal of Lakota, Dakota, and Nakota children from their families into non-Indian foster homes is more than just a series of isolated incidents; it is a systemic problem that is the result of fundamentally unjust structures in the state. Consequently, the solution to this problem involves making a structural change.

We must develop a direct relationship with the Federal Government and exercise our right to self-governance when it comes to the provision of child and family services to our people. Until we do, we will be at risk of losing more of our children, as well as foregoing other entitlement benefits that should accrue to our people.

Too Many Stories That All Sound the Same

At the Great Plains ICWA Summit in Rapid City this May, more than 50 family members who have been hurt by the state of South Dakota's actions gathered the courage to sit down in front of a video camera, open their hearts, and share their stories. They were grandmothers, fathers, aunties, brothers, daughters, and many, many more. Here are just a handful of the stories they told.

Arvella Pomani, a member of the Crow Creek tribe, took her 2-year old son to the hospital for his asthma, but he was misdiagnosed and put on an ever-increasing list of medications. Arvella tried to get her son off the drugs and to use traditional medicine to heal him. But when she did the state prosecuted her for medical neglect, and she eventually lost her children.

Kevin Greenback, an Oglala Sioux member, had his three children taken from him while he was between homes and living with relatives. In an effort to get his kids back Kevin jumped through every hoop the state put in front of him. But he postponed one court date to be at his dying mother's bedside. Then, without Kevin's knowledge, his parental rights were terminated—the day after he buried his mother.

Margaret Brugier is a Cheyenne River Sioux Tribe member. Her two oldest children were interrogated and removed from school without her knowledge. While at work, she was called and notified that her children had been taken, and that she would be incarcerated if she did not also give up her youngest son, who was just a few weeks old at the time.

Toni Sioux Davis, a member of the Yankton Sioux tribe, had her son taken from her mother's care while Toni was in a Juvenile Detention Center because of "rumors" that they were going to move. Once in state custody, the DSS did everything they could to make the situation seem hopeless and eventually terminated Toni's parental rights because her job did not pay enough.

From these stories, and many others, we have seen a clear pattern emerge:

- The Department of Social Services (DSS) begins an investigation, often based on nothing more than rumors or anonymous tips.
- The DSS tracks down our children, often while they are at school, and interrogates them without their parents' knowledge and without them fully understanding what is going on.
- Parents are accused of "abuse and neglect," with the line between "neglect" and "poverty" being almost impossible to see.
- Children are taken, sometimes before any charges have been made or before an investigation has even been started. Often, the state makes no attempt to contact parents.

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- Children who have done nothing wrong are placed in foster homes and lock-down facilities. In many cases they are deemed to have mental health issues and given drug after drug to “fix” them, often against the parent’s wishes.
- DSS and the Department of Criminal Investigations (DCI) intimidate parents into giving up on having their children returned to them, telling the parents that “we will go easy on you” if you surrender your parental rights.
- Once parents relinquish their rights, the state is in complete control of our children. DSS then attempts to adopt the children out, mostly to white families.

The state of South Dakota pretends it has a monopoly on knowing what is best for our families. It does not recognize any other way of raising children except their way. The state criminalizes our traditions and denies that the Lakota way can grow healthy and strong families, as it has for thousands of years. The state’s actions need to stop. We have the right to raise our own children in our own way.

This is a Systemic Problem

The stories of Arvella, Kevin, Margaret, and Toni are not isolated incidents. There is now ample evidence that South Dakota’s violations of the Indian Child Welfare Act are systemic in nature. From NPR’s investigative series in November 2011 to the Coalition of Sioux Tribes for Children and Families’ report to the U.S. Congress in January 2013, numerous, well-researched documents have confirmed that the state’s actions are wide-spread and egregious. Here’s what we know:

- 1) South Dakota’s Department of Social Services removes over 740 Indian children every year from their homes. This is almost three times the rate of other states.
- 2) While Indian children make up 15% of the child population in South Dakota, over one-half of the children in state-administered foster care are Indian.
- 3) The removals of Indian children are often done under questionable circumstances. Stories like those above have been repeated hundreds of times, and at least one former state’s attorney has testified that DSS treats ICWA cases more harshly than non-ICWA cases with similar facts.
- 4) South Dakota is failing to place the children that it takes with their relatives or tribes as is required by ICWA. Upwards of 90% of Indian children are placed in non-Indian homes. At the same time, between one and two-dozen Indian foster homes sit empty.

All of this tells us something very important: when it comes to adhering to federal law and respecting the sovereignty of Indian tribes, the state of South Dakota is not acting in good faith. Not a single representative of the DSS attended the ICWA Summit in May. Could there be any better evidence that South Dakota is unwilling to change its ways? The only solution is to, eventually, take the state out of the picture.

A Structural Solution

The Port Gamble S’Klallam Tribe, located on the Kitsap Peninsula in Washington State, has already successfully implemented such a solution. The following section will outline the many improvements the Port Gamble tribe has experienced by establishing and managing their own child and family service agency. We believe this model provides a specific solution to ending South Dakota’s discriminatory practice of Indian children’s removal. At the heart of this approach is the knowledge that as a sovereign people we have the natural and legal right to self-governance.

The Port Gamble S’Klallam Example

By law, federally recognized Indian tribes are able to receive direct federal funding to administer four programs arising out of Title IV of the Social Security Act:

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- Title IV-A (TANF: Temporary Assistance for Needy Families)
- Title IV-B (Child and Family Services)
- Title IV-D (Child Support and Establishment of Paternity)
- Title IV-E (Foster Care, Adoption Placement, and Kinship Guardianship Assistance)

In 1998, the Port Gamble S’Klallam Tribe established a Tribal TANF program with direct funding from the federal government. This was the first step in a process through which the tribe would eventually take control of all Title IV programs. Today, the tribe maintains a centrally located, comprehensive child and family services agency on the reservation. Through their child and family services agency, Port Gamble S’Klallam provides all of the Title IV services that were previously administered by the state.

Looking to Port Gamble S’Klallam as a model, there are several clear and immediate benefits to tribal administration of Title IV programs.

- **Improved Access:** When tribes administer their own Title IV programs, those services become more accessible to tribal members. There are two reasons for this. First, services are more physically accessible because they are located in tribal buildings on the reservation as opposed to state-run buildings off the reservation. Second, the process of accessing programs becomes less daunting; when individuals need to sign-up for services, they can do so by sitting face-to-face with other members of their own tribe. And, importantly, those services are administered according to tribal rules—based on tribal codes and traditions—rather than rules based on state regulations.
- **Increased Utilization:** Because these services are more accessible, tribal members are more likely to use them. Indeed, the Port Gamble S’Klallam Tribe has seen a significant increase in service utilization by its members.
- **Economic Growth:** Increased utilization of services means that, in the aggregate, more federal dollars will flow into the tribal economy. A significant number of highly skilled jobs will be created for tribal members, and, because funds are delivered directly to tribes, we will be able to ensure that 100% of these monies are being used to benefit our communities rather than being diluted through expenditure on the state population at large.
- **Improved Outcomes:** Self-governance offers tribes the opportunity to tailor programs to meet their specific needs. This combined with increased service utilization means that we will see significant improvements in the health and well being of our children and families.

Title IV-A: TANF (Temporary Assistance for Needy Families) Block Grants

According to Title IV-A of the Social Security Act, states and tribes can use TANF block grants flexibly to achieve four goals:

1. Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
2. End dependence on government benefits by promoting job preparation, work, and marriage;
3. Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
4. Encourage the formation and maintenance of two-parent families.

Through direct administration of TANF block grants, tribes can determine precisely how funds are expended across each of these four areas and thus ensure that TANF programs are tailored to meet their specific needs. Under state control, there is no guarantee that resources will be justly allocated to tribal communities or that TANF grants will be spent on the things that tribal members actually need.

A specific example from the Port Gamble S’Klallam Tribe’s experience can help illustrate this principle. Under Washington State’s policies, needy families were eligible to receive TANF funds to help provide

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for children in their care. However, the amount of money that caregivers would receive *decreased* for each additional child in the home. After taking control of TANF for their tribe, Port Gamble S’Klallam chose to employ a different model. Rather than treat a caregiver with three children as a family of four, they decided to treat each *child* as a family of one. This meant that each child became eligible to receive the maximum per-child amount of TANF funds, providing more resources directly to families. The table below shows the difference between the two policies:

	Caregiver With 1 Child	Caregiver With 2 Children	Caregiver With 3 Children
State Policy	\$349	\$440	\$530
Tribal Policy	\$349	\$698	\$1047
Difference	+ \$0	+ \$258	+ \$517

Additionally, because the Port Gamble S’Klallam tribal TANF office is part of the tribe’s comprehensive child and family services agency, caseworkers can help coordinate the TANF application process and assist families in filling out required paperwork, resulting in little to no delay of payment.

Title IV-B: Child and Family Services, including Welfare Services, Safe and Stable Families, EVT, etc.

Title IV-B funds several important programs, including Education and Training Vouchers—which provide up to \$3,000 per year to foster children for education—and Chaffee Individual Living Skills Funds, which are designed to help foster children acquire the skills they will need to survive upon aging-out of the system.

Title IV-D: Child Support and Establishment of Paternity

After taking control of Title IV-B funds in 2001 the PGST continued the process of appealing for direct control over federal funds for child and family services. In 2002, the PGST became one of the first tribes to establish a Child Support Program as part of Title IV-D. Through this program, the tribe is now able to establish paternity, provide child support, enforce orders, and administer medical support for children.

Title IV-E: Federal Payments for Foster Care and Adoption Assistance

To further protect their children, the Port Gamble S’Klallam tribe worked for several years to negotiate control over Title IV-E funding, which includes payments for foster children, foster care administration, foster care training, and kinship/guardian assistance programs. After more than five years of negotiation, PGST became the first American Indian tribe to win direct control over Title IV-E funding.

Foster Home Licensing

The Port Gamble S’Klallam Tribe took its first step toward establishing control over Title IV-E in 2004 when it began its own foster home licensing program. Before this, there were only three licensed foster homes on the reservation. Because so few tribal households were recognized by the state as foster homes, most foster children were forced off of the reservation and placed into the homes of non-Native families. Now, the PGST Child and Family Services Agency is an independent licensing agent that has licensed dozens of foster homes on their reservation using their own licensing standards. By establishing control over foster home licensing, the PGST has been able to prevent the complete separation of their children from the tribe.

Foster Care Maintenance Payments

The Fostering Connections Act of 2008 created the opportunity for tribes to receive direct Title IV-E funds. It also included several provisions that provide preferential treatment for tribes.

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Perhaps the most important of these preferential treatment features is that tribes receive an increased FMAP rate (Federal Medical Assistance Percentage) for foster care / kinship guardianship payments. All nine tribes in South Dakota qualify for a high FMAP of 83%, while the rate for the state of South Dakota is 59%. Again looking to the Port Gamble S'Klallam Tribe example, before taking control of Title IV-E, the tribe had an intergovernmental agreement with the state through which the state reimbursed the tribe for those IV-E services that the tribe performed. Now that the tribe controls IV-E funds, that dynamic has flipped. The state of Washington still makes the monthly payments to foster families, but it is the tribe that reimburses the state. Moreover, the tribe pays the state at the state's FMAP rate (59%) while the tribe receives the preferred tribal rate (83%) from the federal government—in essence generating additional funds for the tribe to maintain its programs.

CPS

In state CPS programs, CPS workers are not only responsible for investigating claims of abuse and neglect, but they are responsible for attempting to advocate for the best interests of the children in those cases. These two roles are often at odds with each other, which can make it difficult for a worker to establish trust with a family. To rectify this, the Port Gamble S'Klallam Tribe has established a Child Protective Services (CPS) program that relies upon police detectives to investigate claims of abuse and neglect, leaving Child and Family Services caseworkers to focus solely on advocating for the children.

The role of biological parents

By removing the state Department of Social Services from the foster care system, the tribe can also decide what role biological parents should play in raising their children. PGST has decided, for example, that parents should always play *some* role in their child's life. Contrast this to the state of South Dakota's model, which almost always seeks to terminate parental rights, and it is easy to see that outcomes for Indian children will be greatly improved.

Overall, the Port Gamble S'Klallam Tribes administration of Title IV-E programs has greatly improved the stability of their foster care placements. Additionally, it has taken the Port Gamble S'Klallam Tribe closer to its vision of self-governance.

Conclusion

We are a kinship society, and children and families form the lifeblood of our communities. A comprehensive agency that provides the entire array of Title IV services to our people, if created, would thus become a heartbeat for our communities, ensuring the healthy functioning of our children and families. Moreover, self-governance in the area of child and family services would allow us to re-design our programs to meet tribally specific needs without diminishing the United States' trust responsibility to Indian peoples and Tribes. We have often exercised self-governance by entering into contracts with the BIA or other federal agencies, such that federal monies formerly administered by those agencies are passed directly to us (638 contracts). Now, we have the ability to also take over administration of programs run by the state. This is an extremely important step in furthering our sovereignty and autonomy, solidifying a direct relationship with the federal government, and eliminating the last vestiges of subordination to states.

Next Steps

Contract a Title IV Specialist

Title IV of the Social Security Act is a complicated law. Thus, we believe that the first step is for each tribe to hire an individual who will function as a Title IV Specialist. The Title IV Specialist will be charged with the following:

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1. Assess where the tribe is with regard to its preparedness to begin administering its own comprehensive child and family services organization.
2. Put together a step-by-step plan that will take the tribe from where it is currently to a point of readiness to apply for, and receive, federal funding.

It is strongly preferred that the Title IV Specialist be an enrolled member of the tribe. It is equally important that this person be dedicated and tenacious, and that s/he possess the leadership qualities necessary to assemble and begin implementation of a step-by-step plan tailored for the tribe.

Create a Statewide Council

The Title IV Specialists hired by each tribe should form a statewide council that meets regularly so that each tribe can share with the others the information, knowledge, and best practices they have learned. They should also identify ways to coordinate resources and create economies of scale. Additionally, the Statewide Council should engage other tribes throughout the country who have already successfully managed one or more of the Title IV programs to learn from their experiences, make use of resources those other tribes can share, etc. The leaders of the Port Gamble S'Klallam Tribe's child and family services agency have offered to support South Dakota's tribes in this process. Port Gamble's experience successfully applying for direct Title-IV funding can serve as a template for South Dakota's tribes and be a valuable resource as we move forward.

Department of Justice

In the fall of 2011, Congressmen Jim Moran (D-VA), Mike Simpson (R-ID), Tom Cole (R-OK), and former Congressman Dale Kildee (D-MI), signed a letter addressed to the Department of the Interior and the Department of Justice recommending that federal attorneys be detailed to "assist tribes that lack adequate resources to stop this systemic pattern of [ICWA] abuses from occurring." They also noted that detailing of federal attorneys to Indian tribes is authorized by law and does not require separate appropriations. We should avail ourselves of this free resource.

Assistant Secretary of the Interior

Assistant Secretary of the Interior Kevin Washburn has offered to support South Dakota tribes in this process. A letter now circulating among tribal leaders calls on Mr. Washburn to fulfill his commitment and to provide all available and necessary assistance to support our tribes and eliminate as many of the hurdles to this process as possible.