



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #268

Tribal Subsidized Guardianships (Children and Families -- Child Welfare)

[LFB 2023-25 Budget Summary: Page 113, #12]

CURRENT LAW

County and tribal child welfare agencies receive and investigate reports of child abuse and neglect, provide preventive services to help children remain safely in their homes, remove children to out-of-home care such as foster homes or congregate care and treatment facilities when necessary, and provide monthly maintenance payments and ongoing services for children in out-of-home care. Local child welfare agencies perform these functions in conjunction with local courts, with financial support and oversight from the state Department of Children and Families (DCF) and in compliance with state and federal regulations.

Wisconsin is the home of eleven federally-recognized Native American tribes and bands that each operate child welfare agencies with jurisdiction over tribal members. Tribal courts generally determine the placement of tribal children. Some tribes and bands enter into agreements with counties to make maintenance payments to out-of-home care providers. These systems and practices are related to federal policies established by the Indian Child Welfare Act (ICWA) in 1978, and the similar Wisconsin Indian Child Welfare Act (WICWA), which prioritizes the placement of tribal children within their own tribe.

While child welfare agencies are operated by counties, tribes, and bands, the state provides funding that partially supports these services. Under current law, DCF allocates \$101,162,800 per year in state and federal funding to counties under the Children and Family Aids program, for child welfare and related human services costs. DCF allocates \$2,631,400 per year in tribal gaming program revenue and federal grant funds to tribes and bands under the Tribal Family Services Program (FSP) for similar purposes.

The state also provides reimbursement for the costs of certain types of placements. Using federal funding under the Temporary Assistance for Needy Families (TANF) program, DCF

reimburses counties, tribes, and bands for kinship care payments and associated administrative costs. DCF also reimburses counties for subsidized guardianship payments. Subsidized guardianships are a permanent placement option that, unlike adoptions, do not require a termination of parental rights, thereby strengthening children's connection to their birth parents. Guardians must have an existing familial or other significant emotional relationship with the child, and subsidies are capped at the level of the foster care maintenance payment the guardian was receiving prior to the guardianship agreement.

In addition to these allocations, under current law \$717,500 in tribal gaming program revenue is budgeted annually to fund unexpected or unusually high-cost out-of-home care placements ordered by tribal courts and out-of-home placements of Native American juveniles who have been adjudicated delinquent by tribal courts. Counties, tribes, and bands may request funding from this tribal high-cost pool on a case-by-case basis for the amount by which expenditures for that placement exceed \$50,000 in a given year.

DISCUSSION POINTS

1. 2021 Wisconsin Act 132, enacted in February of 2022, transferred financial responsibility for subsidized guardianship payments from counties to the state, requiring DCF to reimburse counties for all costs they incur in making these payments, including subsidized guardianship payments counties make for guardianships ordered by tribal courts. The Act also removed references to tribal expenditures for subsidized guardianship payments from the statutes pertaining to the tribal high-cost pool, consistent with an expectation that the state would now be providing separate reimbursement to tribes for these costs. However, the Act did not explicitly authorize DCF to reimburse tribes for subsidized guardianship payments that they administer. Consequently, tribes remain responsible for the costs of subsidized guardianship payments they make, while DCF fully reimburses counties for their costs of making these payments. The Legislature's intent in enacting Act 132 may have been to reimburse tribes, in addition to counties, for the cost of payments tribes make for subsidized guardianship.

2. Assembly Bill 43 and Senate Bill 70 would provide \$395,800 (\$256,600 GPR and \$139,200 FED) in 2023-24 and \$436,000 (\$282,600 GPR and \$153,400 FED) in 2024-25 to reimburse tribes and bands for the cost of subsidized guardianship payments. The source of the federal funding is matching funds DCF would claim under Title IV, Part E of the Social Security Act, which provides funding for qualifying child welfare costs. The amounts in the bill reflect estimates of the funding amounts that would be needed to make these payments.

3. The bill would authorize DCF to enter into agreements with tribal governments to provide reimbursement for subsidized guardianships and add references to tribes in statutory provisions relating to subsidized guardianship payments so that the same policies relating to these payments that apply to counties would also apply to tribal child welfare. The bill would require that such agreements require tribes and bands to comply with all requirements for administering subsidized guardianships that apply to counties, including program eligibility.

4. In the 2023 State of the Tribes Address, Sokaogon Chippewa Community Chairman

Robert Van Zile described the tribes and bands in Wisconsin as deriving much of their national revenue from limited federal funding sources and casino revenue. He stated that most tribes and bands, once these revenues are exhausted, "fall short of providing basic services."

5. The Committee could include the provisions and associated funding of \$395,800 (\$256,600 GPR and \$139,200 FED) in 2023-24 and \$436,000 (\$282,600 GPR and \$153,400 FED) in 2024-25 to provide reimbursement for subsidized guardianships to tribes, to conform with the intent of Act 132 and to assume the same financial responsibility for state residents who are tribal members as for residents who are not tribal members. [Alternative 1]

6. In place of GPR funding, the Committee could fund the nonfederal share of reimbursement for subsidized guardianship payments made by tribes from tribal gaming revenue. This would require an equal reduction in tribal gaming revenue deposited into the general fund. [Alternative 2]

7. Alternatively, the Committee could require tribes to continue to bear the costs of subsidized guardianships. To reflect this reversal, the Committee could repeal the changes to the tribal high-cost pool enacted as part of Act 132, so that a portion of the cost of unusually high-cost subsidized guardianship payments could continue to be supported from that source. [Alternative 3]

8. Finally, the Committee could take no action on this item, which would deny tribes and bands reimbursement for subsidized guardianships both directly and through the high-cost pool. [Alternative 4]

ALTERNATIVES

1. Provide \$395,800 (\$256,600 GPR and \$139,200 FED) in 2023-24 and \$436,000 (\$282,600 GPR and \$153,400 FED) in 2024-25 to reimburse tribes and bands for the cost of subsidized guardianships. Include the provisions in AB 43/SB 70 to enable DCF to reimburse tribal child welfare agencies for the cost of subsidized guardianship payments in the same manner that DCF reimburses counties for these costs.

ALT 1	Change to Base
GPR	\$539,200
FED	<u>292,600</u>
Total	\$831,800

2. Provide \$395,800 (\$256,600 PR and \$139,200 FED) in 2023-24 and \$436,000 (\$282,600 PR and \$153,400 FED) in 2024-25 to reimburse tribes and bands for the cost of subsidized guardianships using tribal gaming revenue. Include the provisions in AB 43/SB 70 to enable DCF to reimburse tribal child welfare agencies for the cost of subsidized guardianship payments in the same manner that DCF reimburses counties for these costs.

ALT 2	Change to Base
PR	\$539,200
FED	<u>292,600</u>
Total	\$831,800
GPR-Tribal	-\$539,200

3. Do not provide direct reimbursement to tribes for subsidized guardianship costs. Repeal the changes to the tribal high-cost pool enacted under 2021 Wisconsin Act 132, which removed references to subsidized guardianship payments from the list of eligible tribal expenses.

4. Take no action.

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