



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
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January 31, 2008

MEMORANDUM

TO: Honorable Maile S.L. Shimabukuro, Chair
House Committee on Human Services and Housing

FROM: Lillian B. Koller, Director

SUBJECT: H. B. 3135, RELATING TO FEDERAL REVENUE MAXIMIZATION IN
THE JUDICIARY

Hearing: Thursday, January 31, 2008 8:40 a.m.
Conference Room 329, State Capitol

PURPOSE: The purpose of the bill is to require the District and Family Courts to report to the Governor and the Legislature on the reasons for not establishing and implementing a Federal revenue maximization program for all services they provide to children in their care that may be eligible for Federal financial participation and the Family Court's plan to do so in the future.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) strongly supports this Administration bill. The State Judiciary is a key partner in providing alternatives to incarceration to our youth. This bill incentivizes the Judiciary to pursue the use of Federal Title IV-E funds to provide more services to children and youth who are in out-of-home care or at-risk of removal from home.

Specifically, this bill requires the Judiciary to report to the Governor and the Legislature on the reasons why the Judiciary should continue to receive State general revenues on behalf of children in their juvenile justice system, when the Judiciary has not implemented a program to draw down readily available Federal funds, such as 24 States have already done with Title IV-E.

As of 2000, 22 States had already availed themselves of the opportunity to access Title IV-E dollars for their juvenile justice populations, to enhance non-detention

placement options and expand funding of pre-placement and juvenile probation administrative costs (United States General Accounting Office, GAO/HEHS-00-42). At least two other major States (Illinois and Louisiana) have since joined the fold.

So commonplace has this funding mechanism become that Pennsylvania, among others, mandates in legislation that “no state or local funds may be expended on behalf of a juvenile until all available Federal funds (primarily Title IV-E, TANF, and Medicaid) and private funds for which the juvenile is eligible have been exhausted.”

While accessing Federal Title IV-E funding for Hawaii juvenile services has been explored in the past, such efforts have not been fully pursued for reasons unknown to us. Just as Act 141, SLH 2005, mandated the Department of Education to begin submitting Medicaid claims for school-based health services, H.B. 3135 will assure that Hawaii takes full advantage of available Federal Title IV-E funding.

This Administrative bill will also enable Federal funding to support the expansion of less restrictive community-based placements are developed to divert non-violent, low-risk troubled youth from having to enter the Hawaii Youth Correctional Facility because they would benefit more from community-based services as an alternative to incarceration.

The Hawaii State Legislature in the 2006 Legislative Session passed, and the Governor signed into law, S.B. 2323, an Administration bill, as Act 194, that authorized the Judiciary to explore establishing a Federal revenue maximization program for all services provided to children in their care that may be eligible for Federal financial participation.

The Legislature recognized in 2006 that the Judiciary’s implementation of a Federal revenue maximization program would greatly help to ensure that the State receives Federal reimbursement for eligible services provided by the Judiciary to children under the care of the State’s District and Family Courts.

To date, a Federal revenue maximization program has not been implemented by the Judiciary. H.B. 3135 offers a proposed amendment to Act 194, SLH 2006, that would require the District and Family Courts to report to the Governor and the Legislature on the reasons why they should continue to receive State general revenues for juvenile resident care and juvenile probation/case management, when they have not implemented a program to draw down readily available Federal funds, as 22 States have done with Title IV-E, and as has been approved by the U.S. General Accounting

Office in their report of June 2000, "Foster Care: HHS Should Ensure That Juvenile Justice Placements Are Reviewed" (GAO/HEHS-00-42) and endorsed by the National Council of Juvenile and Family Court Judges.

The State Judiciary, through its District and Family Courts, provides important services to children in Hawaii who have been placed in foster care or are deemed to be at risk of removal from their homes.

Many of the activities that court staff engages in are eligible for partial reimbursement under the provisions of Title IV-E of the *Social Security Act* (Public Law No. 96-272, the *Adoption Assistance and Child Welfare Act of 1980*). Title IV-E offers Federal financial participation (FFP) for eligible activities specified in Federal statute and regulation, including the costs of room, board and supervision for children and youth placed in eligible non-restrictive settings as well as associated administrative costs such as preparation for court, case planning, and case management among others,

Several years ago, the Judiciary began to explore innovative uses of Title IV-E monies by developing student internships for law students and social workers serving these families in collaboration with the Department of Human Services and the University of Hawaii. This project has won great support from the Family Court Judges and lays the foundation for continued collaboration.

This successful internship project represents only a small fraction of the potential for enhanced services available through a fuller utilization of these Federal funding streams that have been largely untapped in Hawaii. Currently, the services available through the District and Family Courts in Hawaii are funded overwhelmingly by State revenues. Through the pursuit and optimal utilization of the available Federal funds, the Judiciary should be able to increase the funds available for services to the children under its care and supervision **by a factor of 25 percent**.

In an editorial, published in the *Honolulu Advertiser* on Thursday, August 2, 2007, a leading Jurist in the Family Court called for the development of community-based, non-restrictive alternatives to the current detention system. DHS has developed and is currently expanding a series of "Safe Houses" for non-violent juvenile offenders that offer just such an alternative. Unfortunately, we have been unable to secure all of the available Federal funding for these programs because the Judiciary/Family Court has not, as yet, taken advantage of DHS technical assistance to modify the language of

its court orders and its case planning and case management practices to meet the requirements of the Federal program.

Monumental changes are not required. The Judiciary/Family Court already meets all of the Federal standards for those children involved with the Child Welfare system. All that needs to be done is to extend to the juvenile justice population the same safeguards and protections already afforded the child welfare population.

Although DHS, over the last three years, through the aggressive pursuit of Federal dollars, has successfully managed to generate almost a **fourfold increase** in the amount of funds consecrated to community-based prevention and rehabilitative services, the demand for effective support services for at-risk youth and their families continues unabated.

By seeking Federal reimbursements for all the children under its jurisdiction (juvenile justice and child welfare alike), the Judiciary/Family Court can free up millions of dollars in State general revenues that can be reallocated for program expansion as highlighted in the aforementioned editorial. Moreover, these Federal reimbursements, when they are reinvested in eligible activities, can themselves serve as matching dollars to draw down even more Federal revenue.

The 2002 re-authorization of the Federal Juvenile Justice and Delinquency Prevention Act recognized research confirming the link between Juvenile Justice and Child Welfare Systems and articulated requirements that promote the interaction and coordination of these systems (Child Welfare League of America, 2003). H.B. 3135 will support such requirements.

Title IV-E, in particular, is in imminent danger of being converted to a block grant from its current status as a Federal entitlement program. This would eliminate the required, currently unlimited, FFP contribution by the Federal government, instead, capping Federal funding at the block grant appropriation amount. This means that Hawaii's allocation would be capped based on its current reimbursement levels. **It is, therefore, critical that the State maximize its claims for Federal reimbursements before the block grant conversion occurs.**

In 2002, the last full year for which complete data is available, Hawaii received \$17,045,476 in Title IV-E reimbursements. This figure put the State of Hawaii in 38th place among the 50 States, the District of Columbia and the Commonwealth of Puerto Rico in terms of total reimbursements. Hawaii's youth population, on the other hand, is

increasing faster than the rest of the country. In 1995, Hawaii ranked 24th in the nation in the percentage of its population under 20 years of age and it is estimated by the U.S. Census Bureau to rank 6th in the nation by 2025. A block grant of Title IV-E which would freeze allocations at current reimbursement levels would have a devastating impact on the State, particularly in light of the projected rapid increase in the youth population.

It is imperative, therefore, that the State do everything in its power to increase the level of its Title IV-E reimbursements as quickly as possible, so as to augment the baseline upon which a future block grant would be based.

Following the passage of Act 194 in the 2006 Legislative Session, the Department of Human Services asked its consultants to meet with representatives of the Judiciary to inform them about the opportunities for drawing down Federal dollars for the services the Courts are currently providing for the juvenile offenders they serve. On September 29, 2006, a presentation, explaining the relevant Federal funding streams and the administrative steps necessary to secure the funding, was made to representatives from the Family Court, Adult Parole, Adult Probation, the Office of Youth Services, and Juvenile Probation.

As a follow-up to the presentation, our consultants requested permission from the Judiciary to review a sample of client records in order to establish the percentage of juveniles who would be eligible for Federal reimbursement and ascertain thereby a reliable estimate of the total amount of currently untapped Federal revenue to which the Judiciary would be entitled. In a letter dated October 9, 2006, the Judiciary denied the consultants access to the records. Thus, our efforts to assist the Judiciary have effectively been stymied.

At the Federal level, in light of the mounting deficits, efforts to restrain the growth and curtail the use of Title IV-E reimbursements (particularly in juvenile justice) continue to gather strength. It is all the more imperative that Hawai'i move quickly to secure this funding base for all of our children involved with the Courts before a limit on access to these funds is enacted.

The Department looks forward to working with the Judiciary to expand and improve services to children and youth.

Thank you for the opportunity to testify.