



South Dakota Legislative Research Council

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Welfare Reform Revisited

Preface

During the 1997 Legislative Session, South Dakota lawmakers were involved in a debate over the issue of welfare reform, an issue which was not new to South Dakota, but which was nevertheless thrust into greater importance through federal action. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, signed into law on August 22 of that year, had brought existing welfare reform concepts to a new level--that of federal mandate and devolution of authority, an often obscure mix of increased flexibility and greater regulation.

In the two years since federal welfare reform legislation was passed, South Dakota has stepped up to the plate and done its share to decrease the welfare rolls. The state has faced a number of obstacles, new and old, along the way, and has a number of hurdles yet to overcome, but overall welfare reform in South Dakota has been a successful--though continuing--venture. The purpose of this study is to present South Dakota's legislators with some background on where the state has been, where it is, and where it is going in relation to welfare reform. This is an issue of importance to every legislator, and it certainly did not end with the 72nd Legislative Session.

Before Federal Welfare Reform

Even before federal welfare reform was an item of serious discussion in Washington,

South Dakota was working on ways to help decrease people's dependence on the state. The number of Aid to Families with Dependent Children (AFDC) cases being served by the South Dakota Department of Social Services hit a high of 7,330 in April 1993, after years of relative stability. At about this point, welfare reform within the state of South Dakota began in earnest.

In 1994 a waiver was obtained by the federal government to begin implementing welfare reforms on the state's own initiative. The state's own welfare reform included the following characteristics:

- ◆ A recipient would have two years of AFDC eligibility during which to find a job. If still not employed after two years, the recipient would be assigned to a community service job for 30 hours per week.
- ◆ A recipient who quit a job without good cause would be open to a possible penalty or loss of benefits.
- ◆ Teenagers would be allowed to own a car valued at under \$2,500 and maintain a savings account not greater than \$1,000 without affecting the eligibility of their family.
- ◆ A transitional employment allowance was set up to allow for a financial transition from welfare to work.

◆ AFDC applicants had to sign a “social contract,” concerning a personal plan for leaving welfare.¹

This welfare reform program bore some concrete results; namely, welfare caseloads dropped from a 1994 high of 7,099 (in March) to 6,382 in March 1995, and 6,050 in March 1996. By August 1996, when the federal welfare reform bill was signed into law, South Dakota had 5,807 welfare cases extant, a decline of nearly one-fifth over two and a half years.

Just as importantly, these earlier reforms set the stage for the transition to the current welfare laws by changing attitudes and perspectives on welfare among its recipients and its administrators. The stage was set for the major changes brought about by the introduction of Temporary Assistance for Needy Families (TANF).

Federal Welfare Reform²

With heightened public pressure for changes to America’s welfare system, 1996 would prove to be the year for welfare reform in the United States, to “end welfare as we know it.” The legislation which Congress passed was H.R. 3734, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA; PL 104-193), a 250-page bill which, on its face, devolved a great deal of authority over welfare to the states, but which in reality also presented the states with a number of new regulations and restrictions. However one views it though, the bill’s main purpose was clear: to decrease the welfare rolls.

First and foremost, PRWORA changed welfare from an entitlement to a temporary form of assistance. The former program, Aid to Families with Dependent Children (AFDC), was replaced by Temporary Assistance for Needy Families (TANF). Whereas states were federally funded by

their number of welfare recipients under the AFDC system, under TANF, states are allotted a block grant that must cover their welfare needs over a five-year period. South Dakota’s annual block grant equals roughly \$21,893,510. This figure will hold steady each year for all five years of the original TANF lifespan. The states must also maintain a maintenance of effort match to these federal funds of at least 80 percent of their 1994 welfare spending.

Secondly, PRWORA set up time limits on welfare eligibility. Recipients have a lifetime eligibility limit of 60 months (non-consecutively); however, they must be involved in a work activity within 24 months. Recipients must be involved in some form of community service within two months of beginning assistance if they are not working. These limits apply to adults and are also subject to a variety of possible exceptions.

Third, PRWORA set work participation rates for the states that must be matched in order to continue the flow of federal dollars. Basically, the first year’s work participation rate for one-parent families was 25 percent, moving up by five percent for each succeeding year, finally ending at 50 percent in FY 2002. For two-parent families the work participation rate started at 75 percent, stayed that way for the second year, and then jumps to 90 percent for FY 1999 and beyond. Very few welfare cases in South Dakota involve two-parent families.

The law defines “work activities” in a number of ways, ranging from normal, unsubsidized work to on-the-job training, community service, job search/job readiness programs, etc. Recipients must also meet certain minimum hours of work per week, starting with 20 hours in FY 1997-98, and moving to 25 hours in FY 1999 and 30 hours in FY 2000 and beyond (35 hours for two-parent families for each year). Sanctions are written into the law for states unable to meet these requirements.

The welfare reform legislation also did a number of other things. It mandated that child care be made available to any parent who the state was forcing to work. It allowed Indian tribes to set up and administer their own TANF plans. It gave the states the right to establish family caps (which South Dakota did not do in its final version of the plan). It gave the states wide latitude in tracking down and identifying non-custodial parents and compelling them to pay child support. It set up a work requirement for food stamp assistance. It allowed states facing financial hardship to take a federal loan or utilize a contingency fund. It set up bonuses for high-performing states. This list goes on and on.

PRWORA gave the states a great deal of latitude in formatting their own welfare systems, and in changing the direction of welfare within their borders. At the same time, it placed a number of new responsibilities on state welfare administrators and attached a number of new strings to these federal dollars. It also leaves states with a bit of uncertainty as to what will happen in 2002, when the program set up by this Act runs out.

South Dakota's Response

The new federal welfare reform legislation required a number of changes to existing South Dakota law. These necessary changes resulted in two Governor's bills during the 72nd Legislative Session, SB 259 and SB 266. Both bills were referred to the State Affairs Committee.

SB 259 was entitled, "An Act to promote personal responsibility and provide temporary assistance for needy families and to revise certain provisions relating to public assistance." For the most part, it redesigned welfare as it stood in the South Dakota code. This bill codified the establishment of the

TANF program as an assistance program, not an entitlement. It gave broad authorities to the Department of Social Services to fashion the TANF program and establish rules necessary for its implementation. The bill allowed the Department to reconsider, deny, reduce, or suspend assistance at any time. It protected laid off workers from having their vacancies filled by welfare recipients. It repealed prior AFDC legislation. It reserved the rights of individuals injured in TANF-related jobs, just as for all citizens injured on the job. It granted the department the power to recoup any overpayments of assistance funds and enacted a number of other regulations necessary for the establishment of TANF.

SB 266 was entitled, "An Act to revise certain child support provisions including the adoption of certain child support provisions required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996." This bill greatly extended the state's ability to enforce child support laws. The bill established the Department of Social Services as the state's child support case registry, collecting, updating, and disseminating all child support enforcement records (beginning October 1, 1998). It also made the department the state's child support disbursement unit (beginning October 1, 1998). SB 266 also established a state directory of new hires, to which every employer in the state must report the names and pertinent information related to new employees, for use in a national tracking database. The bill allowed the state broad powers in proving paternity, including ordering genetic tests without a court order, and also bestowed extensive enforcement procedures, such as the ability to strip professional and recreational licenses from delinquent non-custodial parents, garnishment of wages, etc. When paternity is protested, the burden of proof *falls on the moving party*, and trial by jury *is not allowed* in an action to establish paternity.

Throughout the latter part of the 1997 Legislative Session staff from the Executive Branch lobbied for this legislation. For the most part, neither bill contained language or concepts which strayed far from the changes necessary for compliance with federal law. However, once on the floor, differing viewpoints were raised nevertheless concerning the legislation.

An attempt was made in the Senate by the minority leader to amend SB 259 to include the language, "The department shall emphasize education and job training as a major component of temporary assistance for needy families if the education and training does not result in the loss of federal financial participation." This language was replaced by a substitute motion on behalf of the majority leader stating, "to the extent possible in a work-oriented program, training and education, although not an alternative for working, may be utilized to prepare people for work." This language was passed, and ultimately ended up in the final version of the act.³

In the House, a motion was made, and passed, to amend SB 259 by establishing a State-Tribal Economic Development Commission within the Governor's Office of Economic Development.⁴ However, this amendment did not survive the conference committee.

SB 266 was passed after sustaining several relatively technical amendments in committee.

Beyond these two bills, an appropriation of spending authority had to be made by the Legislature in order to move forward with TANF. On February 20, 1997, Secretary Ellenbecker approached the Appropriations Committee with a revised budget, which added 16.0 new FTE and \$908,566 in extra spending authority to help get the program off the ground. This amendment to HB 1176, the general appropriations bill, was

approved by the committee. With this various legislation in place, the South Dakota TANF program took full effect on July 1, 1997.

Welfare reform: South Dakota's Progress

Looking purely at numbers, welfare reform in South Dakota has been quite successful. In June 1997, 5,003 welfare cases were extant in South Dakota. In June 1998, that number had dropped to 3,740, a decrease of over 25 percent. Looking at welfare reform in the longer term, rolls have dropped by 36 percent since June 1996 and by 46 percent since the inception of South Dakota's welfare waiver in 1994. Welfare roles have dropped by 49 percent since the high point of April 1993.⁵

Of course, mere numbers can never tell the full story. The Department of Social Services has been quite successful in aiding a number of welfare recipients in getting back on their feet financially, but for some cases, and for some areas of the state, further successes will be hard won. Consider this: as of June 1998, 12 South Dakota counties had zero TANF cases⁶ (Campbell, Deuel, Edmunds, Faulk, Hand, Harding, Jones, McPherson, Miner, Potter, Sanborn, and Sully); in Pennington County, caseloads had dropped by 42 percent over the last year; in Minnehaha County, caseloads had dropped by 56 percent over the last year; yet in Shannon County, caseloads stood at 514, down only seven from the year before; in Todd County, caseloads stood at 384, down by 74 from the year before; and in Dewey County, caseloads stood at 105, down 21 from the preceding year.

Welfare reductions on the whole, and especially in some counties, have been great, but most of the remaining cases statewide will be difficult to overcome. Many exist on reservations, where the majority of South

Dakota's welfare cases existed even before reforms were put into place. Jobs are extremely scarce in these areas and leaving welfare for work is no simple task. In other cases the parent in question may have never worked before, may have very low skill and educational levels, or may have displayed a past aversion to normal work attitudes, such as coming in late, quitting due to criticism, etc. As the Department of Social Services is quick to point out, the cases left to work with will not be easy to place into employment.

South Dakota's reservations, especially, have been major targets of welfare reform efforts. Not only have the reservations had a history of high unemployment and few opportunities, there has also been a history of less than desirable levels of cooperation between reservation and state authorities. This is beginning to change. Over the past two years, state and tribal officials have been meeting together in an attempt to work through past problems and overcome obstacles to success. One of these is child care, which in many cases exists informally in reservation towns but not in federally accepted formats. The state and tribes, especially on the Pine Ridge Reservation, have been tackling this problem by finding ways to formalize many of the existing child care solutions individuals have already found. Child support enforcement, an issue which also caused tension in the past, is now a focus of greater cooperation. Less "deadbeat" parents are finding shelter in the tribal court system. As for jobs, Social Services is getting involved directly on the reservations. In non-reservation counties, the Department of Labor conducts all job training and job placement programs. However, the Labor Department did not have a presence on the reservations prior to welfare reform, so the Department of Social Services has taken on that role in these particular counties. Through such initiatives, the state and tribes are beginning to grapple with the remaining "hard core" welfare

cases, nearly two-thirds of which are now located within the reservations.

In northeastern South Dakota, many TANF cases were taken over last year by the Sisseton-Wahpeton Tribe. PRWORA allows tribes to take over their own caseloads, and receive and administer their share of the federal money themselves. Sisseton-Wahpeton decided in late 1997 to take over these responsibilities for its own members, about 168 of whom were cash recipients as of that time. The tribe was assisted in this move by a three-month period of transition funding by the state, and the state's continuing advice and administrative support.⁷ Other tribes have an interest in the concept of taking control of their TANF populations, but most are not in an economic position to do so at this time.

Officials within the Department of Social Services have a positive outlook for the direction of welfare reform in South Dakota. They realize that continuing the dramatic decreases in welfare rolls which the last few years have exhibited will be difficult, if not impossible, as the demographics of South Dakota's welfare population becomes more one-sided; however, they feel confident that the message is getting out, that welfare does have an end, and that work, on some level, is expected.⁸

New Developments

Federal involvement in welfare reform, and the regulations and monies it involves, certainly did not end in 1996. One of the first shock waves to be sent through the states concerning their TANF programs was a ruling out of Washington that the Fair Labor Standards Act must apply to all welfare recipients just as it does to any other workers. Chief among the impacts this ruling has is that welfare recipients must receive the minimum wage for any work they do which is subsidized or otherwise

sponsored by the state. States meet a roadblock in that they must maintain a minimum percentage of welfare recipients in work activities, for a minimum number of hours, but in many cases not with the funding necessary to pay minimum wage for all these work-hours.⁹ In South Dakota, the ruling has had little effect so far in that work requirements are still relatively low. As these percentages move up in the near future, however, funds will be squeezed. State officials feel confident, however, that Congress will work out a legislative solution to this problem before it affects most states adversely.

In the original welfare reform legislation, legal immigrants were, for the most part, excluded from TANF. Due to heavy lobbying, however, this language was recently repealed, restoring eligibility for federal dollars to these individuals. In South Dakota, this issue was essentially a moot one, as the state maintained only a very limited number of legal immigrant cases anyway. Most legal immigrants needing assistance in South Dakota were on the state's food stamp program, not TANF, and of course those benefits are being restored this year as well.

Other federal actions are taking place which could mean tougher times ahead for state welfare budgets. Two changes have already been passed which are harmful to the states. First, the match rate for administrative costs of TANF has changed from an equal 50-50 to 53 percent state and 47 percent federal. Also, as part of the cuts necessary for passage of the recent transportation bill, the amount of TANF funds which states are allowed to transfer from TANF to Title XX programs will be cut from ten percent to 4.25 percent in 2001. Along with this, Title XX funding itself is being decreased by approximately \$680 million nationwide (starting in 2001).¹⁰

Moreover, TANF is being looked at by Congress as a possible source of tax cuts and deficit reduction. Here is the dilemma faced by the states: if a state does not spend all of its federal TANF dollars in a given year, these funds are automatically held in trust for the state by the federal government. These funds are then available for use at any time they are needed for TANF purposes. Due to good economic times nationwide, several states (including South Dakota) now have such reserves sitting in the United States Treasury. These reserves have an important purpose: to be utilized when the economy takes a downturn, placing more people on the welfare rolls than future block grants can handle. However, many members of Congress are seeing this money simply as slush, and are eager to cut future block grant payments for the sake of tax reductions, deficit reductions, etc. An attempt was made this year by Congressman John Kasich (R-OH) to do just that, but due to the current political climate it looks as though 1998 will not be the year to cut TANF. There is no guarantee, however, that TANF may be cut in coming years.¹¹

Conclusion

Federal welfare reform was passed in recognition of the fact that welfare was not adequately combating poverty in America. What was meant to be a form of assistance for those experiencing difficult times had become instead a way of life for many recipients and their families. The 1996 Welfare Reform Act was meant to "end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage."¹²

The federal legislation had another purpose as well: devolution. In passing welfare reform, Congress was acting to hand more power, responsibility, and flexibility over to the states; to lessen involvement by Washington, and to place control of

programs for poverty in the hands of more local officials.

Whether these two goals have been adequately addressed by welfare reform remains to be seen. It has only been two years since the President signed this historic legislation into law, and its final effects are certainly not yet known. Some inferences can be drawn, however, from the experiences of that short time.

First, both nationally and in South Dakota, welfare reform seems to be working. Many people who were stuck in the welfare rut have moved on to employment, a change which will greatly benefit both themselves, their children, and society, both economically and psychologically. However, one must not forget that the economy has been in excellent health recently. South Dakota's unemployment rate stands at a mere 2.8 percent.¹³ For many welfare recipients, the migration from assistance to work has been, perhaps not easy, but at least less difficult than in other eras.

For South Dakota a huge question remains in the future of the reservations, home to the majority of the state's welfare population, and also some of the most unmanageable cases in South Dakota. What will South Dakota do to address this problem? This question, of course, is as old as our state, but

how, or if, it is answered will make or break South Dakota's attempts at overall welfare reform in the final analysis.

Secondly, devolution, which was such high-profile news in 1996, has to some extent turned out to be a shadow of what states felt it would be at that time. Certainly, the states now have far greater involvement in the spending of their federal welfare dollars and the landscape of welfare has drastically changed, but do the states really have greater control? It seems quite plausible that more reporting and more federal regulations exist now than under AFDC. Moreover, the future of welfare is more uncertain than ever.

Under block grants, the states now have less confidence in their future fiscal security than they did under an entitlement system. It could certainly be argued that this is good policy, but it is probably not what those who heralded devolution had in mind.

A true analysis of how successful welfare reform has been in South Dakota will not be possible until sometime in the next decade. It is an evolving issue. But for now, it seems safe to say that it is on the right track, and being powered by the best of intentions.

This issue memorandum was written by William E. Pike, Fiscal Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.

¹ Nixon, Lance. "State pursues own welfare reform." *Rapid City Journal*. June 11, 1995, page C3.

² As an excellent synopsis of the 1996 Welfare Reform Act, I would recommend the 32-page analysis prepared by Susan Golanka (NGA), Sheri Steisel (NCSL), and Elaine Ryan (APWA). This analysis is available through NCSL, or I can provide a copy to anyone interested as well.

³ *Journal of the Senate, Seventy-Second Session*. Pages 493-495.

⁴ *Journal of the House, Seventy-Second Session*. Pages 841-846.

⁵ Data garnered from past issues of *Statistical Analysis Report*, a monthly publication of the Department of Social Services

⁶ By “cases” in this section, I am referring to cases in which a parent is a recipient. Child-only and other such cases might also exist.

⁷ “S.D. tribe one of few in nation to run own welfare program.” *Sioux Falls Argus Leader*. January 15, 1998, 2D.

⁸ My thanks to Mr. Mike Vogel and Ms. Judy Thompson of the Department of Social Services for their intriguing comments during a personal interview on August 3, 1998.

⁹ “U.S. Department of Labor Issues FLSA Guidance.” *Information Alert: NCSL Human Services Committee*. May 19, 1997.

¹⁰ “Congress Begins Retreat from Block Grants.” *Federal Update: NCSL Human Services Committee*. June 9, 1998.

¹¹ *Ibid*.

¹² Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Title I, Section 401 (a)(2).

¹³ *South Dakota Labor Bulletin*. August 1998, page 10.