AMERICAN BAR ASSOCIATION

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Statement of

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on behalf of

THE AMERICAN BAR ASSOCIATION

submitted to the

SUBCOMMITTEE ON HUMAN RESOURCES

of the

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

on the subject of

TANF REAUTHORIZATION

February 10, 2005

Dear Mr. Chairman and Members of the Subcommittee:

I am Robert D. Evans, Director of the American Bar Association's Washington Office. I submit this statement at the request of the President of the American Bar Association, Robert J. Grey, Jr., to voice the Association's views with respect to reauthorization of the federal Temporary Assistance for Needy Families (TANF) program and related programs.

The American Bar Association, the world's largest, voluntary professional organization with more than 400,000 members, is the national representative of the legal profession, serving the public and the profession by promoting justice, professional excellence and respect for the law.

The reauthorization of the TANF program and related programs this year presents the first opportunity for Congress to comprehensively review progress on the profound changes in those federal assistance programs enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996. We commend the Bush Administration and leaders in the House of Representatives for their leadership in sponsoring proposals to build upon several years of experience under PRWORA, to set new goals, to revisit certain issues, and to make needed changes. The ABA strongly believes that a number of changes in TANF and related programs should be supported by the Subcommittee and incorporated in reauthorizing legislation to strengthen TANF's commitment to basic fairness and better assure the equal application of its provisions to all. These recommendations are set out below.

Assure Due Process of Law in the Application of TANF Sanctions: Prior to 1996, before a sanction could be imposed for failure to meet work-related requirements, the state was required to offer a "conciliation process," which typically involved informing the parent of what she had failed to do, offering a chance to correct the problem, and offering assistance if needed to come into compliance.

In enacting TANF, Congress removed certain protections provided under prior law. Under current law, a state may terminate all TANF assistance for failure to comply with work-related (or other) requirements; there is no requirement that there be any conciliation process prior to doing so; and (with one limited exception) there is no requirement that the state provide for good cause exceptions. Specifically, the statute states that if an individual "refuses to engage in work," the state must reduce or terminate the family's assistance, "subject to such good cause and other exceptions as the State may establish."[1]

When imposing sanctions, there is no requirement that a state provide an opportunity to resolve the problem, offer assistance in addressing the difficulty, or offer an opportunity for the individual to have assistance reinstated by coming into compliance. There is also

[1] 42 U.S.C. §609(7)(e)(1). There is a limited exception: a state may not reduce or terminate assistance to a single parent with a child under age six if the parent is unable to meet work requirements because of the unavailability of child care. 42 U.S.C. §607(e)(2).

no requirement that a state provide an opportunity for a hearing when a sanction is imposed, although all states have elected to maintain an administrative hearing process. Current law only requires that a state's TANF plan shall include "an explanation of how the State will provide opportunities for recipients who have been adversely affected to be heard in a State." This requirement is insufficient to provide basic fairness.

Some states have made extensive use of sanctions in their TANF implementation efforts. Since the comprehensive overhaul of welfare in PRWORA, opportunities for termination or reduction of benefits are more numerous, as work requirements and eligibility conditions have increased. In particular, financial sanctions for noncompliance with program rules have increased dramatically. Studies show that the families that get sanctioned often face serious employment barriers. The heads of these sanctioned families are also more likely to have limited education and work experience and/or serious health or mental health problems; they are also more likely to have been victims of domestic violence. In addition, advocates and lawyers who represent persons subject to sanctions find that state bureaucrats often do not have up-to-date information, and frequently have incomplete or missing data about individual participation in a variety of required program activities.

Given the current absence of due process protections for sanctioned TANF recipients, the ABA urges the implementation of the following protections that are currently lacking:

- the provision of clear, understandable notices;

- the establishment of the principle that a sanction should not be imposed when there is good cause for noncompliance;

- the assurance that sanctions will not continue (or will not continue for an unreasonable period) after a sanctioned individual comes into compliance;

- the requirement that all states include a conciliation process, and offer assistance to overcome employment barriers and medical difficulties; and

- provision for follow-up efforts, after states impose sanctions, to attempt to contact the family and offer assistance to help the family enter into compliance.

We urge the Subcommittee to support these changes to strengthen the provisions governing administration of TANF sanctions as part of reauthorizing legislation to assure due process and equal application and enforcement of the law.

Legal Immigrants: In reauthorizing TANF, we support proposals put forth in the past two Congresses to restore or extend TANF protections to legal immigrants and remove the present 5-year ban on access that would be continued in the Bush proposal. Fully one in five indigent children in the United States comes from a family headed by an immigrant parent. The ABA House of Delegates approved a policy recommendation in August 1997 urging Congress and the President to restore to legal immigrants the same

rights to TANF, Supplemental Security Income, food stamps and other federal- and state-funded services, benefits and assistance which were available to them prior to enactment of Title IV of PRWORA. Stated affirmatively, immigrant children should have equal access to basic assistance, food stamps, health care, foster care and social services, public education and public housing, regardless of the immigration status of the child or the child's parents. Legal immigrants pay taxes, are eligible to serve in the military, and their children often are citizens.

The Association opposes any provision that would require benefits providers to verify the citizenship or immigration status of individuals who seek their assistance. Verification may deter eligible applicants from applying and may result in eligibility determinations based on invidious factors such as an individual's name, accent, speech pattern or physical appearance. When it is required by law, federal, state and local agencies administering benefits programs subject to PRWORA should follow Department of Homeland Security and Bureau of Citizenship and Immigration Services guidelines limiting verification only to the status of the actual recipient of the benefits. Parents who are applying on behalf of "qualified" children should not be required to respond to questions concerning their own immigration status.

Child Support Enforcement: The ABA supports the consensus reflected among leading TANF proposals and included in legislation twice-passed by the House to increase the pass-through of child support from payments made to states to families receiving assistance.

Child Care: The ABA supports expanding availability of child care and bipartisan efforts to increase funding under Child Care and Development Block Grant (CCDBG) program. The CCDBG program should be funded at substantially higher levels in order to enable parents of young children to work. Child care assistance should be excluded from the five-year time limit for TANF assistance and states should be permitted to carry over unspent TANF funds from previous years for child care and for supporting attainment of minimum health and safety standards for CCDBG-funded child care. The ABA supports the provision introduced by Senator Olympia Snowe and adopted overwhelmingly by the Senate in the 108th Congress to provide additional child care funding and urges the House to adopt similar provisions.

Equitable Access for Native American Children to Federal Foster Care and Adoption Assistance Programs: The ABA supports amendment of Title IV –E of the Social Security Act to provide equitable access for foster care and adoption services for Indian children under tribal court jurisdiction. The current TANF reauthorization process provides an opportunity to correct this problem directly related to TANF programs by allowing direct tribunal administration of the Foster Care and Adoption Assistance Entitlement Program. The ABA believes tribal governments should be able to directly administer the program, and tribal governments should retain the option to enter into tribal-state agreements, in order to correct the preferential treatment of one class of children. We urge the Subcommittee to add provisions such as those introduced in the 108th Congress by Representative Dave Camp as H.R.443, the Indian and Alaska Native Foster Care and Adoption Services Amendments of 2003, to reauthorizing legislation.

The purpose of the Title IV-E Foster Care and Adoption Assistance Act is to ensure that children receive adequate care when placed in foster care and adoption programs. The Act provides for the reimbursement of states for services provided to income-eligible children who are placed in foster care or adoptive homes through state agencies. Services provided by tribes for income-eligible children place by tribal agencies are not eligible for reimbursement unless there is a tribal-state agreement. As a result, thousands of Native American children who meet income-eligibility criteria who are placed in foster care by tribal courts do not receive foster care and adoptive services to which all other income-eligible children are entitled, and have little federal support in achieving the permanency they need and deserve. This amendment to current law would require that federal programs provide equitable access to foster care and adoption services for Indian children under tribal court jurisdiction.

The ABA appreciates the opportunity to offer its views on this fundamentally important subject. We look forward to working with the Subcommittee to achieve a strengthened TANF as the reauthorization proceeds in coming weeks.

Sincerely,

Robert D. Evans

cc: Members of the Subcommittee

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