

August 2010

CHILD WELFARE SERVICES ON SOUTH DAKOTA INDIAN RESERVATIONS

This memorandum provides information regarding child welfare services on South Dakota Indian reservations.

GOVERNOR'S COMMISSION ON THE INDIAN CHILD WELFARE ACT

In response to the high percentage of Indian children being removed from their families and tribal communities and being placed with non-Indian families, Congress, in 1978, enacted the Indian Child Welfare Act (ICWA). The Act sought to protect and preserve the bond between Indian children and their tribe and culture. The ICWA includes provisions addressing:

- Tribal rights and opportunities;
- Indian social and cultural considerations; and
- Minimum federal standards for state court proceedings.

In 2004 the South Dakota Legislature created the Governor's Commission on the Indian Child Welfare Act to study the requirements of the ICWA [25 U.S.C. 1901-1963], including:

- Compliance with the requirements for notice.
- Placement.
- Expert witness testimony.
- Intervention.
- Transfer of jurisdiction.
- Active efforts.
- Means by which Indian tribes could assist in pursuing the policies of ICWA.

The commission analyzed South Dakota's compliance with ICWA by involving the National Center for State Courts, in partnership with Native American Legal Services. The final reports were presented to the Governor and the 2005 South Dakota Legislature. Each report contained numerous recommendations for the state and the tribes to improve the outcomes for Indian children who enter the child welfare system. The commission ceased to exist on December 31, 2004, but was reestablished by executive order of the Governor to assist in the implementation of its recommendations.

The executive order (attached as an [appendix](#)) directed the commission to focus its efforts on implementation of 30 high-priority recommendations found in the commission's earlier report. Further, the commission was directed to review each of the recommendations to determine, in regard to the implementation of each recommendation, the entity or entities responsible, action plans, timelines, and barriers to implementation. The commission was also directed to issue a report to the Governor by November 30, 2005.

IMPLEMENTATION OF RECOMMENDATIONS

The South Dakota ICWA commission report included a recommendation to hire a statewide ICWA coordinator to help enforce a statewide ICWA compliance plan. This position was created in February 2005 within the Department of Social Services.

The 2005 South Dakota Legislature enacted legislation to establish certain notice provisions related to the custody and placement of Indian children and to provide a preference for placement of abused and neglected children with relatives and to provide a hearing for review of adoptive placement decisions.

The Division of Child Protection Services, Department of Social Services, requested two full-time employee positions to act as family locators in its 2005 budget request which were authorized beginning July 1, 2005. These two positions were placed in Rapid City and Pierre. These workers identify and recruit relative placement resources for children in the department's foster care program. The family services specialists make personal contact with the child's relatives to provide them information about the child in foster care and inquire about relatives who may be able to provide care for the child. They share information about kinship care, resources and economic assistance available to kinship providers, and the home study process. These workers assist relatives with the home study process and serve as a liaison between them and the agency completing the home study. Relatives who choose to become licensed foster care providers are eligible to receive foster care payments. The goal is to increase the number of children who can be placed with relatives. Children will achieve permanency in a more timely manner if their extended family members are identified quickly and provided placement support when the child initially comes into care.

The 2006 South Dakota Legislature enacted legislation to revise certain provisions regarding notice to a tribe of a child custody proceeding subject to ICWA. Under South Dakota Codified Laws (SDCL) Section 26-7A-15.3, each tribe may designate an individual or agency to whom ICWA notices must be sent and to whom information regarding a temporary custody hearing should be provided. However, following intervention by a tribe, notices must be sent to the tribal representative or counsel who has appeared on behalf of the tribe pursuant to SDCL Section 26-8A-33. In order to designate an agent, the tribe must submit a request form along with a copy of the provision of the tribal code or tribal resolution appointing the individual or agency as the designated agent for receipt of the notices. Effective July 1, 2006,

state's attorneys were required to send the notices required under ICWA and SDCL Chapter 26-7A to the individual or agency designated. If a tribe has not designated an agent under SDCL Section 26-7A-15.3, notices are sent in accordance with relevant federal regulations. Proceedings covered by ICWA include foster care placements, termination of parental rights (voluntary and involuntary), preadoptive placements, and adoptive placements. In determining adoptive placements, preference must be given, in the absence of good cause to the contrary, to placement with:

1. A member of the child's extended family.
2. Other members of the Indian child's tribe.
3. Other Indian families [25 U.S.C.A. 1915(a)].

A tribe may intervene at "any point in the proceeding" [25 U.S.C. 1911(c)]. Tribes have a right to intervene under the Act to enforce placement preferences. Regarding child placement, tribal code may include the department among those authorized to place the child.

The Division of Child Protection Services and the Casey Family Programs in Pine Ridge and Rosebud entered a memorandum of understanding in April 2004 regarding a collaborative effort for Casey Family Programs to offer family group decisionmaking to families involved with the Division of Child Protection Services from the Pine Ridge and Mission offices. The goal of family group decisionmaking is to facilitate the preservation and stability of families by providing a forum for families to make plans that are designed to ensure the safety, permanency, and well-being of their children and youth when the child has entered or is at risk of entering the child welfare system. The Division of Child Protection Services office in Rapid City has implemented a family group decisionmaking program with assistance from the Casey Family Programs in Pine Ridge.

TRIBAL CONTRACTS

The ICWA authorizes the state to enter tribal Title IV-E agreements with individual tribes for the care and custody of Indian children. Title IV-E of the Social Security Act also authorizes the state and tribes to enter Title IV-E agreements for the payment of foster care for children determined to be eligible for Title IV-E funding and for administrative funding associated with staffing and training of staff and foster and adoptive parents. There are nine tribes in South Dakota. The state entered a contract with the Sisseton-Wahpeton Oyate Tribe in 1978 and with the Oglala Sioux Tribe in 2008 for the provision of all services, including foster care and child protective services. These tribes receive funding for placement, training, and administration. The state provides services on the remaining seven reservations, except for investigation services for the Standing Rock Sioux

Tribe. Agreements with three tribes--Crow Creek Sioux Tribe, Flandreau Santee Sioux Tribe, and Standing Rock Sioux Tribe--provide for the passthrough of placement funding only. On reservations where a contract or agreement exists, tribal staff must use the state system for placement, and an ICWA program specialist visits the locations under contract to review files for compliance. Tribal staff is also included in training.

COLLABORATIVE CIRCLE

State and tribal leaders formed a committee--the Collaborative Circle--to bring together all stakeholders who are committed to improving child well-being outcomes for Native American children in the state, including the tribes, the Division of Child Protection Services, families, consumers, providers, and other partners. The members of the Collaborative Circle include 18 representatives from each of the nine South Dakota tribes and 18 child welfare and other care providers, including nine state officials from the Division of Child Protection Services, four family consumers, and five partner representatives from the Bureau of Indian Affairs, Casey Family Programs, Children's Home Society, Lutheran Social Services, and South Dakota Association of Residential Care Providers. To ensure Native American children and families of South Dakota who enter the child welfare system achieve better results in the areas of safety, stability, and well-being, Collaborative Circle members commit to functional, trusting, and working relationships and to constantly strive to improve relationships with each other and other community stakeholders. Efforts are made to protect children through a system that:

- Matches them with their culture.
- Empowers families--birth, kinship, or foster/adoptive--to create a safe and nurturing home for the children.
- Prevents children and families from entering the child welfare system.
- Helps children and families leave as soon as possible after having achieved the goals they have set for themselves by providing individualized and appropriate services.

The Collaborative Circle meets quarterly, and members have recently identified the following as critical issues to be addressed by the group:

- Enhancing placement resources;
- Establishing transfer protocols; and
- Engaging tribes to contract with the state to provide services.

ATTACH:1