



Indian Child Welfare Act Commission Report II



Review of the Top 30 Recommendations



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**GOVERNOR'S COMMISSION
ON THE INDIAN CHILD WELFARE ACT
2005 REPORT TO THE GOVERNOR**

I. EXECUTIVE SUMMARY

The ICWA Commission was created by Senate Bill 211 in 2004 to study the requirements of the federal Indian Child Welfare Act (25 U.S.C. Sections 1901 – 1963), including compliance with the requirements for notice, placement, expert witness testimony, intervention, transfer of jurisdiction, active efforts and the means by which the tribes could assist in pursuing the policies of the Act.

The Commission held public hearings on the reservations and in Sioux Falls and Rapid City and met on seven occasions. The Commission assisted the National Center for State Courts in conducting the most in-depth assessment of ICWA compliance ever undertaken in South Dakota. Through this sometimes painful process, remarkable relationships and collaborations have developed.

In just two years, the Department of Social Services has embraced and implemented many of the Commission's top 30 recommendations to improve the delivery of services to Indian children and their families. DSS hired an ICWA program specialist to serve as the facilitator between the state and tribes. Furthermore, two placement investigators were hired to search for relatives for children placed in foster care, the result of which will improve compliance with ICWA's placement preferences. DSS is now meeting quarterly with the ICWA director from each tribe to develop policies and protocols for providing services to children. DSS is also working with the Child Welfare League of America to modify the PRIDE curriculum, used to train foster and adoptive parents, to address the needs of Native American children and families. DSS had entered into a contract with Children's Home Society in 2002 to facilitate timely kinship home studies. In April of 2005, DSS also implemented a revision of its kinship care policies. Although these efforts were commenced prior to the formation of the Commission, they reflect the Department's recognition of the importance of kinship care and have resulted in

a 25% increase in kinship placements for all children in the custody of DSS between July 1, 2004 and June 30, 2005. Finally, DSS has facilitated creation of a “collaborative circle” comprised of tribal and state members to focus on the recruitment and retention of American Indian foster homes and to continue the work of the Commission and fulfillment of its recommendations.

A significant statute was enacted as a direct result of the Commission’s work and findings. In 2005, the ICWA Commission submitted a proposed rule to the South Dakota Supreme Court which would allow tribes to appear through counsel or a designated representative of the tribe in abuse and neglect proceedings. This rule is now codified at 26-8A-33. The 2005 legislature also enacted SDCL 26-7A-15.1, which sets forth notification requirements for custody and placement of Indian children. SDCL 26-7A-15.2 includes a form for the notice to insure consistency. In addition, SDCL 26-7A-15 was amended to require reasonable efforts to inform the tribe of a 48 hour hearing. Further, the legislature also enacted 26-7A-19.1, a bill which was sponsored by DSS, and which requires DSS to grant relatives a preference when seeking to place abused and neglected children, and SDCL 26-8A-29.1, which provides any relative denied adoptive placement by DSS the right to request a hearing to review the placement decision.

It is necessary to continue to build upon these accomplishments as much remains to be done. At the present time, the Sisseton-Wahpeton Oyate Tribe provides its own child protection services through a contract with the State. The Standing Rock, Crow Creek, and Flandreau Santee Sioux Tribes have IV-E and licensing agreements with DSS to allow pass through of IV-E federal funds to pay foster care. DSS provides a full range of child protection services on the Pine Ridge, Cheyenne River, Lower Brule, Yankton and Rosebud reservations, utilizing the tribal courts of each of those nations. The Commission urges DSS, under the Governor’s leadership, to meet with the tribes to discuss their interest in pursuing the contracting of child protection services.

DSS must also develop criteria for the transfer of cases from state to tribal court in which DSS maintains placement, care and supervision of the child with continuation of IV-

E funding to support the paid placements, providing that all federal IV-E requirements are met. Children should not be denied needed services when cases are transferred from state to tribal courts as the necessary funds should follow the child.

The tribes should prioritize funding for the family and juvenile court systems, child protection services and ICWA offices. Dedicated and committed individuals are in place on every reservation to do this important work, but resources are lacking to fully staff and stabilize these crucial offices.

Additional funds are needed to implement several of the Commission's recommendations. Oftentimes, before a child can be placed with a relative, a home study must be completed. The impact of the family locator positions within DSS will be monitored in terms of the increase in relatives located and the assistance they can provide to kinship families to help them complete the home study process. DSS will also evaluate the need for additional FTE or contract dollars to expand the number of family locators and the contract with Children's Home Society. The Commission also recommends that DSS expand the family group conferencing model used on the Pine Ridge and Rosebud reservations to each of the other reservations. DSS is now piloting this model in Rapid City. However, in order to expand this model to other areas, including the reservations, will require additional FTEs or funding to contract with a service provider to implement group family decision making. However, prior to expanding this model, DSS will need to evaluate the effectiveness of the model in furthering the best interests of children in its care. Additional funding is also needed to meet the Commission's recommendations regarding the use of "ICWA experts". The State must utilize appropriately qualified "ICWA experts" as defined by the South Dakota Supreme Court. This should be a matter of priority and will require additional training for DSS workers and/or contract dollars to retain appropriately qualified experts. Finally, all system participants, to include judges, state's attorney, CASA workers, defense counsel and DSS workers, would benefit from cultural sensitivity training.

Much has been accomplished through earnest dialogue, good faith and hard work over the course of the last two years. New friendships and partnerships have been formed but much remains to be done. As of October 31, 2005, there were 1,532 children in out of home care placement as a result of state and tribal court actions. Of the 1,532 children, 398 or 26% were placed with relatives. Of the total number of children in out of home care, 59% were Native American. The future of these children, the tribes, and our state depends on the continuation of this important work. We thank the Governor for creating the Commission and urge him to continue to take a leadership role to work with the stakeholders to further compliance and the well-being of all of South Dakota's children.

II. INTRODUCTION

The Governor's Commission on the Indian Child Welfare Act (the "Commission") was created through passage of Senate Bill 211 during the 2004 South Dakota Legislative session. The Commission was charged to study the requirements of the Indian Child Welfare Act (25 U.S.C. §§1901-1963), commonly referred to as "ICWA", including compliance with the requirements for notice, placement, expert witness testimony, intervention, transfer of jurisdiction, and active efforts, and the means by which Indian tribes could assist in pursuing the policies of ICWA. The work of the Commission included an Analysis of Compliance with the Indian Child Welfare Act in South Dakota conducted by the National Center for State Courts, in partnership with the Native American Legal Services, as well as the Commission's Report on the Indian Child Welfare Act. The foregoing reports were presented to Governor Rounds and the members of the 2005 South Dakota Legislature. Each contained numerous recommendations for the state and the tribes to improve the outcomes for Indian children who enter the child welfare system. The Analysis of Compliance and the Commission's Report on the Indian Child Welfare Act can be reviewed at <http://www.sdtribalrelations.com/agreements.asp>. The Commission ceased to exist on December 31, 2004.

The first recommendation of the Commission was that the Commission should be extended in order to assist in the implementation of its other recommendations. This recommendation was accomplished by Governor Rounds through Executive Order 2005-08, which re-established the Commission. (See Appendix 1- Executive Order 2005-08.) The Executive Order directed the Commission to focus its efforts on implementation of the top 30 recommendations found in the Commission's earlier Report. Further, the Commission was directed to review each of the foregoing recommendations to determine, in regard to the implementation of each recommendation, the entity or entities responsible, actions plans, timelines, and barriers to implementation. The Commission was also directed to issue a report to the Governor by November 30, 2005.

III. COMMISSION MEETINGS

The Commission held two meetings, one on September 9, 2005 in Pierre and the second on October 8, 2005 in Rapid City. During the September 9, 2005 meeting, reports were given by state and tribal Commission members regarding their efforts to implement the recommendations. Those efforts will be described later in the report. In addition, a summary was provided of legislation passed during the 2005 Legislative Session which pertains to juvenile proceedings including: HB 1226 (which enacted the notice requirements of ICWA); SB 55 (which gives preference for placement of abused and neglected children with relatives and provides a hearing for review of adoptive placement decisions); SB 12 (which authorizes, under limited circumstances, a parent to appear by telephone for a hearing to voluntarily terminate parental rights); and HB 1258 (which revises the definition of abused and neglected child to include exposure to an environment used for manufacture, use or distribution of methamphetamine or any other unlawful manufactured controlled drug or substance). It was the consensus of the Commission during this meeting that much had been accomplished to implement the top 30 recommendations. During the October 8, 2005 meeting, the Commission reviewed the recommendations contained in the Analysis of Compliance with the Indian Child Welfare Act in South Dakota, many of which were found to mirror the Commission's top 30 recommendations. The Commission also discussed the process for drafting the report for the Governor. (See Appendix 2 – Commission Meeting Minutes)

IV. IMPLEMENTATION OF THE TOP 30 RECOMMENDATIONS

Set forth below is a synopsis of the work that has been accomplished or is ongoing by the Department of Social Services, Unified Judicial System, and the tribes to implement the Commission's top 30 recommendations. The top 30 recommendations are:

1. Extend the service of the ICWA Commission for one year in order to provide guidance and assist in the implementation of its recommendations.
2. DSS should consider hiring "child placement investigators" to identify, locate, and investigate relative and kinship placements. This would be the sole responsibility of this position.
3. Create a position for a statewide ICWA coordinator within DSS to help enforce a statewide ICWA compliance plan (In the Interests of D.M., R.M., III and T.B.C., 2004 WL 1689673 (SD), 2004 SD 90).
4. The Governor of the South Dakota and Department of Social Services through its Secretary should offer to each tribe in South Dakota the opportunity to enter into a contract to enable the tribe to provide full child welfare services to its children domiciled on its reservation, including foster care licensing, Title IV-E payments, and administrative capacity.
5. Encourage the Department of Social Services to work with each tribe to identify qualified expert witnesses whose testimony will be relied upon by state courts and not just utilize those experts who will conform their opinions to the requested actions of DSS. Department of Social Services shall contact Tribal Community Colleges to identify persons who could serve as qualified expert witnesses.
6. Whenever possible, DSS and State's Attorneys shall provide tribes with notice of 48 hour hearings and the opportunity to participate, by telephone or in person. When the tribe indicates a desire to participate, the Circuit Court shall consider the input of the tribe in determining whether an emergency situation exists; whether a continued out-of-home placement is necessary; and whether extended family members are available to provide care for the child. DSS and the State's Attorneys shall attempt to introduce qualified expert witness testimony at the 48 hour hearing.
7. Create family placement specialist teams with representatives from the Department of Social Services and each tribe to search for relatives.
8. Proactively recruit American Indian foster homes throughout the state.

9. DSS and the State's Attorneys should adopt a statewide and uniform notification process for notifying the tribes, the ICWA worker, and the Bureau of Indian Affairs (BIA). This should include uniform language and format including the right of the parties to review the court files and inclusion of the mother's maiden name. The same notice should be given to parents and Indian custodians.
10. Revise the format of the PRIDE classes to include culturally appropriate parenting practices. Consider contracting with a tribal community college or colleges to train American Indian foster care providers to expand the pool of providers and make PRIDE classes more culturally appropriate.
11. Enter into agreements with each tribe and provide appropriate training so that the tribes may license their own foster homes both on and off the reservations. The Department of Social Services shall honor tribal licenses pursuant to 25 U.S.C. Section 1931(b) and children in homes shall be eligible for all state and federal benefits.
12. All of the state agencies involved in CHINS cases must develop a realistic and consistent protocol for the application of ICWA in CHINS cases. At a minimum, (1) State's Attorneys should include an ICWA statement in the petition and notice the tribes, and (2) judges should make active inquiry and a record (at each stage of the proceeding) whether ICWA is applicable. This information should also be included in the court order. The tribes should develop a consensus regarding how they are to respond to CHINS.
13. Create a statewide ICWA office within state government.
14. Provide tribes before every hearing, if necessary by fax, copies of all DSS reports generated by workers. This includes 48 hour emergency hearings if DSS has determined the tribal affiliation of the child prior to the hearing.
15. The tribes should fully staff and fund ICWA offices, as a top priority, to include paralegals and attorneys. Additionally, the tribes should fully staff and fund the juvenile and family courts on each reservation.
16. DSS should expand family group conferencing to each reservation.
17. Create a brochure to be distributed to families in court explaining the Indian Child Welfare Act and their rights under the Act.
18. Develop a protocol for transfer of cases from state to tribal court including those cases where DSS maintains the child in foster care placement and provides services. DSS shall work with each Indian tribe to apprise them of the options available to DSS and the tribes for paid placements under the Interstate Compact Act for Indian Children transferred from out of state.

19. Increase the resources necessary to quickly and thoroughly complete home studies. Delays hold up kinship placements and jeopardize placement options.
20. The tribes should keep DSS, the South Dakota Attorney General, State's Attorneys and the Circuit Courts regularly apprised of any change in tribal law regarding child protection issues including any tribal resolution or amendments to tribal law changing the order of preference for foster care and adoptive placements for the children of that tribe.
21. All state and private adoption agencies should designate specific local, regional and state-level ICWA employee resources within their organizations. For DSS and UJS, this may include specifically designated individual(s) within the private agency "network". This information should be widely disseminated throughout each organization.
22. All of the state agencies, in consultation with the tribes, must work to develop a network of ICWA experts. This may include DSS social workers and supervisors (in the circuits where DSS testimony is accepted) if the DSS worker meets established minimum criteria (i.e., three completed ICWA cases, advanced training in ICWA, and the knowledge of services available to Indian children and families and Indian culture). Additionally, at a minimum, DSS workers should not be in a position to testify as an expert on their own cases.
23. UJS should also fund a statewide ICWA coordinator to work with the DSS counterpart to serve as a liaison between courts, DSS, and the tribes. Furthermore, this coordinator should work to implement the many recommendations contained in this report.
24. Request the Supreme Court to update the South Dakota Guidelines for Judicial Process for Child Abuse and Neglect Cases (SD Guidelines – "The Green Book").
25. All judicial circuits should require that an ICWA affidavit or court report be filed in every case involving an Indian child. The ICWA affidavit or court report should be updated at each step of the proceedings in terms of the ongoing need for the child's placement consistent with ICWA placement preferences.
26. When actions venued in state court, involving children domiciled off the reservation, are transferred to tribal court, DSS, if so ordered by the tribal court, will maintain legal custody, similar to placements by tribal courts with DSS for reservation domiciled children, and the tribal courts shall commit to conducting court proceedings in a manner that accommodates the families of off-reservation children and witnesses. DSS and the tribes that take advantage of this opportunity shall develop procedures for such cases addressing issues such as the applicability of ASFA to such children and other matters.

27. Tribes should respond to DSS contacts either by telephone or in writing to assure regular communications with DSS workers to prevent perception by DSS or State Court that the tribe is not desirous of participating in a pending state court proceeding.
28. Certificates of Mailing should clearly indicate which documents were included in the mailing.
29. At each stage of the proceeding, judges should make an active inquiry about the applicability of ICWA and the status of the determination that the child is an Indian Child. This information should be included for the record of the case and the court order. Moreover, the UJS should consider adopting the standards and practices set out by the National Council of Juvenile and Family Court Judges – Indian Child Welfare Act Checklists for Juvenile and Family Court Judges (June 2003). These checklists articulate best practice standards for state courts processing of ICWA cases. (Appendix 29)
30. The provision of active efforts can be strengthened by caseworkers becoming more hands on or directly involved in helping clients achieve the goals outlined in the family service and treatment plans. For example, rather than simply giving a mother the telephone number of a program that provides parenting classes and expecting her to set up classes, the caseworker and mother could together visit with a program representative to discuss how the class will meet the needs of the mother and then discuss any barriers, such as transportation, childcare, or work schedule, that might make it difficult for the mother to attend classes.

A. DEPARTMENT OF SOCIAL SERVICES (“DSS”)

Recommendations #2: DSS should consider hiring “child placement investigators” to identify, locate, and investigate relative and kinship placements. This would be the sole responsibility of this position.

Recommendation #7: Create family placement specialist teams with representatives from the Department of Social Services and each tribe to search for relatives.

The Department of Social Services, Division of Child Protection Services, requested two full time employee positions in its 2005 budget request, which were authorized beginning July 1, 2005. These two positions were placed in Rapid City and Pierre to cover the western and central portions of the state.

These workers are charged with identifying and recruiting relative placement resources for children in the Department’s foster care system. These social workers 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 provide care for the child. They share information about kinship care, resources available to kinship providers, financial support available to kinship providers, and the home study process. These social workers assist relatives with the home study process and serve as a liaison between them and the agency completing the home study until it is completed. The Department expects to increase the number of children who can leave the foster system to be placed with relatives. It is also anticipated that 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.

Recommendation #3: Create a position for a statewide ICWA coordinator within DSS to help enforce a statewide ICWA compliance plan (In the Interests of D.M., R.M., III and T.B.C., 2004 WL 1689673 (SD), 2004 SD 90).

The Department of Social Service, Division of Child Protection Services hired Teresa Nieto on February 24, 2005 to become the Indian Child Welfare Program Specialist to oversee policies and procedures within the Division that impact the provision of services

to Native American families and children. The duties of this position include, but are not limited to:

- Establish, implement, monitor, and enforce policies, procedures, and protocols regarding Child Protection Services' compliance with the Indian Child Welfare Act.
- Liaison to the tribes to collaborate and coordinate with the tribes to assure effective provision of services to tribal children and families that comply with federal and state mandates and tribal codes.
- Monitor existing agreements and contracts for compliance and provide technical assistance to tribes that have an agreement or contract with the Department of Social Services.
- Assist the Division Director of Child Protection Services in the development of licensing agreements, Title IV-E foster care agreements, and child protection services contracts between the Department of Social Services and the tribes.
- Conduct training assessments of Child Protection Services staff regarding the Indian Child Welfare Act, Indian culture, maintaining cultural connections, and cultural sensitivity.
- Provide ongoing education regarding cultural competence and develop a training plan to address identified needs.
- Oversee the quarterly meetings between Child Protection Services and the ICWA directors.
- Increase the tribal involvement in the activities associated with the Child and Family Service Plan.

Recommendation #4: The Governor of the South Dakota and Department of Social Services through its Secretary should offer to each tribe in South Dakota the opportunity to enter into a contract to enable the tribe to provide full child welfare services to its children domiciled on its reservation, including foster care licensing, Title IV-E payments, and administrative capacity.

Recommendation #11: Enter into agreements with each tribe and provide appropriate training so that the tribes may license their own foster homes both on and off the reservations. The Department of Social Services shall honor tribal licenses pursuant to 25 U.S.C. Section 1931(b) and children in homes shall be eligible for all state and federal benefits.

Currently only one tribe, the Sisseton Wahpeton Oyate Tribe, has a contract with DSS for the provision of all child protection services. The remaining tribes contract in whole or in part with the Department of Social Services to provide child protective services. The Oglala Sioux Tribe and the Rosebud Sioux Tribe are working toward the development of IV-E agreements and state-tribal licensing agreements, with the long-range goal of contracting with the state to provide a comprehensive child welfare system. The Department of Social Services and the Standing Rock Sioux Tribe, the Crow Creek Sioux Tribe and the Flandreau Santee Sioux Tribe have IV-E and licensing agreements in place.

The Director of the Division of Child Protection Service and the Director of the Office of Tribal Government Relations will send a letter to the chairperson or president of each tribe to request a meeting. The purpose of the meeting is to discuss agreements and contracts between the state and the tribes so each tribe can determine if they wish to work toward the provision of child welfare services to its children and families domiciled on its reservation. The letters to the Tribes to request a meeting will be sent by January 15, 2006.

Recommendation #5: Encourage the Department of Social Services to work with each tribe to identify qualified expert witnesses whose testimony will be relied upon by state courts and not just utilize those experts who will conform their opinions to the requested actions of DSS. Department of Social Services shall contact Tribal Community Colleges to identify persons who could serve as qualified expert witnesses.

Recommendation #22: All of the state agencies, in consultation with the tribes, must work to develop a network of ICWA experts. This may include DSS social workers and supervisors (in the circuits where DSS testimony is accepted) if the DSS worker meets established minimum criteria (i.e., three completed ICWA cases, advanced training in ICWA, and the knowledge of services available to Indian children and families and Indian culture). Additionally, at a minimum, DSS workers should not be in a position to testify as an expert on their own cases.

The ICWA Program Specialist for the Division of Child Protection Services will continue to work with the Indian Child Welfare Directors of each tribe to develop a list of

qualified expert witnesses, as well as contacting the tribal community colleges to identify expert witnesses.

The Department of Social Services has developed policy to guide staff on who can be considered an expert witness which mirrors recommendation #22. (See Appendix 3 – DSS Policy Memo)

Recommendation #6: Whenever possible, DSS and State’s Attorneys shall provide tribes with notice of 48 hour hearings and the opportunity to participate, by telephone or in person. When the tribe indicates a desire to participate, the Circuit Court shall consider the input of the tribe in determining whether an emergency situation exists; whether a continued out-of-home placement is necessary; and whether extended family members are available to provide care for the child. DSS and the State’s Attorneys shall attempt to introduce qualified expert witness testimony at the 48 hour hearing.

This recommendation was addressed in part by passage of HB 1226 which requires the state’s attorneys or the Department of Social Services to make reasonable efforts to contact and inform the tribe and Indian custodian of a temporary custody hearing involving an Indian child, which is the first hearing held after the child is taken into protective custody. Contact may be made by writing, telephone or facsimile. In order to facilitate timely notice of the hearings, the Department of Social Services developed a contact list of the ICWA directors and juvenile judge for each tribe. The contact list has been provided to Child Protection Services staff and is posted on the Child Protection Services web site (<http://www.state.sd.us/social/CPS/ICWA/Directory>). In addition, information regarding the availability of the list via the website has been provided to the State’s Attorneys’ Association.

Recommendation #8: Proactively recruit American Indian foster homes throughout the state.

The State of South Dakota invited AdoptUsKids to assist with the development of a Recruitment and Retention Strategic Plan for Native American foster homes. Preliminary data indicated that the State has made significant progress in increasing the total number of approved homes to accommodate the numbers of children in care, but did not have enough homes to meet the racial, cultural, ethnic and other exceptional needs of children requiring

placement. Especially concerning was the fact that approximately 59% of the children in care are of Native American heritage, while only 9% of the approved foster homes are Native American. A State/Tribal Workgroup was organized in 2002 to address the issues of recruitment and retention of Native American families, but the group's effectiveness and attendance had been less than hoped for.

In November 2004, DSS received technical assistance to develop a recruitment plan. State and tribal leaders formed a new committee, the "Collaborative Circle," which developed the South Dakota Retention and Recruitment Plan. This plan builds upon the original workgroup's strategies and recommendations. (See Appendix 4 – Draft of South Dakota Recruitment and Retention Plan)

Recommendation #10: Revise the format of the PRIDE classes to include culturally appropriate parenting practices. Consider contracting with a tribal community college or colleges to train American Indian foster care providers to expand the pool of providers and make PRIDE classes more culturally appropriate.

PRIDE is the foster and adoptive parent preparation program used by the SD Division of Child Protection Services. The PRIDE curriculum was developed through a collaboration of the Child Welfare League of America with several states, including South Dakota. The material is copy written.

Several states, including South Dakota, expressed a desire for a curriculum especially adapted to address the needs of Native American families and children. The Child Welfare League has undertaken a project to create and implement this type of curriculum. The purpose of the project is three-fold: 1) to develop a standard, rigorous foster/permanency training curriculum that can be made available to all tribes nationally while still recognizing the different approval considerations for Indian parent care givers by sovereign tribes; 2) to establish a curriculum adaptation process that is able to promote the inclusion of tribal-specific members, traditions, and practices; and 3) to test the capacity of the curriculum's dissemination in a) increasing tribal parent confidence and readiness to care for waiting children; and b) the development of skills in parenting that promote safety, security, and permanency for Native children needing permanent homes. Input will be received from 5-8 tribes to include a tribe from South Dakota. The participatory process will include focus groups, work groups, and curriculum development

groups. The collaborators, tribes, and state/county jurisdictions will create the curriculum template. The final result will include evidence-based best practices for foster and permanent parent education and training in a format that would allow each tribal group to embed their own cultural practices and traditions. Plans include the piloting of this curriculum in South Dakota.

In addition, Child Protection Services sent staff to be trained in the Extending Families through Unity (Unity) Program. This training was held in collaboration with the Children's Home Society with trainers from the Native American Training Institute from Bismarck, ND. Seventeen individuals attended the training, including: 2 state foster parents, 4 Children's Home trainers, and 11 trainers from Child Protection Services. Now pertinent sections of Unity can be included in PRIDE training or the entire Unity training can be used in the place of PRIDE. The Unity training is used exclusively in Pine Ridge and Rosebud by the Casey Family Program, and in Hot Springs, Eagle Butte and Mission by CPS trainers. In Rapid City, Pierre, Chamberlain, Winner and Sioux Falls portions of Unity are added to the PRIDE training depending on the composition of the participant group.

Recommendation #9: DSS and the State's Attorneys should adopt a statewide and uniform notification process for notifying the tribes, the ICWA worker, and the Bureau of Indian Affairs (BIA). This should include uniform language and format including the right of the parties to review the court files and inclusion of the mother's maiden name. The same notice should be given to parents and Indian custodians.

This recommendation has been addressed in part through HB 1226, which amended SDCL 26-7A-15 and created SDCL 26-7A-15.1 and SDCL 26-7A-15.2. In addition to requiring reasonable efforts to inform parents, Indian custodians, and Indian tribes of the 48 hour hearings (see recommendation 6 above), HB 1226 enacted the notice requirements of ICWA, including a standard form for providing the notice. To that end, the bill designated when, how, and to whom a formal notice of the proceeding must be given, as well as the content of the formal notice. Finally, the bill included a sample form to be used by state's attorneys in providing the required written notice. As a result, the written notice

used in cases across the state will be substantially uniform in content. (See Appendix 5 – SDCL 26-7A-15, SDCL 26-7A-15.1, SDCL 26-7A-15.2)

Recommendation #13: Create a statewide ICWA office within state government.

Implementation of this recommendation would require funding to establish an ICWA office. The Commission continues to believe that a statewide office is necessary to further compliance.

Recommendation #14: Provide tribes, before every hearing, by fax if necessary, copies of all DSS reports generated by workers. This includes 48 hour emergency hearings if DSS has determined the tribal affiliation of the child prior to the hearing.

Immediate efforts will be undertaken in every case to identify the tribal affiliation of the child. Once determined, the tribe will be notified of the proceedings and of efforts undertaken to place the child within the placement preferences of ICWA. In addition, if the tribe intervenes, it will be provided copies of all DSS reports generated by the workers. However, prior to intervention, the type of information provided to the tribe is limited due to laws regarding confidentiality.

It has been suggested that SDCL 26-7A-15 and SDCL 26-7A-15.1 be amended to require that notice be provided/sent to the tribe via its designated agent. If so amended, the notification of the proceedings and information regarding efforts to place within preferences will be provided to the designated agent which may or may not be the ICWA director or juvenile tribal judge. Further, following intervention, the notices and reports will be sent to the counsel or designated representative of the tribe.

Recommendation #16: DSS should expand family group conferencing to each reservation.

The Division of Child Protection Services and the Casey Family Programs in Pine Ridge and Rosebud entered into a Memorandum of Understanding in April 2004, to offer Group Family Decision Making to families involved with Child Protection Services from the Pine Ridge and Mission offices. The goal of Family Group Decision Making 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 Child Protection Services office in Rapid City has also implemented Group Family Decision Making with assistance from the Casey Family Programs in Pine Ridge.

The expansion of Group Family Decision Making to all reservations would require additional resources in terms of funding for FTEs, program development or contracting with a private entity to provide the service.

Recommendation #18: Develop a protocol for transfer of cases from state to tribal court including those cases where DSS maintains the child in foster care placement and provides services. DSS shall work with each Indian tribe to apprise them of the options available to DSS and the tribes for paid placements under the Interstate Compact Act for Placement of Children transferred from out of state.

This recommendation has been taken under advisement by the Director of the Division Child Protection Services and will be the focus of discussions among Division management staff and the ICWA Directors of each Tribe.

Recommendation #26: When actions venued in state court, involving children domiciled off the reservation, are transferred to tribal court, DSS, if so ordered by the tribal court, will maintain legal custody, similar to placements by tribal courts with DSS for reservation domiciled children, and the tribal courts shall commit to conducting court proceedings in a manner that accommodates the families of off-reservation children and witnesses. DSS and the tribes that take advantage of this opportunity shall develop procedures for such cases addressing issues such as the applicability of ASFA to such children and other matters.

The Department of Social Services will develop criteria for the transfer of cases from state court to tribal court, where DSS maintains placement, care and supervision of the case and agrees to continue IV-E funding to support the paid placement as long as all federal IV-E requirements are met.

The Commission also discussed the development of a uniform motion and order for transfer to be utilized by the tribes to provide consistency and continuity in services. A protocol should be developed to assist DSS, law enforcement or other witnesses involved

in a case to testify in tribal court in person or telephonically when cases are transferred to tribal court to insure that cases are not dismissed based on lack of evidence and unavailable witnesses.

Recommendation #19: Increase the resources necessary to quickly and thoroughly complete home studies. Delays hold up kinship placements and jeopardize placement options.

The Department of Social Services entered into a contract with the South Dakota Children's Home Society on July 1, 2002, for the completion of kinship and Interstate Compact home studies. The purpose of the contract was to increase the ability of Child Protection Services to assess all relatives that could be potential placement resources. Another objective was to expedite the home study process for these families, which allows the agency to make more timely decisions regarding relative placements.

Child Protection Services recently completed revision of policy and procedures related to the Kinship Care. Technical assistance is being provided to all Child Protection Services staff regarding the revised policies and procedures to continue to elevate the importance of kinship care and the efforts required to locate safe and appropriate kinship placements. (See Appendix 6 – DSS Kinship Procedures)

DSS saw a 25% increase in kinship placements between July 1, 2004 and June 30, 2005. This increase is a direct result of the Department's continued emphasis on the importance of kinship care through its contract with Children's Home Society and improved guidance to staff regarding kinship placements.

In addition, the Department sponsored SB 55 which amended SDCL 26-7A-19 and created SDCL 26-7A-19.1 and 26-8A-29.1. SB 55 provides a preference to relatives for foster care and adoptive placement and affords relatives an opportunity for a court review, in some cases, of the Department's adoptive placement decision. Because SB 55 did not go into effect until July 1, 2005, the foregoing increase in kinship placement does not reflect its impact. However, SB 55 is expected to result in a further increase in kinship placements for all children, including Indian children. (See Appendix 6 – SDCL 26-7A-19, SDCL 26-7A-19.1 and SDCL 26-8A-29.1)

Recommendation #21: All state and private adoption agencies should designate specific local, regional and state-level ICWA employee resources within their organizations. For DSS and UJS, this may include specifically designated individual(s) within the private agency “network.” This information should be widely disseminated throughout each organization.

The Department of Social Services has employees who are knowledgeable and have experience with the Indian Child Welfare Act. These employees include, but are not limited to the ICWA Program Specialist and attorneys within the Department’s Division of Legal Services.

The Division of Legal Services provided training on ICWA during the State’s Attorneys Conference in May 2005. Resource materials on ICWA were distributed to the attendees as well as to various state’s attorneys not in attendance. In addition, in June 2005, the Division assisted in presenting a CLE for attorneys representing children in abuse and neglect proceedings, which included a segment on ICWA. Finally, the Division has offered, with the assistance of various members of the Commission, to present a CLE specific to ICWA.

Recommendation #25: All judicial circuits should require that an ICWA affidavit or court report be filed in every case involving an Indian child. The ICWA affidavit or court report should be updated at each step of the proceedings in terms of the ongoing need for the child’s placement consistent with ICWA placement preferences.

The Department of Social Services directs staff to complete an ICWA affidavit or court report for every case involving an Indian child which outlines the ongoing need for the child’s placement consistent with the placement preferences. (See Appendix 3 - DSS Policy Memo)

Recommendation #28: Certificates of Mailing should clearly indicate which documents were included in the mailing.

The Department of Social Services has directed staff to attach a certificate of mailing to the copy of the document mailed to the tribal officials to improve the tracking and verification that the document was sent and received. Compliance with this recommendation is being tracked through reviews conducted by the ICWA Program

Specialist for the Department. In addition, HB 1226, which enacted the notice requirements of ICWA, requires that the original or copy of each notice sent must be filed with the court along with any return receipt or other proof of service. The certificate of mailing should list a description of each document included in the mailing.

Recommendation #30: The provision of active efforts can be strengthened by caseworkers becoming more hands on or directly involved in helping clients achieve the goals outlined in the family service and treatment plans. For example, rather than simply giving a mother the telephone number of a program that provides parenting classes and expecting her to set up classes, the caseworker and mother could together visit with a program representative to discuss how the class will meet the needs of the mother and then discuss any barriers, such as transportation, childcare, or work schedule, that might make it difficult for the mother to attend classes.

Child Protection Services is initiating a new case management and assessment process for families working with the DSS. The new program, referred to as the Protective Capacity Assessment, will be piloted in Rapid City, Sioux Falls and Brookings beginning the week of November 14, 2005. CPS will monitor the pilot sites and if the program is successfully implemented it will become the state model.

The Protective Capacity Assessment integrates the findings from the Initial Family Assessment. Services will be targeted to address those conditions which caused the child to be unsafe in the home. DSS workers will enhance caregivers' protective capacities, by identifying and building on their emotional, behavioral and cognitive strengths. At the same time, workers will focus on eliminating the risk factors in the home that are directly responsible for the child being unsafe. This will be a major shift in how DSS provides services and treatment for families. Too frequently in the past DSS made recommendations based on the caregiver's compliance with the tasks identified within the case plan. DSS will now be more focused on what must change and how the family will perceive the changes. DSS will make recommendations based on identified caregiver behaviors rather than on strict compliance with case plan requirements, e.g., whether or not a parent attended all of the ordered parenting classes.

Part of this process will include exploring with caregivers, their beliefs and readiness to make changes. The model will be very focused on strengths and needs

directly related to safety which will allow DSS to be very clear in communications with families, the court system, service providers, and other stakeholders.

B. UNIFIED JUDICIAL SYSTEM (UJS)

Recommendation #12: All the state agencies involved in CHINS cases must develop a realistic and consistent protocol for the application of ICWA in CHINS cases. At a minimum, (1) State's Attorneys should include an ICWA statement in the petition and notice the tribes, and (2) judges should make active inquiry and a record (at each stage of the proceeding) whether ICWA is applicable. This information should also be included in the court order. The tribes should develop a consensus regarding how they are to respond to CHINS.

The Commission determined that the ICWA checklists created by the National Council of Juvenile and Family Court Judges were a valuable tool for implementing best practice standards in ICWA cases. The Commission requested, and UJS forwarded, copies of the checklists to every state circuit judge in 2004. Judge Gors, Presiding Judge of the Sixth Circuit, is chairing the UJS revision committee to revise the "Green Book" (Guidelines for Judicial Process in Child Abuse & Neglect Cases). Revisions will include recommendations made by the National Center for State Courts. The Commission recommends that the Governor's Office immediately appoint a statewide work group with representatives from DOC, UJS, State's Attorneys and tribes, to develop a protocol for notification in CHINS cases. Doug Hermann would be willing to chair this group as DOC representative and Judge Kern also volunteered to serve on the work group.

Recommendation #17: Create a brochure to be distributed to families in court explaining the Indian Child Welfare Act and their rights under the Act.

The Commission discussed the feasibility of publishing and disseminating the National Indian Child Welfare Brochure on ICWA. Students at Oglala Lakota College, under the leadership of Hazel Bonner, are currently developing an ICWA informational brochure which will be forwarded to the ICWA Commission co-chairs upon completion for their review and distribution to UJS and DSS for further review.

Recommendation #23: UJS should also fund a statewide ICWA coordinator to work with the DSS counterpart to serve as a liaison between courts, DSS, and the tribes. Furthermore, this coordinator should work to implement the many recommendations contained in this report.

Keith Bonenberger, ICWA Commission member and Director of Court Services for UJS, has been appointed as the UJS ICWA coordinator. His role is to act as liaison with the courts for distribution and information sharing of ICWA issues and updates. An additional FTE would be required to fully implement this recommendation.

Recommendation #24: Request the Supreme Court to update the South Dakota Guidelines for Judicial Process for Child Abuse and Neglect Cases (SD Guidelines – “The Green Book”).

Judge Gors has agreed to chair the UJS committee to revise the "Green Book" (see #12 above).

Recommendation #29: At each stage of the proceeding, judges should make an active inquiry about the applicability of ICWA and the status of the determination that the child is an Indian Child. This information should be included for the record of the case and the court order. Moreover, UJS should consider adopting the standards and practices set out by the National Council of Juvenile and Family Court Judges – Indian Child Welfare Act Checklists for Juvenile and Family Court Judges (June 2003). These checklists articulate best practice standards for state courts’ processing of ICWA cases. (See Appendix 8 –NCJFCJ ICWA Checklists)

As in #12 above, the NCJFCJ ICWA checklists have been obtained and forwarded to all judges. Judge Gors will utilize this material in the revision of the Green Book. Additionally, ICWA training has been scheduled for all state judges in South Dakota at their Spring 2006 judicial training conference.

C. TRIBES

Recommendation #15: The tribes should fully staff and fund ICWA offices, as a top priority, to include paralegals and attorneys. Additionally, the tribes should fully staff and fund the juvenile and family courts on each reservation.

Recommendations #20: The tribes should keep DSS, the South Dakota Attorney General, state's attorneys and the circuit courts regularly apprised of any change in tribal law regarding child protection issues, including any tribal resolution or amendments to tribal law changing the order of preference for foster care and adoptive placements for the children of that tribe.

Recommendation #27: Tribes should respond to DSS contacts either by telephone or in writing to assure regular communications with DSS workers to prevent perception by DSS or state courts that the tribe is not desirous of participating in a pending state court proceeding.

State of South Dakota
Office of the Governor
Executive Order 2005-08

WHEREAS, The 2004 South Dakota State Legislature established the Governor's Commission on the Indian Child Welfare Act to study the requirements of the federal Indian Child Welfare Act, (25 U.S.C. §§ 1901-1963), as amended to January 1, 2004; and,

WHEREAS, The Governor's Commission on the Indian Child Welfare Act conducted five meetings and nine listening sessions from May 2004 through December 2004; and,

WHEREAS, Governor M. Michael Rounds contracted with the National Center for State Courts to conduct a study in South Dakota regarding compliance with the Indian Child Welfare Act; and,

WHEREAS, In December 2004, The National Center for State Courts completed a report entitled *An Analysis of Compliance with the Indian Child Welfare Act in South Dakota*; and,

WHEREAS, The foregoing report was reviewed by the Governor's Commission on the Indian Child Welfare Act in preparation of the Indian Child Welfare Act Commission Report, which was completed in December 2004; and,

WHEREAS, The Executive Summary of the Indian Child Welfare Act Commission Report contained the commission's top 30 recommendations to improve compliance with the Indian Child Welfare Act; and,

WHEREAS, Efforts must be made to facilitate implementation of the top 30 recommendations identified by the Governor's Commission on the Indian Child Welfare Act; and,

WHEREAS, The Governor's Commission on the Indian Child Welfare Act dissolved and ceased to exist on December 31, 2004:

IT IS, THEREFORE, BY EXECUTIVE ORDER, Directed that the Governor's Commission on the Indian Child Welfare Act be re-established and be authorized to function in compliance with the following sections of this order:

GENERAL PROVISIONS

Section 1. The name of the commission will remain the Governor's Commission on the Indian Child Welfare Act;

Section 2. The membership shall consist of the following individuals:

Members appointed by the governor:

Department of Social Services

Virgena Wieseler
Ann Holzhauser
Sara Olson
Teresa Nieto

Department of Corrections

Doug Herrmann
Bill Whitlance

Court Appointed Special Advocate

Deb Fischer-Clemens

Child Placement Agencies

Sister Mary Carole Curran
Renee Eggebraaten

Representatives of Tribal Governments

Cheyenne River Sioux Tribe
Crow Creek Sioux Tribe
Flandreau Santee Sioux Tribe
Lower Brule Sioux Tribe
Oglala Sioux Tribe
Rosebud Sioux Tribe
Sisseton-Wahpeton Oyate Tribe
Standing Rock Sioux Tribe
Yankton Sioux Tribe

Bob Walters
Dave Valandra
Jackie Barse
Rose McCaulay
Cordelia White Elk
Steve Emery
B. J. Jones
Tracey Manywounds
Ramona O'Connor

Members appointed by the South Dakota State's Attorney Association:

Michael Schad
Tami Maroney Bern

Members appointed by the Chief Justice of the Supreme Court of South Dakota:

Judge Janine Kern
Judge Kathleen Trandahl
Keith Bonneberger
Judge Jack Von Wald
D. J. Hanson

Section 3. In that Article III, Section 12, of the Constitution of South Dakota, makes legislators ineligible for any civil appointment from the governor, the governor requests that the chairs of the commission invite to participate in the commission two senators and two representatives, as recommended by the President of the Senate and Speaker of the House, respectively, to serve as ex-officio members.

Members recommended by the President of the Senate:

Senator Theresa Two Bulls
Senator Bob Gray

Members recommended the Speaker of the House:

Representative Joni Cutler
Representative Jim Bradford

Section 4. The Governor's Commission on the Indian Child Welfare Act shall focus its efforts on implementation of the top 30 recommendations contained in the Indian Child Welfare Act Commission Report by reviewing each recommendation to determine:

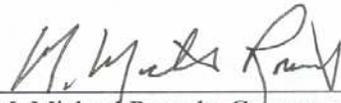
- a. The responsible entity or entities for implementation;
- b. Action plans for implementation;
- c. Timelines for implementation; and
- d. Barriers to implementation.

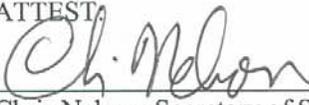
Section 4. The Governor's Commission on the Indian Child Welfare Act shall be administered by the South Dakota Department of Social Services.

Section 5. The Governor's Commission on the Indian Child Welfare Act shall issue a report to the governor by November 30, 2005, and shall dissolve and cease to exist upon completion of said report.

Dated in Pierre, South Dakota, this 6th day of June, 2005.




M. Michael Rounds, Governor of South Dakota

ATTEST

Chris Nelson, Secretary of State

Governor's ICWA Commission Meeting

September 9, 2005

King's Inn, Pierre SD

Commissioners Present: Raymond Cournoyer, Bob Walters, Dave Valandra, Garrie Kills A Hundred (on behalf of Guy Zephier), Sara Olson, Lynn Sudbeck (on behalf of DJ Hanson), Judge Jack Von Wald, Judge Kathleen Trandahl, Judge BJ Jones (Co-Chair), Judge Janine Kern (Co-Chair), Tracey Manywounds, Cordelia White Elk, Renee Eggebraaten, Ann Holzhauser, Mike Schad, Virgena Wieseler, Sr. Mary Curran, Bill Whitelance, Doug Herrmann, Steve Emery, Jim Bradford, Teresa Nieto

Commissioners Absent: Rose McKauley, Deb Fischer-Clemens, Tami Maroney Bern, Joni Cutler, Bob Gray, Theresa Two Bulls, Keith Bonenberger

Others present: Margaret Bad Warrior, Pamela Bennett, Duane Jenner, Tom Magedanz, Roger Campbell, Marge Two Hawk, Robert Becker, Aske Whitebird, Lori Walking Eagle

1. Welcome

The meeting was called to order at 9:11 a.m. Bob Walters said the opening prayer.

Virgena Wieseler introduced the new Secretary of DSS – Deb Bowman. Deb thanked the co-chairs for continuing the endeavor, and also thanked the Commissioners for the work that has been done. She described her background and experience. The governor has decided to have the Commission look at the top 30 recommendations and prioritize the ones that have not been acted upon yet and also come up with ways to implement them. She also briefly described what DSS has done to comply with the recommendations.

2. Overview of 2004 Legislation (UJS and DSS)

Judge Kern summarized why the Commission was reconvened. Governor Rounds would like to have a report by November 30, 2005. The Commission will now review which of their 30 recommendations have been implemented and which have not. They will look at the ones that have not been executed and think of ways in which they can be implemented. Much has happened since the December 2004 meeting. The 2005 legislature enacted several statutes effecting ICWA compliance and the Supreme Court rendered three important decisions. Judge Kern also discussed SDCL 26-8A-33 which was originally submitted to the Supreme Court by the ICWA Commission as a proposed rule. The Court held a hearing on February 17, 2005 and adopted the rule. Commissioner Emery testified in favor of the rule. It is now codified as 26-8A-33, and allows Tribes to appear in ICWA proceedings either through counsel or by a representative designated by the Tribe. DSS has made a lot of steps forward.

Lynn Sudbeck (UJS) talked about recommendation numbers 12, 29, and 24. The three recommendations are intertwined. Judge Gors has agreed that the Green

Book needs to be updated and he will be in charge of making the revisions. Judge Gors has copies of checklists from the National Council of Juvenile and Family Court Judges and the NCSC recommendations to incorporate into the Green Book. NICWA has a credit card sized list of what happens during court. UJS has received permission to copy and hand out to families. Keith Bonenberger has been named the state-wide ICWA Coordinator to work with DSS. Judges have training sessions twice a year; the next spring training will have an ICWA component. Lynn also brought up that North Dakota state judges meet with the tribal judges three times a year. DJ Hanson will attend this next week. The training is in New Town, North Dakota and the contact person is Jim Ganje (iganje@ndcourts.com).

Judge Jones asked how judges from the state and tribes can speak to each other about an ICWA case (ex-parte communication). Judge Trandahl said that judges can do that between states (Uniform Child Custody Jurisdiction and Enforcement Act). Judge Kern suggested that tribal judges should be included in this type of legislation.¹

Ann Holzhauser (DSS) briefly went over the four bills that were passed.

HB 1226 – notice bill. Notice can be made by telephone or fax, 48-hour hearing to be sent to tribe, ICWA requirements to be tracked by certified mail (sent to parents, tribe, Secretary of Interior, BIA, Indian custodian). The files now include a sample form so that each file is uniform.

SB 55 – relative placement. This does not only apply to ICWA cases, but to all cases. Relatives are given preference for foster care and adoptive placement, as long as it is in the best interest of the child. This also applies to custodians such as: stepparents, adoptive parent of sibling of child in question – in order to keep children together. If a non-relative is chosen over a relative (adoptive placement) then that relative has a right to request a hearing. This bill doesn't prevent the tribes from intervening in an A & N.

SB 12 – appearances. This bill authorizes a parent to appear telephonically for a hearing to voluntarily terminate parental rights.

HB 1258 – expands definition of an abused and neglected child to include one who knowingly exposes the child to an environment that is being used for the manufacture, use or distribution of methamphetamine or other drugs.

3. Summary of South Dakota Supreme Court decisions

Judge Jones summarized the three SD Supreme Court decisions that were rendered and discussed an important case pending in California.

JSB-Rapid City. Does the Adoption and Safe Families Act apply to Indian Children? The SD Supreme court is the first court in the nation to resolve this. ASFA does not relieve "active efforts". If it's an Indian child, DSS is not relieved of

¹ On September 14, 2005, Judge Trandahl sent the Commissioners an e-mail in response to Judge Jones' concern in which she stated that the 2005 Legislature repealed the UCCJA and enacted the UCCJEA in its place. Pursuant to Section 104 of the Act, codified at SDCL 26-5B-104, the courts of South Dakota are now required to consider Indian Tribes the same as states. Furthermore, child custody determinations made by Tribal courts are to be honored under the terms of the UCCJEA.

duty to provide services to Indian families. DSS doesn't have to apply ASFA, but the tribe has to apply ASFA to kids coming through the court system.

M.H. – Sioux Falls. Who is a qualified expert witness? The Supreme Court held that just because someone has general knowledge of ICWA that does not qualify someone as an expert witness. The Supreme Court also held that expert witnesses must have knowledge of that particular Tribe's child-rearing practices and not just generic knowledge.

The People of the State of South Dakota in the Interest of O.S. Who is a qualified expert witness? The Supreme Court upheld use of a DSS social worker who had four years experience in DSS where half of her cases involved ICWA. Social workers are generally going to be qualified expert witnesses (QEW). The courts will probably have a problem with lawyers being a QEW. The Supreme Court denied QEWs testifying by phone because tribe had not made prior arrangements.

Doe v. Mann (California) – challenges to court decisions. Mother took case to Federal court through 1914 – Indian parent or child may challenge state court decisions to overturn decision. Now there is a case in front of Judge Schreier filed by the Crow Creek Sioux Tribe. Currently because of habeas corpus (cannot use to challenge termination of parental rights), but 1914 may be used to do this.

Break – 10:26 am to 10:51 am

4. Department of Social Services – status of efforts to implement recommendations.

Virgena Wieseler (Director, CPS) went through a PowerPoint Presentation regarding the efforts of DSS to comply with the ICWA Commission's top 30 recommendations.

- #1 - Governor Rounds met with Secretary Bowman, Virgena Wieseler, and Ann Holzhauser about the ICWA Commission in January. They suggested doing follow-up meetings this year. He reappointed the Commission through Executive Order and wants a report by November 30, 2005.
- #2 - Hire Child Placement Investigators (Family Locators) housed in Pierre and Rapid City. The focus will be on kids coming into care, contacting tribes, contacting other relatives – and asking relatives how they wanted to proceed in terms of kinship care, licensed foster care, etc.,. The investigators will help the families through whichever process they choose. The positions were filled in August.
- #3 - Statewide ICWA director for DSS. Duties were reassigned in CPS State Office to free up an FTE for the ICWA Program Specialist. DSS hired Teresa Nieto; she is located in Rapid City. Among others, her job duties are: to conduct an ICWA knowledge assessment review within the CPS department – 22 question assessment of knowledge for staff to establish a baseline as to ICWA knowledge in the office to focus training efforts; ICWA compliance case reviews by office; ICWA director's meetings; identifying expert witnesses and making a listing available; and visiting tribes to review ICWA office.

- #4 - Contracting. Currently have contracts with the Sisseton Wahpeton Oyate. Working with the Oglala Sioux Tribe and the Rosebud Sioux Tribe on an Integrated Child Welfare System.
- #6 - ICWA info on CPS website. Providing a listing of all ICWA offices, their contact information, and tribal judges so offices can go to website when dealing with an ICWA case. The info was also sent to Chuck Shroyer and was forwarded to all state's attorneys. ICWA resource material was distributed to all state's attorneys offices at a training seminar. The Green Book will contain a chapter on ICWA, a copy of the BIA guidelines, a copy of the notice bill that had been passed, and federal regulations. The State Bar Association also did A & N training with an ICWA component; the training is available for all attorneys.
- #7 – Create family placement specialist teams with representatives from the DSS. DSS has hired two social workers; their sole responsibility is to locate relatives of children entering care. They are also working with ICWA directors to assist in locating relatives. They hope to meet with tribes about case planning, child care, etc.
- #8 – presented by Kathy Deserly, who has been working with Virgena's office since last November. She is working with CPS to design collaborative circles and a recruitment/retention strategic plan. They want to bring back the State-Tribal effort. The State-Tribal work group to be looked at as more of a collaborative effort. They are asking themselves what activities this group would tackle. What is coming out of the ICWA Commission and how can they be sure it lives on after the Commission ends. The next meeting will take place on the 21st and 22nd. Tribes are submitting names to participate and the state has identified people as well. Virgena stated that the same people must show up to the meetings consistently for things to get done. Judge Kern asked for a copy of the members of the collaborative and a copy of the draft plan for all the Commission members. Aske will send it out to all the ICWA Commissioners after the next Collaborative Circle meeting scheduled for September 21st 22nd, 2005.
- #9 – resolved through HB 1226
- #10 – revise format of PRIDE. PRIDE is a copyrighted curriculum – and cannot be changed. PRIDE Adaptation Project which is an ongoing initiative by the PRIDE Advisory Workgroup to develop a PRIDE curriculum focused on Native American families. South Dakota is one of the states being looked at to pilot the curriculum. Extending families through UNITY, available through Casey Family Programs and some CPS trainers have been trained. SRST, CCST, SWO, and FSST have licensing agreements with the State. CRST, RST, and OST have draft licensing materials.
- #13 – create a statewide ICWA office within state government. No office has been created but DSS has hired a statewide ICWA coordinator and UJS has named Keith Bonenberger as the ICWA contact person.
- #14 – court reports go to ICWA director and tribal judges.
- #16 – MOU between Casey Family Programs and CPS in Mission and Pine Ridge to implement Family Group Decision Making. Implementing Group Family Decision Making in Rapid City as a pilot program with assistance of

Casey Family Programs in Pine Ridge. Need to obtain outcome data to support expansion in other areas.

- #18 – develop a protocol for transfer of cases.
- #19 – DSS contracts with the Children's Home Society to complete all kinship home studies, home locators. CPS has had a 25% increase in relative placements between July 2004 and June 2005 (this number does not just include Native American children, but all children that come into CPS custody). The CPS staff is striving to improve that number.
- #21 – implement ICWA resources within state and private adoption agencies. DSS and UJS should designate people who are expert witnesses and disseminate information.
- #22 – develop a network of ICWA experts.
- #25 – ICWA affidavit – update in Green Book. Ongoing discussion with State's Attorneys regarding updates in the Guidelines. Have ongoing dialogue with several counties on the ICWA Affidavit.
- #28 – Certificates of Mailing should clearly indicate which documents were sent to the tribes. Efforts have been made to attach the Certificate of Mailing to the document mailed in the DSS file and to develop a tracking log to be contained in each case record.
- #30 – protective capacity assessment being piloted. Directly relates services to issues causing children to be unsafe in home – behavior vs. compliance based. DSS wants to reconnect children with their families and keep them safe. Plans are to begin the pilot this fall.

Lunch – broke at 12:02 pm and resumed again at 1:05 pm.

5. Report from the Great Sioux Nation ICWA Consortium

Lori Walking Eagle and Raymond Cournoyer from the Great Sioux Nation ICWA Consortium gave a PowerPoint Presentation on their organization. The organization is comprised of tribal ICWA directors/employees. They are a work in progress – they have developed by-laws and a charter, and have done Honoring the Children ceremonies. They leverage funds for attorney's fees and travel; they are coordinating a list of all ICWA offices on the reservations. They are planning a workshop in December in Rapid City. They are meeting in Rosebud in September (the 3rd or 4th week in September). The GSN ICWA Consortium extended an invitation to the Commission to attend and speak at their meeting.

Raymond Cournoyer added that in Charles Mix County, he must submit a tribal resolution for each case he is appearing on in Circuit Court. Judge Jones and Judge Kern said that one resolution designating him as the representative of the Tribe should be sufficient. They offered to write letters to Chief Justice Gilbertson to discuss training for UJS staff on his issue.

6. Report from Tribes

Standing Rock Sioux Tribe – Tracey Manywounds

Her office currently has agreements with North Dakota and South Dakota. They don't terminate parental rights – as termination is not a part of their code and tradition. There is a strong court system – a licensed Standing Rock Sioux Tribal attorney gets the forms or court orders. There are administrative reimbursements from 4E from ND, currently trying to access from SD. They are focusing on suicide prevention and received a grant to assist in suicide prevention efforts. OST has come up to help Tracey in the communities as well as the State of North Dakota. She will be having a meeting with the SD Health and Human Services department to help with suicide prevention. Her office is funding a lot of programs which promote positive activities and assisting families with burial expenses. She has a good working relationship with ND and all four tribes in ND run their own programs. It's approved through the state and federal 4E agreements.

Oglala Sioux Tribe – Cordelia White Elk

For the past four years they have been building an integrated child welfare program. It is designed to work with a number of disciplines: courts, public safety, mental health, etc. They organized a leadership committee who drive this and are now seeing the results. They will be having a judiciary retreat to provide training on this new program. They are also pulling in custom laws which include community members and spiritual leaders. There are also interagency meetings with I.H.S., CPS, and Dakota Plains Legal Services. The ICWA Commission has helped them tremendously and the Tribal/State committee will help.

Crow Creek Sioux Tribe – Dave Valandra

Dave's office has a good working relationship with the State of South Dakota. His office deals strictly with ICWA cases. He monitors 70 cases in various states other than SD. 16-17 cases are from SD. He does licensing of foster homes (currently 11 licensed foster homes), does home studies, etc. All foster homes are full. He also gets 250-300 notices from other states for enrollment eligible children related to ICWA.

Cheyenne River Sioux Tribe – Bob Walters

The tribe is currently working on standards for licensing programs. In 2000 they passed standards and sent them to the state, but nothing was done. They are in the process of working on changes with a tribal lawyer. CPS is needed. Children are being put into non-Indian foster homes far away (98+ miles). They are working on getting foster parents on the reservation.

Yankton Sioux Tribe – Ray Cournoyer

He thinks there have been a lot of positive steps to help tribes. He has been running into problems with the State's Attorney regarding notification. Currently, the State's Attorney requires Ray to have a separate tribal resolution for each child. This poses a problem for the 48 hour hearing.

Flandreau Santee Sioux Tribe – Garrie Kills A Hundred

Stated he is very impressed by what he's heard today. He is willing to make a commitment to this process. They are currently trying to get a Boys and Girls Club started.

Rosebud Sioux Tribe – Steve Emery

Steve spoke on a number of topics throughout the day and therefore did not give a separate report.

Sisseton Wahpeton Oyate – Judge BJ Jones

The Oyate has had 4E agreement with the State since 1978 – which helps with placement. They also have BIA funding and the tribe kicks in \$500,000 per year for children. They receive about 100 cases to transfer jurisdiction. He says that in regard to the transfer protocol, that the local law enforcement and social workers have a duty to cooperate with tribes to help enforce the presentation of the case. He also brought up that AFSA applies to children on reservation but does not apply to children off of the reservation. They are also beginning to have problems with the “disestablished reservation” label.

Lower Brule Sioux Tribe – Rose McKauley

Rose was not present at this meeting.

Judge Kern then asked if any other Commissioners wished to speak on behalf of their agencies.

Sr. Mary Curran: the Catholic Family Services program is still looking to see if any of the recommendations apply to them. They have found a couple of things they should be doing. Their program does not deal with A&N cases, however this has been educational for them.

Jim Bradford: he asked if the legislation has done anything good for the children. Steve Emery commented that generally it has done some good; however he does not like SB 12. This bill is ok for folks who are beyond the authority of SD judges (people who are in federal custody); on the other hand for those who are within SD jurisdiction, this may pose some problems. Jim was worried that this legislation wouldn't help the kids. Ann Holzhauser said that the effects of these bills may be hard to judge right now because the bills were just enacted.

Mike Schad: His office deals primarily with A&N cases and they're doing their best, but doesn't know if it's good enough. As far at the 48 hour hearing and tribal affiliations of kids – sometimes tribal affiliation is still not know by the time the hearing takes place. The biggest issues that he's run across is the notice of the 48 hour hearing. Adding exposure to methamphetamine as grounds to file a petition will have an immediate effect because the meth problem is huge in Pennington County. Overall he thinks that the communication between the State and the tribes can still be improved and a conscious decision to improve communication is a matter of developing new relations with people again. Biggest benefit he's seen is the building of communication. Steve Emery commented that this is the first time that he's aware of that the State Bar has addressed ICWA. Steve appreciates what Mike's been doing and thinks it's tragic that the Commission ends on November 30. The ongoing dialogue that has been taking place is very helpful because the State's Attorneys and Tribal administration have a lot in common. Steve also commended DSS for being on the job 24 hours a day 365 days a year. Mike Schad added that with the revised Green Book there should be more training on ICWA. Ann Holzhauser said that she e-mailed the State Bar Association and said she'd help with the training on ICWA but that there ought to be other people involved also. Mary Curran brought up that it

shouldn't be advertised as just for ICWA abuse and neglected cases, but also made available to all attorneys.

7. Small Group Breakout

The Commission broke out into three groups to discuss the 30 recommendations and to prioritize the recommendations that have not been touched upon yet.

8. Small Group Reports

Prioritization of recommendations:

Group 1: #4 – recommends having Secretary Bowman send out a letter to the tribes on this point. #5 – tribes and DSS should work at identifying potential expert witnesses. This is an urgent concern. #12 – priority placed upon protocol developed by each tribe, state's attorney, and UJS. #15 – public defenders offices identifying someone who specializes in ICWA cases for parents (Minneapolis does this and they have an office set up for it) – governor would send a letter to tribes asking them if they would be interested in receiving funding from the federal level to help with ICWA cases (assistance in advocating for funds). #18 – transfer of records and funding (4E) should follow the child. This should be addressed soon and look into developing protocol for addressing other funding issues. Assure expert witness testimony for foster care placements – look into and follow how it's being developed across the state – expert testimony presented within 90 days – 1912E needs additional funding/compliance – could happen at the adjudicatory hearing – an area where we need to improve and build it into the Green Book and maybe state law as its already federal law. #30 – active efforts – distinction between reasonable efforts and active efforts at the court level. Possibility of Commission members commenting on what the National Center for State Courts report said. Judge Jones and Judge Kern requested that Commissioners send their comments to them.

Group 2: mainly talked about Mike Schad's case – training DSS workers to seek the info out (possibly an Indian custodian) as soon as they get the case. Asking social workers to look into that and at the same time having the tribes do a record check (for an Indian custodian). Protocol on transfer and the need for it – judicial training, bar training, continuing CLE's – training every 5-8 years is not enough.

Group 3: #18 – transfer protocol – getting cooperation from law enforcement, DSS, etc. in presenting in tribal court. Bringing kids back from another state possibly by using interstate compacts to follow child rather than not having access to funding. Availability for tribal judge to use state court room where family is, providers are, resources are, witnesses are. Develop a check list for private adoptive agencies and judges to use. Funding for developing the expert witness list available by tribe needs to be looked into. Training in SB 12 at the annual conference for Clerk of Courts – talk to UJS people on Commission on doing the educational training. Develop a form for relatives to help them get a hearing. Develop a resource listing by tribe on: mental health departments, alcohol/drug departments, traditional healers, housing, etc. Laminate cards with ICWA info on it and the ICWA offices info on it.

Things to accomplish before the next meeting: summary of what was reported by the end of next week (Mike Schad, Ann Holzhauser, and Virgena Wieseler). Virgena will send out an e-mail of her PowerPoint Presentation and a draft of Collaborative Circle along with who is involved with it. At the next meeting the written document needs to be talked about (how to draft it). Report progress and look at recommendations that weren't addressed and how they can be implemented.

Jim Bradford brought up that he would like to see some of the Commission members on the Collaborative Circle. The input to the Governor and Legislature is very important. He would like to know how to take what the Commission has done and keep people vested in what has been talked about. Judge Trandahl said that a lot of progress has been made but a lot of people don't know about it and a lot of good things have been done by the state and tribes. Judge Kern suggested that maybe there ought to be a press conference. Judge Jones suggested a summary of great accomplishments from DSS, a slide show, discuss what hasn't been done yet and which entity is responsible, and talk about the report.

9. Strategic plan – next meeting date

The next meeting date was discussed (October 8, 2005) in Rapid City. This date was suggested as the majority of Commission members will be there for the Black Hills Powwow.

Sr. Mary Curran concluded the meeting with a prayer. The meeting ended at 4:15 pm on Friday September 9, 2005

Governor's ICWA Commission Minutes
October 8, 2005
Day's Inn (Exit 59), Rapid City, SD

Commissioners Present: Kathleen Trandahl, Keith Bonenberger, Joni Cutler, Tracey Manywounds, Rose McCauley, Dave Valandra, Teresa Nieto, Virgena Wieseler, Sara Olson, Garrie Kills A Hundred, Doug Herrmann, Jim Bradford, Deb Fischer-Clemens, Raymond Cournoyer, Bob Walters, Co-chair Janine Kern, Co-Chair BJ Jones, Steve Emery

Commissioners Absent: Bob Gray, Theresa Two Bulls, Cordelia White Elk, DJ Hanson, Jack Von Wald, Michael Schad, Renee Eggebraaten, Bill Whitelance, Sr. Mary Curran, Tami Maroney Bern, Ann Holzhauser

Others Present: Margaret Bad Warrior, Hazel Bonner, Barry LeBeau, Dena Palmier, Terrence Veo, Bev Tuttle, Julia Monczunski, Heather Wood

9:00 a.m.

Opening Prayer and Welcome

The meeting started at 9:10 a.m. with Rose McCauley saying the opening prayer.

9:05 - 9:10 a.m.

Approve Minutes

Judge Kern asked Raymond Cournoyer if he had been able to resolve his concerns with the Charles Mix County Clerk of Courts. A question had arisen as to whether he needed to file, in every case, a copy of the Yankton Sioux Tribe's resolution appointing him to represent the tribe in abuse and neglect proceedings. Raymond said he didn't have a lot of time to deal with it just yet. Judge Kern then provided a brief overview of Raymond's concern which was addressed at the September 9, 2005 meeting. Judge Jones asked if any other tribes are having problems with tribal representatives being able to appear in court. Judge Kern said to contact Keith Bonenberger if there are any more problems. It's probably a learning issue as it is a new statute.

Steve Emery said he is very dissatisfied with the response he received from the state regarding 4E Compact negotiations. He was supposed to carry out negotiations for the tribe, but Virgena Wieseler said that she is getting requests from other people from the tribe (RST) as well. She was not sure who exactly had authority to speak for the tribe. It was resolved that she would be working with Steve Emery.

Motion to approve minutes:

Motion made by Kathleen Trandahl;

Seconded by Keith Bonenberger

Ayes: 18 Nays: 0

Motion carries

9:10 - 9:30 a.m.

Collaborative Circles – Virgena Wieseler and Teresa Nieto: a forum for continuing the work of the commission

Virgena Wieseler provided an overview of the draft of the Collaborative Circle. The first section details the background and history of the group. One of the challenges facing the group is inconsistent attendance which makes it hard to develop consistency and continuity. They have asked for technical support through Adopt US Kids, a national resource center for foster care and kinship placements which helps states with recruitment and retention.

The Collaborative Circle is a collaboration between state and tribal entities. The vision of the Collaborative Circle is to develop

a system of child and family services and supports in South Dakota that ensures that each Native child is safe and thriving in a permanent, appropriate home that families are supported in their communities, and that communities themselves take responsibility for ensuring that this vision becomes a reality.

Membership (discussed on page 8) is comprised of up to 36 members, including: tribal representatives, families/consumers, state officials and other partner representatives. Two representatives from each of the nine tribes and a designated alternative were selected for continuity. Currently there are no tribal reps from: Rosebud, Cheyenne River, Crow Creek, or Lower Brule, although Rosebud and Cheyenne River currently have unofficial representatives.

There are five standing committees in the Collaborative and anyone can participate on those committees. A number of suggestions were made by the commission regarding the criteria for membership. Recommendations/questions that will be taken back to the Collaborative Circle are: 1) Will this impede tribal sovereignty?; 2) Why should appointments be different for the tribes?; Background checks should be required for everyone; 3) Should tribal members be selected based on recommendations rather than on formal tribal appointments? Wieseler said she'd take these issues back to the Collaborative Circle. Steve Emery requested that the requirement for a member to "have knowledge of child and family service issues and ICWA" be reworded to "have experience working with child and family service issues and ICWA."

There will be four quarterly meetings of the Collaborative Circle. The standing committees will be meeting more often. The tribal ICWA directors were contacted and if there was not a response from them, contacts were made with tribal leaders to obtain representation.

Legislation is not necessary to formalize the Collaborative Circle. However, the standing committees may introduce legislation as needed.

9:30 - 10:00 a.m.

Outline and Discussion of draft report to the Governor

The Commission went through the National Center for State Courts' recommendations. As the Commission received the finalized recommendations a week before it expired in 2004, they did not previously finalize the report that was submitted or respond back to the review team.

- Recommendation 1:
- Recommendation 2: ND is going to be working on an ICWA bill
- Recommendation 3: DSS can implement through policy and UJS through judges
- Recommendation 4: DSS through policy; UJS through enforcement. This should also include the private adoption agencies
- Recommendation 5: Legislature has passed already and it is a statutory fix (state's attorneys). A form has been created and will be sent out to the commission.
- Recommendation 6: State's attorneys issue (HB 1226) was passed. Courts, DSS, and state's attorneys need to assure new form is being utilized.
- Recommendation 7: The DSS website now contains a list of ICWA directors and tribal judges. Commission members indicated there could be a problem as the person assigned to the case is not always the ICWA director. The issue has not been raised in court yet. This fits in with Raymond Cournoyer's problem – it was decided that he should attach a copy of the resolution of appointment to each motion to intervene.
- Recommendation 8: UJS thinks this has been accomplished but will check for verification (register of actions). Judge Jones asked if this applies when a tribal judge talks to a state judge regarding a case. Keith Bonenberger did not think so.
- Recommendation 9: Within the next year UJS will be doing ICWA training for all judges.
- Recommendation 10:
- Recommendation 11: it is on UJS's to-do list as well as the training. The clerks of court will be getting training on this issue this fall.
- Recommendation 12: UJS and DSS have designated ICWA reps (Teresa Nieto and Keith Bonenberger). Information has not yet been received from the private adoption agencies. Virgena Wieseler and Keith Bonenberger will compile what's been accomplished in the final report.
- Recommendation 13: Needs to be completed in order for training to start.
- Recommendation 14: It would be helpful if the tribes could develop standardized motions for intervention. Dakota Plains Legal Clinic is redoing some forms. Cheyenne River has

developed legal forms. Peg Bad Warrior will send those to Judge Jones and Judge Kern. The Collaborative Circle has an ICWA component to it and that could be the venue for tribes to sit down and standardize the forms.

- Recommendation 15: UJS – Every judge has received this. The Bench Book needs to be updated also. Judge Gors has agreed to work on this.
- Recommendation 16: Accomplished.
- Recommendation 17: The clerk of courts has this list. The attorneys either received the training directly or viewed training tapes that were sent out by the Supreme Court.
- Recommendation 18: Training issue.
- Recommendation 19: Who is an ICWA expert witness? DSS caseworkers should not serve as ICWA experts in their own cases.
- Recommendation 20: DSS should contact people on the reservation to set up cultural activities for kids in foster care to learn more about their heritage. There are activities that are not on the tribe's websites that are part of community life.
- Recommendation 21: Accomplished. There have been two family locators hired – one in Rapid City and one in Pierre.
- Recommendation 22: No response from most of the tribes, CRST has responded back. Statewide coordination is needed with DOC, UJS, State's Attorneys, local agencies and Tribes. (Doug Herrmann indicated he would take the lead on this issue.)
- Judge Kern briefly went through the rest of the recommendations.

10:45 - 11:00 a.m. Break

11:00 - 12:00 p.m. Breakout sessions: UJS, DSS, Legislation, and Tribes
The Commission decided to skip this as it was done in the previous session. The Commission also decided to work through lunch to finish the meeting by 1:00 p.m.

11:00 - 1:00 p.m. Additional recommendations to include in report
The commission went through their top 30 recommendations and decided what had been accomplished, what remains to be done, and which agency should take the lead. The executive report also needs to be condensed.

Hazel Bonner asked if OLC could contract with DSS to provide the training for licensure of Indian foster homes plus an additional 15 hours of college credit. Virgena Wieseler responded that it depends on what the budget will be for 2006 and that she'd know more by the end of February.

- Recommendation #4: Roger Campbell and Virgena Wieseler will set up meetings with the tribal leadership to discuss 4E agreements. It will be done by next week.

- Recommendation #5:
- Recommendation #6:
- Recommendation #7:
- Recommendation #8:
- Recommendation #9: done through statute
- Recommendation #10: recommend need for funding to utilize contract dollars with universities.
- Recommendation #11: ties back into #4
- Recommendation #12: creation of a statewide task force (UJS, DOC, DSS, State's Attorneys, Tribes) and eventually local agencies. Previously, Doug Herrmann said he would form a committee to address this issue.
- Recommendation #13: because of funding issues, it's still unresolved; the report should emphasize this still needs to be accomplished.
- Recommendation #14:
- Recommendation #15: Judge Kern thinks it is very important
- Recommendation #16: Funding issue – will need either FTEs or contract dollars.
- Recommendation #17: UJS has NICWA brochure and could draft one to make it more detailed. Hazel Bonner's class at OLC is currently updating one. It should be done in about a month and she will send it to the Commission.
- Recommendation #18: Goes with numbers 4 and 11 – still needs to be done. DSS and ICWA directors could draft a model to delineate a protocol for transfer.
- Recommendation #19: Funding issue – FTEs or contract dollars. Has not been accomplished yet.
- Recommendation #20:
- Recommendation #21: private agencies
- Recommendation #22: State and Tribes should have their own list of experts available to litigants in cases.
- Recommendation #23: Accomplished.
- Recommendation #24: Working on.
- Recommendation #25:
- Recommendation #26: A letter should be sent to the Governor updating him on the South Dakota Supreme Court rulings (Judge Jones). Also goes with #18. 4E money should apply if everyone follows compact rules, if no one follows compact rules, no money.
- Recommendation #27: Collaborative Circle.
- Recommendation #28:
- Recommendation #29: Has been mailed out to the judges. Will also go into the Green Book and Bench Book updates.
- Recommendation #30:

The Commission discussed the mechanics of the final report to the Governor. Wieseler agreed to provide a narrative draft. Jones, Kern and Trandahl will review the draft. They will send out draft to

the Commission and they will e-mail back any changes. A second draft will be sent out again and Commissioners will respond with suggestions or changes.

Jones, Kern, Trandahl – 1st draft to be done by November 8, 2005. Changes to draft to be submitted by November 15, 2005. Finalized draft out for one last review by November 22, 2005.

Deadlines:

Wieseler – October 25, 2005

Motion to approve minutes by e-mail/electronically:

Motion – Emery, Second – Herrmann

Aye – 18, Nay – 0

Motion passed.

Kern asked if there were any other issues. Emery would like #9 (uniform notification) to be rewritten to include a requirement that the ICWA director receive notice. Fischer Clemens asked that SDCL 26-7A-15.1 be rewritten to include a requirement for certificates of mailing that delineate the documents sent. Bad Medicine suggested that Kinship be put under #19. Jones suggested that the report also work in the recommendations of the review team.

Motion to approve putting in recommendations of review team

Motion – Emery, Second – Fischer Clemens

Aye: 18, Nay: 0

Motion approved.

1:00 - 1:15 p.m.

Discussion regarding press release

Because there has been much progress towards improving ICWA compliance, there should be a press release summarizing the work of the Commission. A copy of the final report should be sent to everyone who attended the public hearings.

Bradford suggested that Tom Van Norman be recognized in the press release as he was the one who initially suggested the Commission.

Campbell's office will put out the press release and will also mention the Collaborative Circle as the body now working to further the Commission's objectives.

Steve Emery said the closing prayer and the meeting adjourned at 1:15 p.m. on October 8, 2005.

**STATE OF SOUTH DAKOTA
CHILD PROTECTION SERVICES
KNEIP BUILDING, PIERRE**

**POLICY MEMORANDUM
CPS/POL # 2006-06
DATE: November 23, 2005**

SUBJECT: CPS Social Workers as ICWA Experts
Utilization of ICWA Affidavits by CPS Social Workers

FROM: Virgena Wieseler, Division Director

The Governor's Commission on the Indian Child Welfare Act published its report in January 2005. Since the publication of the report, the Department of Social Services, Division of Child Protection Services has worked diligently to implement the top 30 recommendations contained in the Commission's report. Recommendations #22 and #25 have been discussed with management staff and are being implemented. The recommendations are as follows:

Recommendation #22: All of the state agencies, in consultation with the Tribes, must work to develop a network of ICWA experts. This may include DSS social workers and supervisors (in the circuits where DSS testimony is accepted) if the DSS worker meets established minimum criteria (i.e., three completed ICWA cases, advanced training in ICWA, and the knowledge of services available to Indian children and families and Indian culture). Additionally, at a minimum, DSS workers should not be in a position to testify as an expert on their own cases.

DSS social workers and supervisors should strive to follow Recommendation #22. A DSS/CPS social worker is not permitted to provide expert witness testimony on their own cases. ICWA Program Specialist will maintain a list of individuals who have been or could be utilized as an ICWA expert witness.

Recommendation #25: All judicial circuits should require that an ICWA affidavit or court report be filed in every case involving an Indian child. The ICWA affidavit or court report should be updated at each step of the proceedings in terms of the ongoing need for the child's placement consistent with ICWA placement preferences.

In circuits where allowed, DSS social workers will complete an ICWA affidavit and /or a court report, to be filed at the 48 hour hearing or as soon as possible thereafter, which shall include information regarding any efforts provided prior to removal, the likelihood of serious emotional or physical harm if the child is returned, and the efforts undertaken to locate a placement consistent with ICWA placement preferences. The affidavit and/or court report should be updated at each step of the proceedings.

Action Required: As Indicated Above
Action Due Date: Immediate and Ongoing
Inquiries: Field Program Specialist and State Office
Distribution: All CPS Manual Holders



Draft South Dakota Recruitment and Retention Plan July 25, 2005

Background and Introduction

AdoptUsKids was invited by the state of South Dakota to assist with the development of its Recruitment and Retention Strategic Plan. Preliminary State data indicated that the State has made significant progress in increasing the number of approved homes to accommodate the numbers of children in care, but did not have enough homes to meet the racial, cultural, ethnic and other exceptional needs of children requiring placement. Of special concern to the State was the fact that approximately 59% of the children in care are of Native American heritage, while only 9% of the approved foster homes are Native American. State leaders had started a State/Tribal Workgroup in 2002 to address the issues of recruitment and retention of Native American families, but expressed concern that the group's effectiveness and attendance had been less than hoped.

The technical assistance process began in November of 2004. Since then state and tribal leaders have come together to develop a common mission statement, partnership and structure to address the needs of the children and families in South Dakota. This document provides a blueprint to integrate the original State/Tribal Workgroup's (the designated strategic planning committee) strategies and work plans into the committee structure of the newly formed *Collaborative Circle*.

Methodologies

Recruitment and Retention Assessment

It was decided that the first step in the process would be to conduct six focus groups in five cities to assess the current situation from the perspective of stakeholders, including the "State/Tribal Workgroup" members, resource families, agency staff and other invited stakeholders throughout the state. These focus groups were held during the week of November 1, 2004. (See the attached report of the findings from this process.)

Accelerated Strategic Planning Workshops

The State designated the State/Tribal Workgroup with the addition of some foster parents and additional tribal representatives as their recruitment and retention strategic planning team. The group met November 4-5, 2004 to wrestle with the stakeholder recommendations and establish priorities for their plan. The team selected priority issues and developed goals and strategies to be included in their plan.

The team identified effective state/tribal collaboration as a pre-requisite to moving forward on its plan. The State requested technical assistance from AdoptUsKids (Kathy Deserly) and the National Resource Center for Organizational Improvement (Steve Preister) to facilitate the development of a more functional partnership. Meetings were held in March and June 2005 to facilitate the development of a new collaborative entity. This group

named the collaborative - *United for Families: the Collaborative Circle for the Well-Being of South Dakota's Native Children* or for short – the *Collaborative Circle*. The vision, mission and values of the Collaborative Circle were considered and adopted by the State/Tribal workgroup. Priorities, structure, and sub-committees were approved and are being developed.

In addition, South Dakota reconvened the original strategic planning committee to refine strategies and actions for the state's Recruitment and Retention IV-B Plan. The state requested that the original AdoptUsKids strategic planning consultants, Judith McKenzie, John McKenzie and Kathy Deserly, return to facilitate this meeting, which was held in Pierre, South Dakota on June 7 and 8, 2005.

Recruitment and Retention Strategic Plan

At the original meeting in November of 2004, five goals were established by the strategic planning group.

Goals

1. State and Native American Tribes/communities will work together in the spirit of reciprocity, equality and accountability to create and optimize resources (including funding, time commitment, policy, leadership) to better serve children in placement in accordance with the requirements of ICWA.
2. South Dakota will have and retain an adequate number of culturally appropriate families who are willing and qualified to meet the needs of the children in care.
3. South Dakota's first priority is to place children with extended families, as defined by the child's culture.
4. South Dakota will model a culturally competent approach to child placement that honors and supports the child's connections.
5. The public image of placement services is that birth, kinship, foster and adoptive families are valued and supported resources to ensure family preservation and permanency of children.

For purposes of the June meeting, the strategic planning group focused on developing strategies for goal #2, which is the State's explicit goal for recruitment and retention. It is important to point out that many of the strategies and actions identified in the planning session address more than one goal and dovetail the work of the *Collaborative Circle*. This is important because family centered values and collaboration will need to permeate all parts of the child welfare system in order for the State to be successful in achieving its

goals in any part of the system. In other words, the reforms being launched in South Dakota at the State level are everybody's job and will need to be implemented and integrated at the regional and local levels.

Rationale for Selection and Assignment of Strategies

In November preliminary strategies had been identified by the planning committee to address the state's recruitment and retention goal #2. A sub-committee met to establish action items for each strategy. When the full strategic planning committee reconvened in June of 2005, the sub-committee report was the basis of our work together.

The strategic planning group was mindful of important considerations in establishing their recruitment and retention plan. These were:

- Commitments and actions already established in the state's Program Improvement Plan (PIP) and ICWA Commission Report
- Voice of stakeholders heard from the focus groups held in November of 2004
- Values and priorities being considered by the *Collaborative Circle*
- Limited budget and staffing resources to carry out the plan

During the June strategic planning meeting, priorities were established with the above considerations in mind. The rationale for selection and assignment of each strategy is described in this report. Attached to this report are draft work plans for each strategy, showing actions, assignments and timeframes.

Recruitment and Retention Strategies

State/Tribal Level Strategies

Strategy #1 – Review and adapt policy, procedures and resources to support recruitment and retention of resource parents

Stakeholders had identified several state agency policy and procedures that are believed to be significant barriers to recruitment and retention of resource families. State level staff agreed to explore and address any barriers within CPS control.

Strategy #2 – Provide regular training to all staff in cultural competency, including how to do culturally relevant family assessments

The group identified staff training in culturally relevant family assessment as a critical capacity building component that needs to be initiated within 3-6 months to support planned recruitment and retention initiatives. This was felt to be a very high priority for the state and could be integrated into existing state training programs and annual conferences. Implementation of this strategy will involve state training staff, in collaboration with foster care and adoption program staff, as well as further input and support from the *Collaborative Circle*, as it is also one of its priority areas.

The 3-6 month timeframe will need to be adjusted. The Collaborative Circle is involved in significant level of activity that relates to this strategy and the Collaborative Circle is in the process of developing the plan that would impact this strategy.

Strategy #3 – Ensure expectations for resource parents are clearly defined and training needs met accordingly

The group struggled with the “right” way to make expectations clear and address the training needs of resource families. Gaps were seen in issues related to working with birth families and maintaining the cultural identity of children in care. The ICWA Commission Report recommends revising the PRIDE classes to include culturally appropriate parenting classes. The planning group suggested the possibility of supplemental training and/or “Extending Our Families through Unity” as a way of providing families with a “culturally approved designation”. A uniform solution will need to be developed at the state level. The strategic planning group recommends that this issue be referred to the *Collaborative Circle* for further discussion and decisions. Other training issues were also addressed and are indicated in the work plan for this strategy.

Regional Strategies

Strategy #4 – Develop and support recruitment and retention collaboratives at the Regional Level

Regional collaboratives will be particularly important as the state implements the strategic plan for the recruitment and retention of resource families, including Native American families. These regional collaboratives will need to be connected to the *Collaborative Circle*. The State level group will help to set statewide priorities, policies and procedures, while regional groups will implement them. The interim leaders of the *Collaborative Circle* will be preparing a proposal for regional collaborative groups for consideration at their September meeting. Meanwhile, pre-existing regional and local groups will continue to meet and expand their membership in preparation for statewide implementation on a broader scale. Regional groups will be concerned about recruitment and retention of families, particularly finding necessary resources at the local level to meet the needs of children in care (including their therapeutic, medical, dental, educational and cultural identity needs). They will be reaching out to include more resource parents and community stakeholders in existing groups.

Strategy #5 – Conduct targeted campaign for Native American resource families

This strategy involves supporting the work of the of the *Collaborative Circle* to complete the development of comprehensive, culturally appropriate recruitment materials for statewide distribution and engaging media operated by native leaders to help implement the campaign. Regional collaboratives will need to be prepared to implement the campaign locally and be ready to respond to families who inquire in timely and culturally relevant ways.

Strategy #6 – Develop targeted recruitment initiatives aimed at finding and supporting families to care for older children and sibling groups

In addition to the campaign for native families, regional collaboratives will need local plans, effective methodologies and relevant materials to conduct recruitment efforts for older youth and sibling groups in their regions. Although many of these children will also be of Native American heritage, some will not be. Regional collaboratives will require current data to be able to identify other underserved children and youth in their respective areas and target recruitment efforts to families who can meet their needs.

Strategy #7 – Develop and implement effective mechanisms for communications among stakeholders

This strategy involves enhancements to existing communications, e.g., the newsletter currently being distributed by a private agency and expanding the distribution and content of the publication. Other communication methods might also be explored.

Strategy #8 – Develop incentives and recognition opportunities for resource parents

This involves developing programs and opportunities for recognizing resource parents, providing them with specific benefits, e.g., calling cards, state identification cards and other “perks”. It also includes developing relationships with business and other organizations, such as faith based organizations, to provide respite, day care and other benefits. This strategy could benefit from a private agency taking the lead and would succeed, with support of state level staff, to open doors and resolve barriers.

CPS supports the strategy to develop incentives and recognition opportunities for resource parents. Some of the recommended benefits such as state identification cards, insurance, and purchase of surplus state property are guided by rules and laws that would make the benefits unachievable.

Strategy #9 – Support development of local and statewide parent groups and/or associations to assist state in recruitment and retention of resource families

This strategy is a result of the focus group experience. Many parents are already taking the initiative to develop local support groups and associations to aid resource parents. They requested help with start up expenses, mailings, etc. An agency that would be a resource for families to tap when their local groups need help in organizing or developing programs would be most helpful and appreciated by parents. This strategy will be very helpful in retaining parents and involving them in other recruitment and retention initiatives.

Strategy #10 – Assess need, feasibility and potential impact of a mentoring program for resource parents

Although this strategy was identified as potentially leading to major improvements, it was also seen as difficult to do. Success of a mentoring program will depend on the commitment of local program supervisors and staff to use and support mentors in various ways. Given the extent of other commitments in the plan, we are recommending that this strategy start with a needs assessment/ feasibility study in the first contract year. A mentoring initiative could also be tried on a small scale or as a small pilot. Mentoring needs that were identified throughout the planning process included: mentoring new parents while they are waiting to be licensed or approved; developing mentors to help families in crisis; and/or developing mentors to help support the cultural identity of children in care. Developing an effective mentoring program for resource parents will take time, focus and dedicated leadership.

As stated, this strategy may be very difficult to achieve. The strategy and action steps will be retained in case the resources and if the level of effort required become available.

The following discussion regarding implementation of the plan is from the viewpoint of the consultants that drafted the plan.

Timing of Implementation and Other Recommendations

South Dakota staff and stakeholders are very committed to developing and supporting resource parents to care for South Dakota's children. We, from *AdoptUsKids*, were very impressed with the dedication and commitment of the people to make needed improvements, despite limited resources.

Implementation timing

South Dakota's plan is ambitious and cannot be accomplished overnight. It will take strong and intentional leadership at the state, regional and tribal levels, incredible patience and mutual trust. Sequencing and timing the implementation of the priorities will be very important to the State's success. For that reason, we did not presume to put time frames in the work plans or to provide overly detailed action plans. We provided enough detail to give the workgroups a place to begin implementation for each of the strategies. We recommend that the State consider phasing in implementation over a three to five year time span and sequencing the priorities so that improvements build incrementally and can be sustained. Suggested phases are as follows:

Phase 1 –Building Organizational Capacity

- Continue to develop the partnership culture of the *Collaborative Circle*, add members and establish standing committees.
- Concentrate on staff training in cultural competence, family centered practice and assessment. (New recruitment and family search initiatives will be effective to the extent staff are fully equipped and supported to be responsive to Native American families and culture.) (Strategy #2)
- Address policy issues that have been identified as barriers. (Strategy #1)
- Continue to enhance and improve implementation of kinship care policies and practice (*Collaborative Circle*)
- Mobilize support efforts for current resource families (Giving priority to supporting resource parents through a time of change will affirm them and help when asking for their help and commitment to embrace new expectations.) (Contracting strategies 7-10)
- Review utilization of current resource families to find possible resources for sibling groups and teens. (Many licensed families are not being utilized; analyze what is causing the imbalance between resources and utilization and take corrective actions.) (Strategy #6)
- Complete development of culturally sensitive recruitment materials (Strategy #5)
- Implement search program, utilizing newly hired search specialists.

Phase 2 – Developing Family and Child Centered Practice

- Continue work of *Collaborative Circle* committees
- Establish regional collaboratives (Strategy #4)
- Provide accurate data regarding children and families needed to target recruitment efforts regionally (Strategy #6)

- Define expectations for staff and resource families related to working with birth parents and cultural identity of children (Strategy #3)
- Redesign training for resource parents and staff related to role expectations (Strategy #3)
- Train all staff in child-centered recruitment techniques and search practices (Strategy #6)
- Continue support strategies for resource parents (Strategies # 7-10)

Phase 3 –Fully engaging community stakeholders

- Fully maximize regional collaboratives in engaging resource parents, Native American community leaders and staff and other community stakeholders in solving local resource issues for recruitment and meeting service needs of children and resource families
- Conduct two year aggressive campaign for recruiting Native American resource families. (Note: This may seem like a late start for the campaign; planners will want to consider the need to lay the foundation for a campaign through building relationships with Native communities; launching kinship care initiatives and child specific recruitment first; and readying staff state-wide through training)
- Conduct other local targeted recruitment initiatives for families for siblings, older youth and to meet other exceptional needs of youth in care
- Continue support strategies for resource parents (Strategies #7-10)

Other Considerations and Recommendations

During the course of the strategic planning meeting, participants asked about the state’s plans for addressing Goal #3. This goal- *South Dakota’s first priority is to place children with extended families, as defined by the child’s culture* has implications for all children in the system and the group wanted to communicate its sense of urgency related to this issue. As the *Collaborative Circle* takes on kinship care through their “placement resources committee”, there may be a need for additional representation from local offices to strengthen the state’s capacity to address kinship family services.

At the close of the June meeting, the Strategic Planning group asked what will be the next steps and how the implementation of the plan will be guided and monitored. Approximately ½ of the group members are also members of the newly constituted *Collaborative Circle*.

We recommend that the strategic planning group become the *Collaborative Circle’s* standing committee to implement Regional Collaboratives and provide oversight to this plan. The chair or co-chairs of this committee need to be a member of the *Collaborative Circle*. We also recommend that the group meet regularly to review their progress and share promising practices from the regions.

AdoptUsKids can be available for additional technical assistance as requested and has assisted other states in conducting an annual review and update of their plans. In addition, AdoptUsKids, in collaboration with the NRC for Organizational Improvement, can provide

technical assistance and training on change management to help guide the state, county and other partners through the change process.

Report respectfully submitted by:

Judith McKenzie, AdoptUsKids
John McKenzie, AdoptUsKids
Kathy Deserly, AdoptUsKids
Steve Preister, NRC for Organizational Improvement

Attachments:

1. Detailed Action Plans for Strategies
2. Focus Group Assessment Report

DRAFT

WORK PLANS

Strategy #1 –Review, and if appropriate, adapt policy, procedures and resources to support recruitment and retention of resource parents.

Results Intended: The state’s policies and procedures will support the recruitment and retention plan

Lead: State office program management team

#	Action	Resp.	Start Date	End Date	Milestone
1.1	Review how CPS offices implement the licensing process to accommodate family schedules. Consider feasible options to increase flexibility related to families schedules. (A)	Local Office Supervisors			Practices shared at supervisory and strategic planning meetings
1.2	Review & disseminate CPS Foster Parent Grievance Policy- Pride Module 10; broadly disseminate grievance policy through newsletter (A)	Dave Lisa			Policies reviewed and disseminated
1.3	Explore a contract with impartial third party to conduct investigations of resource parents (i.e., outside agency, another CPS office) (C1)	Merlin			Arrangements have been made
1.4	Review the exceptions allowed under current licensing rules that accommodate sibling placements and other needs (C2) Educate others on existing state standards and tribal standards.	Dave			Exceptions policy and process developed

Strategy #2 – Provide regular training to all staff in cultural competency, including how to do culturally relevant family assessments

Results Intended: South Dakota will have a culturally competent system of care; all staff will be communicating from a culturally sensitive, family centered value system

Lead: State Training Manager, State Management Staff (Dave, Patty, Teresa) in collaboration with *Collaborative Circle* Training Committee

#	Action	Resp.	Start Date	End Date	Milestone
2.1	Arrange meeting of <i>Collaborative Circle</i> Training Committee; review and complete a more detailed work plan	Committee Chair(s)		TBD	First meeting held and more detailed work plan developed
2.2	Develop criteria for developing training program	Committee		TBD	Criteria developed
2.3	Explore current models available for training staff in doing culturally sensitive family assessments, with focus on Native American Families; e.g., programs available through Native American Institute in N.D.; Unity Training; Spaulding training on cultural competence; Other?	Committee		TBD	Research completed and recommendations made
2.4	Make recommendations and get buy-in of <i>Collaborative Circle</i> to plan, choose and/or adapt a training program for S.D.	Committee			
2.5	Train all staff (Tribal, State, Private) together in interactive format	TBD			Staff training completed
2.6	Institutionalize training program (e.g., “Train the Trainers”, etc.)	TBD			All new staff trained

Strategy #3 – Ensure expectations for resource parents are clearly defined and training needs met accordingly

Results Intended: Resource parents will clearly understand their role and have acquired knowledge and skills to work with birth parents and relatives and support the cultural identity of children in their care

Lead: State program staff (TBD) and *Collaborative Circle* Training Committee

#	Action	Resp.	Start Date	End Date	Milestone
3.1	Convene committee, review & establish a more detailed work plan	Chair(s)			Principals assigned and work plan completed
3.2	Establish criteria for resource parent training, based on role description	Committee			Criteria established
3.3	Review current PRIDE and UNITY curricula against criteria and make necessary revisions and/or explore other options	Committee			
3.4	And/or consider creation of an optional “Culturally approved” designation or training standard to better serve Native American children and their families	Committee			
3.5	Make recommendations and get buy-in of <i>Collaborative Circle</i> for a uniform program state wide				
3.6	Review current state training program and consider modifications.				
3.7	Implement revised training program with all new families and all new staff.				
3.8	Determine options for training existing foster parents on cultural understanding.				
3.9	Determine ongoing training needs of families, if information not gathered at renewals and find local resources to meet needs, e.g., multicultural centers, tribal resources, etc. (A)	Licensing Staff			Family specific training needs are identified and referrals made for training/support
3.10	Address family needs for grief and loss support through PRIDE training, ongoing training, parent support groups, “mentors” and individual grief counseling	Licensing and Placement Supervisors			Families receive the support they need

Strategy #4 – Develop and support regional recruitment and retention collaboratives

Results Intended: Each region will have a pool of families available that represent the racial, cultural and ethnic characteristics of the children needing families and there will be an array of services available to meet the needs of the children in care.

These action steps are recommendations to be considered by the Collaborative Circle.

Lead: *Collaborative Circle* Regional/Strategic Planning Standing Committee

#	Action	Resp.	Start Date	End Date	Milestone
4.1	Standing committee established by the <i>Collaborative Circle</i> ; Chairperson(s) appointed	<i>Collaborative Circle</i>			Committee established; leadership decided
4.2	Determine regions and assign regional coordinator(s); finalize committee membership	Committee Chair(s) & State Management Staff			Composition of committee finalized
4.3	Arrange meeting of <i>Collaborative Circle</i> Regional Committee and accomplish the following tasks: <ul style="list-style-type: none"> Develop a more detailed charter for the regional groups to include retention activities for families and identifying & addressing service needs of youth, including mental & physical health; cultural identity needs; transitioning into adulthood, etc. Review and complete committee work plan 	Committee Chair(s)			Work plan completed
4.4	Continue current regional collaborative meetings, expand membership and develop regional plan, based on decisions made in 4.3	Linda, Bev, Sara, Anita			Work plan completed
4.5	Convene new regional committees to include: Tribal/State staff, resource parents, mental health and other community based agencies, stakeholders on local level. Develop workplan (see 4.3 above)	Regional Coordinators			Regional Committees established and meeting regularly
4.6	Hold Standing Committee Meetings bi-monthly to provide progress reports and share promising practices among coordinators and <i>Collaborative Circle</i>	Committee Chair(s)			Meetings held; Progress reports shared
4.7	Continue to find ways to encourage and support local coordinators, including listserv, teleconference, etc.	All participants			Mechanisms developed for regular communication

Strategy #5 – Conduct targeted campaign for Native American Resource Families

Results Intended: There will be a significant, measurable increase in the number of kinship and recruited Native American Families who are providing foster care for Native American children

Lead: *Collaborative Circle’s Placement Resources Committee and Regional Collaborative Committee*

#	Action	Resp.	Start Date	End Date	Milestone
5.1	Convene Placement Resources Committee and review and complete work plan	Chair(s)			Work plan completed
5.2	Complete culturally sensitive recruitment campaign materials	Placement Resources Committee			Recruitment materials ready for distribution
5.3	Organize campaign and get buy-in from Tribal leaders, business owners, and media	Placement Resources Committee			Campaign has a detailed implementation and evaluation strategy
5.4	Roll out campaign with Regional Collaborative Committee and Regional Coordinators	Both Committees			Measurable increase in Native American Families fostering, including kin families

Strategy #6 – Develop targeted recruitment initiatives aimed at finding and supporting families to care for older children and sibling groups

Results Intended: There will a measurable increase in the number of sibling groups who have stable placements together and a measurable increase in the number of older youth who have stable placements with families

Lead: State management staff and Regional Collaboratives

#	Action	Resp.	Start Date	End Date	Milestone
6.1	State will continue to develop search capacity to find relatives and other connections for older youth and sibling groups	State Management Staff			Search capacity will be available for regions
6.2	Gather data to profile the need in each region. Provide each regional collaborative with data regarding characteristics and needs of children in their care; information related to successful families and families needed, including where they shop, worship, work, etc.	State IT and management staff, local staff			Each regional collaborative has needed information to target recruitment efforts
6.3	Review current waiting family lists to determine which families are willing to parent older kids and sibling groups; cull list of those families who are not interested or able to care for foster children	Local Management Staff, Regional Collaboratives			Current resource families are contacted and given an opportunity to be reconsidered for waiting children
6.4	Identify agencies, resource parents and community leaders to help with implementation. Engage resource families and older youth in helping to define and carry out regional recruitment initiatives. Convene meeting	Regional Collaboratives			Older youth and families are engaged in helping with recruitment
6.5	Review current recruitment messages used to make sure they reflect the needs of our children	Regional Collaboratives			
6.6	Develop new material packets, with input of <i>Collaborative Circle</i> , stakeholders, etc.	State & Regional Collaboratives			New materials are available
6.7	Develop outreach into faith communities, military installations and other community groups to target efforts according to needs identified in 6.2	Regional Collaboratives			Community relationships established and involved
6.8	Train and provide case consultation for all placement staff to use child-centered and other search approaches, i.e., look for relatives and other connections for older children and sibling groups, whenever possible	State training and Search Staff			Staff have been trained in search methods and culturally sensitive family assessment

Strategy # 7 – Develop and implement effective mechanisms for communication among stakeholders

Results Intended: Communications to resource parents, including Native American and Kinship families, are current and include information about resources and promising practices; regular communications are also maintained with persons involved in the collaboratives at the state and regional levels.

Lead: Contract Agency, with support of advisory group and advice of regional collaboratives and *Collaborative Circle*

#	Action	Resp.	Start Date	End Date	Milestone
7.1	Contract is established with provider, work plan finalized and agreed upon, advisory group established	Merlin & contractor			Contract is in place
7.2	Contractor continues development and distribution of newsletter for resource parents and other stakeholders to communicate resources available, support group meetings, training opportunities, new programs, outstanding achievements, etc.	Contractor			Newsletter is regularly disseminated with input from stakeholders
7.3	Contractor develops new communication vehicle for state and regional collaboratives, considering both electronic and print mechanisms, to insure that state and tribal participants and other key stakeholders are regularly informed of progress, initiatives and promising practices	Contractor			Communication vehicle is established and disseminated on an agreed upon schedule
7.4	Proposal for new communications vehicle presented and approved by <i>Collaborative Circle</i>	Contractor			<i>Collaborative Circle</i> approves concept and mode of dissemination

Strategy #8 – Develop incentives and recognition opportunities for resource parents

Results Intended: All resource parents feel valued and part of the team; recognition programs and celebrations are culturally appropriate and significant to the people involved

Lead: State, with support of advisory group and in collaboration with local offices and regional collaboratives

#	Action	Resp.	Start Date	End Date	Milestone
8.1	Contract is established and work plan agreed to by both parties and advisory group	Merlin & Contractor			Contract is in place
8.2	With input from advisory group of resource parents, local office staff, tribal representatives and other stakeholders develop incentive & recognition proposal and budget				Plan and budget are approved by the state and implemented
8.3	Explore possibility of providing foster parents with cards similar to business cards so that they can use them as needed and give them to prospective foster parents.				Business cards are made available to parents per plan
8.4	Develop list of ideas on securing private and corporate funds (possibly some of their advertising funds) to support incentive and recognition plan				Funding has been achieved to help underwrite incentive plan
8.5	Explore funding for reimbursement for travel related costs for training, meetings, and reimbursement for child care for training, meetings, etc.	State			Funding has been achieved and mechanisms for reimbursement are in place

Strategy #9 – Support development of local and statewide parent groups and/or associations

Results Intended: Resource Parent support groups are meeting regularly in every region of the state; support groups include Native American parents and/or cultural representatives

Lead: State, with support of advisory group and in collaboration with local offices and Regional Collaboratives

#	Action	Resp.	Start Date	End Date	Milestone
9.1	Establish contract, work plan and advisory group	Merlin & Contractor			Contract in place
9.2	Connect with existing support groups throughout the state to determine needs for technical assistance and/or other resource needs, e.g., leader development, speakers' bureau to explore special topics, e.g., cultural identity, traditions, etc.; help with mailings, copying transportation, tickets to family events, etc.	Contractor			Needs assessment completed and support group plan developed and approved by the State and local offices
9.3	With the help of local offices, identify where there are gaps in the state where new support groups are needed; provide assistance in organizing new groups	Contractor			New groups are organized and functioning to fill gaps
9.4	Explore feasibility of obtaining additional mini-grants and/or local business support for support group				Funding obtained to support development of groups
9.5	Explore annual listing and/or email distribution list (statewide or by region) to assist with networking	Contractor			New families are engaged in support groups as soon as possible
9.6	Consider seeking consultation and technical support from National Foster Parent Association to develop statewide association and/or other formal structure.	Support Group Leaders			Support group leaders explore benefits available from National Association and make informed decisions as to whether they want a state wide association and/or other structure,
9.7	Ensure active communication and involvement of local offices in connecting families to groups and connecting staff with support groups for referrals, attending when invited, etc.	Local CPS Offices, Regional Collaboratives			Families are referred to support groups and local offices actively support participation

Strategy #10 – Assess need, feasibility and potential impact of a mentoring program for resource parents

Results Intended: Effective mentoring program is in place to meet identified needs of parents and local offices for help in recruitment and retention of families

As stated earlier in the report, this strategy may be very difficult to achieve. The strategy and action steps will be retained in case the resources and if the level of effort required become available.

Lead: In collaboration with local offices and Regional Collaboratives

#	Action	Resp.	Start Date	End Date	Milestone
10.1	Establish contract and work plan	Merlin			Contract established, agreements made
10.2	Use advisory group of parent groups, local office and Native American representatives and other stakeholders to help inform process and work plan	Contractor			Advisory group formed and meeting regularly
10.3	Do assessment to determine resource parents need for mentors; experienced parents interest in mentoring; how local offices and private agencies would use resource parent mentors; training needs; include such ideas as helping new parents while they wait, parenting teens, working with birth parents, dealing with grief and loss				Assessment completed, findings shared with advisory group and recommendations made
10.4	Include concept of “cultural mentors” for youth and families in exploration of mentoring				
10.5	Pilot mentoring by contracting with some experienced parents to provide crisis intervention and mentoring services to stabilize placements at risk	Anita & Linda			Successful small scale pilot is observed and ‘lessons learned’ shared with others
10.6	Develop proposal for mentoring program; show how it fits with parent and local office needs; develop structure and budget for implementation, identify state, federal and local funding sources	Contractor with input of local offices, parent support group leaders and regional collaboratives			Program is funded and implemented

26-7A-15. Notice to parents, guardian, or custodian of child taken into temporary custody-- Notice of hearing--Information to Indian custodian or Indian child's tribe-- Failure to notify.

The officer or party who takes a child into temporary custody, with or without a court order, except under a court order issued during a noticed hearing after an action has been commenced, shall immediately, without unnecessary delay in keeping with the circumstances, inform the child's parents, guardian, or custodian of the temporary custody and of the right to a prompt hearing by the court to determine whether temporary custody should be continued. If the child's parents, guardian, or custodian cannot be located after reasonable inquiry, the officer or party taking temporary custody of the child shall report that fact and the circumstances immediately to the state's attorney. The state's attorney shall notify the child's parents, guardian, or custodian, without unnecessary delay, of the time, date, and place of the temporary custody hearing. If the temporary custody hearing concerns an apparent abused or neglected Indian child, the state's attorney or Department of Social Services shall make reasonable efforts to inform the Indian custodian and Indian child's tribe, if known, of the time, date, and place of the temporary custody hearing. The information regarding the temporary custody hearing may be provided to the Indian custodian or Indian child's tribe orally or in writing, including by telephone or facsimile. The hearing shall be held within forty-eight hours if it concerns any apparent abused or neglected child or if it concerns any apparent delinquent child pursuant to § 26- 8C-3 or within twenty-four hours if it concerns any apparent child in need of supervision pursuant to § 26-8B-3, excluding Saturdays, Sundays, and court holidays, after taking the child into temporary custody, unless extended by order of the court. Failure to notify the child's parents, guardian, or custodian, or to inform the Indian custodian or the Indian child's tribe, of the temporary custody hearing is not cause for delay of the hearing if the child is represented by an attorney at the hearing. As used in this section, the terms, Indian child, Indian custodian, and Indian child's tribe, are defined as in 25 U.S.C. § 1903, as amended to January 1, 2005.

Source: SDC 1939, § 43.0320 as enacted by SL 1968, ch 164, § 14; SL 1979, ch 171, § 2; SL 1989, ch 226, § 2; SL 1991, ch 217, § 19B; SDCL Supp, § 26-8-19.2; SL 2001, ch 138, § 1; SL 2003, ch 149, § 12; SL 2005, ch 139, § 1.

26-7A-15.1. Proceedings under certain chapters to which the Indian Child Welfare Act applies--Procedures.

In any proceeding under chapters 26-7A, 26-8A, or 26-8B, to which the terms of the "Indian Child Welfare Act", 25 U.S.C. § 1901 et seq., as amended to January 1, 2005, apply:

(1) If the state's attorney knows or has reason to know that an Indian child is involved, the state's attorney shall notify the parent or Indian custodian and the Indian child's tribe, if known, of the pending proceedings and of their right of intervention. The notice shall be sent by registered mail with return receipt requested but may be personally served on any person entitled herein to receive notice in lieu of mail service. If the identity or location of the parent or Indian custodian and the Indian child's tribe cannot be determined, the notice shall be given to the United States Secretary of the Interior and to the area director for the Bureau of Indian Affairs in like manner, who have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe;

(2) The state's attorney shall provide such notice prior to any adjudicatory hearing and prior to any final dispositional hearing in which the state seeks termination of parental rights of one or both parents or termination of the rights of the Indian custodian. However, upon intervention, the parent, tribe, or Indian custodian is entitled to notice in the manner authorized by the Rules of Civil Procedure and chapters 26-7A and 26-8A;

(3) The court shall establish in the record that a notice of the proceeding was provided as required in this section. No foster care placement or termination of parental rights proceedings may be held until at least ten days after receipt of the foregoing notice by the parent or Indian custodian and the tribe or the Secretary. The parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for the proceeding;

(4) The notice required in this section shall be written in clear and understandable language and shall include the following:

- (a) The name and tribal affiliation, if known, of the Indian child;
- (b) A copy of the petition unless the notice is served by publication pursuant to § 26- 7A-48;
- (c) The name and address of the state's attorney;
- (d) A statement listing the rights of the Indian child's parents, Indian custodians, and tribes, under the Indian Child Welfare Act, 25 U.S.C. § 1901, et. seq., as amended to January 1, 2005, including:

(i) The right of an Indian custodian or the Indian child's tribe to intervene in a proceeding for the foster care placement of, or termination of parental rights to, the Indian child;

(ii) The right to file a motion to transfer the proceeding to the tribal court of the Indian child's tribe;

(iii) The right to be granted up to twenty days from the receipt of the notice to prepare for the proceeding; and

(iv) The right to request that the court grant further extensions of time;

(e) If the petition alleges the child to be an abused or neglected child, a statement that the termination of parental or custodial rights is a possible remedy under the proceedings;

(f) A statement that if the Indian child's parents or Indian custodian are unable to afford counsel, counsel may be appointed to represent them;

(g) A statement in the notice to the tribe that the information contained in the notice, petition, pleading, or other documents are confidential; and

(h) The location, mailing address and telephone number of the court.

The original or a copy of each notice sent pursuant to this section shall be filed with the court together with any return receipts or other proof of service;

(5) Each party may examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

As used in this section, the terms, Indian, Indian child, parent, Indian custodian, tribe, Indian child's tribe, foster care placement, termination of parental rights, and secretary, are defined as in 25 U.S.C. § 1903, as amended to January 1, 2005.

Source: SL 2005, ch 139, § 2.

26-7A-15.2. Form of notice to parent, custodian, or Indian tribe of child custody proceeding.

The form of the notice provided for in § 26-7A-15.1 is as follows:

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
) ss	
COUNTY OF _____)	_____ JUDICIAL CIRCUIT
THE PEOPLE OF THE STATE OF)	Juv. No. _____
SOUTH DAKOTA IN THE INTEREST)	
OF _____,)	NOTICE TO PARENT, CUSTODIAN,
MINOR CHILD(REN), AND)	OR INDIAN TRIBE OF CHILD CUSTODY
CONCERNING _____,)	PROCEEDINGS (ICWA)
_____,)	
RESPONDENTS. _____)	

TO: [Name and Address of the Parent/Custodian/Tribe]:

PLEASE TAKE NOTICE that, pursuant to the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901, et. seq.), a child custody proceeding is now pending in the above-named court. The child(ren) who (is/are) the subject of this proceeding (is/are) believed to be (an) "Indian child(ren)" (as defined in 25 U.S.C. § 1903(4)) affiliated with the _____ Tribe.

A HEARING HAS BEEN SCHEDULED FOR _____ [date] AT _____ [time] (a.m./ p.m.) (CST/MST) IN THE COURTROOM OF THE _____ COUNTY COURTHOUSE, _____, SOUTH DAKOTA. A copy of the Petition by which this proceeding was initiated is attached.
You are further notified that:

1. The following information is known regarding the parents, grandparents and Indian custodians:
 - a. The names and last known addresses of the parents, grandparents and great grandparents or Indian custodians are as follows:
 - b. Any maiden, married and former names and aliases are as follows:
 - c. Birthdates and places of birth and death are as follows:
 - d. Tribal enrollment number(s):

2. You, as the parent(s) or Indian custodian, and the child(ren)'s tribe, may have a right to intervene in these proceedings.

3. If you, as the parent(s) or Indian custodian, are unable to afford an attorney, an attorney may be appointed to represent you. If you desire a court-appointed attorney, you should contact the court using the information provided in paragraph 7 below.

4. You may have the right, as the parent(s), Indian custodian, or Indian tribe, to have, upon request, 20 additional days to prepare for the hearing. If you desire additional time to prepare for the hearing, you should contact the court using the information provided in paragraph 7 below.

5. You may have the right, as (a) parent(s), Indian custodian, or Indian tribe, to petition this Court for transfer of the proceeding to tribal court.

6. The Petitioner in this action is the State of South Dakota, and the name and address of the attorney for the Petitioner is: _____, State's Attorney for _____ County, _____, South Dakota.

7. The Court's phone number is _____. The Court's mailing address is _____. Please report to the Court or to the State all information you have as to the status of the above-named child(ren), including the eligibility/membership of the child(ren) or the parent(s) in any Indian tribe.

8. If you are the child(ren)'s parent, it is possible that your parental rights will be terminated in this proceeding. If your parental rights are terminated in this proceeding, you will no longer be able to exercise parental, custodial or any other rights with regard to the child(ren).

9. Since custody proceedings are conducted on a confidential basis, you are requested to keep confidential all information contained in this Notice.

Dated this _____ day of _____, 20_____.

State's Attorney

Source: SL 2005, ch 139, § 4.

Department of Social Services

Kinship Procedures

Kinship care is defined as the continuous care provided for a child requiring out-of-home placement in the home of a relative. The practice of relatives or “Kin” parenting children when their birth parents can not is a time-honored tradition in most cultures. The raising of children by relatives is a very strong tradition within Native American culture. Within the child welfare system, children have the right to be with people they know provided that they will be safe and it is in the child’s best interest. Relative placements assure that children will have connections to their families and be a part of the culture. Whenever it is possible and in the best interest of a child, either in an initial, on-going or permanent placement, relatives that can provide a safe nurturing environment need to be considered before any other type of care.

Relatives include stepparents or other responsible adults who have a bond or tie with a child and/or the child’s parents regardless of connections by blood. Kinship relationships include the following:

- (1) **Related by blood.** Blood relatives including half-blood relationships are:
 - (A) Siblings;
 - (B) Grandparents and great or great-great grandparents
 - (C) Aunts and uncles and great or great-great aunts and uncles.
 - (D) Nieces and nephews and great or great-great nieces and nephews.
 - (E) First cousins and first cousins once removed.
- (2) **Related by adoption.** Related through legal adoption, including any of the relationships listed above.
- (3) **Related by marriage.** Related by marriage even if a marriage is terminated by death or divorce;
- (4) **Parental relatives.** Paternal relatives of (1), (2), or (3) above of children born out of wedlock;
- (5) **Step parents.** Any person listed in (1), (2), or (3) above who have a step relationship with the child, even if the marriage is terminated by death or divorce.
- (6) **Related by emotional tie or bond.** These relationships are based on emotional ties or bonds that cause a child or the child’s parent to accept a person as part of the extended

family or network of friends prior to the necessity for an out-of-home placement. The child must indicate that they feel safe with this individual or family. Examples of these types of kin include: a friend of family; a church member; a school teacher; or any other community member significant to the family and/or child.

Because of the unique relationship represented by this type of care, use of these types of homes will require State Office approval from the Foster Care Program Specialist.

It is the expectation that these types of homes will complete PRIDE. These types of families should be encouraged to complete the foster care licensing process. This will be necessary before any type of care payment can be made to them.

Kinship care is classified as either informal or formal.

- Informal kinship care is when the family decides that the child will live with relatives. Although a Social Worker may be involved in helping the family plan for the child, the agency does not have legal custody or responsibility for the child. Informal placements made by parents do not require that relatives be approved, licensed or supervised by the agency.

Some informal kinship placements may require an assessment regarding the kin's ability to recognize threats of harm, their ability to protect the child, etc.

It maybe necessary to complete an Initial Family Assessment (IFA) on the family to determine if they have the ability to recognize threats of harm, or have the ability to protect the child. If there are threats of harm, an assessment needs to be made to determine if the family is capable of carrying out a protective plan. If they are not, it is the responsibility of CPS to seek custody.

- Formal kinship care involves the placement of children with relatives through court action. The child is placed in the state's custody or care, placement, and supervision responsibility by the court and the agency is required to supervise the placement with the relative. Formal kinship care is governed by applicable agency policy, licensing requirements, state and federal law.

DILIGENT SEARCH FOR RELATIVES

Relative placements are less restrictive and therefore usually preferable to other types of out-of-home care when in the child's best interest. The Social Worker is responsible for conducting a diligent search for maternal and paternal relatives of any child coming into the agency's care.

The search for relatives begins at the moment the agency is asked to place the child and continues until the child's permanent plan is achieved. The following guidelines are to be followed when searching for relatives.

- Non-offending parents who demonstrate sufficient protective capacity should always be considered first as a possible placement resource.
- If family members are not located or immediately available for placement, the search must continue as soon as possible.
- Checks must be made with the central registry and local law enforcement before any placement with a relative is made. When DSS has custody, immediate placement with a relative must not occur when:
 - Criminal records of the family are known;
 - The family is on the central registry;
 - Law enforcement has concerns; or
 - Justifiable concerns regarding the relative's protective capacity exist.
- Further consideration of a relative for placement may take place when there is a substantiated report of child abuse or neglect recorded on the central registry. For this process see Subject: Denial For Relative or Temporary Substitute Placements Based on the Central Registry or a Substantiation.
- The Social Worker should solicit information from the parent regarding their placement preferences. A parent needs to be advised that consideration will be given to these preferences but no assurances are to be made. If appropriate, the child may be asked to identify people who take care of them when their parents are gone.
- When Indian children are involved, the Indian Child Welfare Act Social Worker and Enrollment Office at the Tribal office where the child is enrolled or eligible for enrollment should be contacted for names of family members who could care for the child. The Indian Child Welfare act places the burden on the agency to follow the placement preferences of the act and to document efforts to follow those preferences.
 - ✓ ICWA preferences in any foster care or pre-adoptive placement are:
 - A member of the Indian child's extended family;
 - A foster home licensed, approved, or specified by the Indian child's tribe;
 - An Indian foster home licensed or approved by an authorized non-Indian Licensing authority; or
 - An institution for child approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.
- The Social Worker must try to obtain a list with current addresses and phone numbers of all relatives known to the parent(s) from each parent. It is the Social Worker's responsibility to initiate contact with each person for whom an address and/or phone number is provided. Contact does not need to be made with people on

the list if the agency has documented a criminal history or child abuse and neglect convictions. If the Social Worker is unable to make contact in person or by telephone, a letter should be sent. A failure to respond to the Social Worker's initial phone call or written attempts at contact does not automatically preclude a relative from placement consideration.

- When possible, the Social Worker should attempt to convene a family meeting asking the parent(s) to invite all relatives in the immediate area for the purpose of identifying possible placement resources for their child. Relatives living out of the area may be included using teleconferencing. This should be done as soon as possible after placement.
- All efforts at contacts and outcomes must be documented on the Family Fact Sheet (CP-525). Additional information regarding those contacts should be documented in the narrative. A determination that sufficient efforts have been made to contact the relative cannot be made until:
 - The Social Worker has spoken with the relative by telephone or in person;
 - Telephone contact has been unsuccessful because the relative does not have a telephone, the telephone has been disconnected or a telephone number cannot be obtained. In these instances letter contact is required;
 - A letter to the relative has been returned as undeliverable; or
 - Two letters have been sent to the relative, the second of which is sent certified with return receipt requested. If a previous letter was sent certified return receipt requested and no response was received within 60 days of delivery.
- It must not be assumed that relative placements do not exist based solely on the parent's statement or their unwillingness to provide the information necessary to locate relatives.
- If efforts to locate an appropriate relative have been unsuccessful based on the information provided by the parent and the above procedures the Social Worker should:
 - Ask any known relative or kin to identify other relatives;
 - Search the FACIS/FAMIS system;
 - If the child is an Indian child contact the Reality Office at the BIA Office and the child's Tribal ICWA representative. Another resource may be to contact community elders;
 - Review existing case records, including but not limited to Temporary Assistance to Needy Families (TANF), court, school, and child care; and
 - Utilize the Parent Locator Service.
- When a parent refuses to provide information regarding relatives, it is appropriate to ask the court to order the parent to provide the needed information.

- If a placement disrupts, further reconsideration of relatives must take place. The Social Worker must reassess any relative who may have been determined inappropriate in the past. Contact does not need to be made with families for whom the agency has documented a criminal history or child abuse and neglect convictions or substantiations and it has been determined that the family would never be an appropriate placement for the child.
- If a relative is located out-of-state and indicates a desire to be a placement resource, the Social Worker must:
 - Obtain the name, address, and phone number from the relative to initiate an Interstate Compact on the Placement of Children (ICPC) referral for an assessment of the relative's home;
 - When the case plan goal is reunification, advise the relative that an important factor in determining the placement of the child is the ability for the parent and child to have visitation. If visitation is not feasible in the out-of-state placement, the child must remain in state;
 - Facilitate contact between the relative and the child prior to an out of state placement so a relationship is established or maintained;
 - Keep the relative informed of the progress towards the child's case plan goal and any changes in the case plan goal;
 - Advise the instate placement provider if reunification is not feasible, the permanency plan could change to move the child to the out-of-state relative; and,
 - Advise the current placement provider of the status of the relative placement prospect.

SELECTION OF KINSHIP PROVIDER

Once potential relative providers have been identified, the process of selecting the most appropriate relative who can best meet the needs of the child begins. Key factors to be considered are:

- The current and possible future legal status of the child;
- The case goal and permanent plan for the child;
- The proximity of the relative's home to the child's current placement;
- The level of support the relative will provide for the case plan goals;
- The level of understanding the relatives demonstrate about the reasons the child is in care, and the actions the parent or caretaker need to accomplish before the child can be returned;
- The relative's protective capacity relating to the identified child;
- The ability of the relative to manage for child safety in their home;
- The level of support the relative is willing to provide the parent or caretaker in the tasks they need to accomplish;
- The level of support the relative demonstrates for the agency's efforts with the parent or caretaker;

- The receipt of an approved Kinship home study and ICPC approval; and
- The ability of the Kinship placement to meet the adoption standards if the family is planning to adopt.

The Social Worker should provide information to the family about the Foster Care Standards and requirements of licensure in case the family chooses to become a licensed foster family. The family should be asked to summarize their understanding of the requirements to assure the requirements are understood.

Federal regulations state that relatives that have been convicted of a felony involving the following crimes will not be considered:

- Child Abuse or neglect;
- Spousal abuse;
- A crime against a child or children (including child pornography); or
- A crime involving violence, including rape, sexual assault, or homicide.

In addition to crimes listed above, if a relative wants to become a foster or adoptive parent, family members must not have been convicted of a felony within the last five years involving:

- Physical assault;
- Battery; or
- A drug-related offense.

For additional state requirements please check SDCL 26-6 and the corresponding Administrative Rules of South Dakota, 67:42:01 for foster care and 67:14:32 for adoption.

GUIDELINES FOR ASSESSING POTENTIAL RELATIVE PROVIDERS

The following Safety, Permanency, and Well Being questions and discussion issues must be explored with the prospective kinship family.

Safety

- Motivation
 - Determine the relative's understanding of why the child was removed from his/her home.
 - Discuss the relative's feelings and attitudes toward the child's parents and other family members.
 - State the relative's initial reason for wanting the child placed in the home.
 - Discuss the relative's feelings and attitudes about the potential placement of a related child in the home.
- History of alcohol and drug use of kin caregiver.
 - Discuss the caregiver's history of drug or alcohol use, if any.
 - Discuss rehabilitative activities, if any.
 - If the kin caregiver has a history of alcohol and drug use, assess kin caregiver's ability to provide a safe environment for children.

- History of child abuse/neglect of the kin caregiver.
 - Discuss the kin caregiver's history of child abuse (physical, emotional, and sexual) and neglect, if any.
 - Discuss rehabilitative activities, if any.
 - If the kin caregiver has a history of child abuse and neglect, assess the kin caregiver's ability to provide a safe environment for children.

- Abuse/Neglect and criminal history checks.
 - Document results of criminal history checks and abuse/neglect checks on all household members.
 - Explain any criminal history and subsequent rehabilitative activities.
 - Include your perceptions of how the results of the background checks would affect the health and safety of the child. If you believe that the placement of the child will eventually require licensing of the home, then be sure that the relative(s) can pass the minimum licensing standards for criminal history and child abuse/neglect.

- Family relationships including history of family violence.
 - Previous relationships. Include discussions of previous significant relationships and marriages. Describe the history of the relative's past relationships including how they met, their courtship, their decision to marry, if applicable, and if the relationship ended, a discussion of how the issues causing the relationship to dissolve must be included.
 - Current relationships if married or with a significant partner. Describe the relatives' interactions as husband and wife. Discuss any separations and/or marital counseling. Address the family decision-making processes including financial decisions, and how disagreements are handled. Discuss the effects of adding a child to the home. Describe the strengths and needs of the marriage or partnership, including their perceptions and your own. Describe other emotional support systems available to the applicants.
 - Couples with children. In addition to the questions above, the relatives' interaction as parents must be discussed. Address the decision-making processes, the agreements about parental discipline, how disagreements are resolved, their level of support for one another as parents, and any other issues like possessiveness, excessive control, permissiveness, etc. Include the relatives' feelings about themselves as parents. Describe the relatives' expectations of their children and the children that may be placed in their home.
 - Single parents. Discuss the relative's support system. Describe the relatives' significant relationships with both men and women. Include the relative's feelings about themselves as a parent. Describe the realism of the relative's expectations of the child that may be placed in the home.
 - Children. Ask the children currently living in the home about discipline. Ask about the family rules and what happens when those rules are broken. Listen to the child's opinion/perception of the family's decision to provide

- care to a relative child. Report the child's perceptions, your own perceptions, and your observations of the child's interaction with parents.
- Other household members. Discuss other household members who reside in the home full or part-time. Also include the results of both abuse/neglect and criminal history checks of each person in the home.
 - Family rules and boundaries. Discuss the family expectations, responsibilities, division of labor, issues related to nudity around children, privacy, etc.
 - Family stress. Discuss how family members express negative feelings. Include specific examples of statements and behaviors that support your assessment.
 - Kin caregiver's home. Address the relative's ability to provide a safe home environment. Complete the home safety checklist if foster care is an option so that they are aware of any deficiencies. Address your perceptions and assessment of issues that effect safety, giving examples. Include a description of sleeping arrangements and adequacy of space for children to play both inside and outside.
 - Safety issues. Discuss the relative's understanding of the problems the child may have and how the relative will deal with those problems. Explore the relative's ability to provide protection to the child from parents or other relatives who may pressure them to return the child to the parents. Report the relative's perception and your own.
 - Discipline. Discuss the relative's parenting philosophy. Describe the relative's current methods of disciplining children, and their feelings about the discipline of children who are not their own. If their current disciplinary practices are incompatible with CPS discipline policies, discuss how their practices will be reconciled with CPS policies. Include the relative's ability to support CPS's discipline policy.
 - Child-care knowledge. Discuss the relative's child-care experience if they have had no children. Address the relative's expectations of the child to be placed. Include the relative's expectations about school visits, school performance, public displays of inappropriate behaviors, etc.
 - Child management. Discuss the relative's ability to manage the behaviors of children who have been sexually or physically abused and/or neglected. Explore the relative's abilities to manage specific behaviors, such as sexual acting out, aggression, abusive language, etc.

Permanency

- Child's involvement with the proposed kin caregiver, include:
 - Past and current contact with the relative.
 - The child's feelings about the relative(s).
- Kin caregiver motivation.
 - Determine if the relative(s) desire to have the child placed temporarily or permanently and how this compares with CPS's plans for permanency. Explain the relative's perception and your own.

- Explore the relative's attitude toward parental visitation and contacts, including the relative's willingness to cooperate with visitation, case plans, and help in maintaining sibling contact if needed. Explain the relative's perception and your own.
- Kin caregiver health.
 - Include an assessment of the relative's physical, mental, and emotional health in relation to the relative's ability to parent the child to be placed with the relative.
 - Discuss any disabilities the relative has including adaptations and limitations the disability may impose on the relative's ability to provide safety, permanency, and well-being for the child to be placed.

Well-Being

- Description of children to be placed. Include:
 - Placement history;
 - Health status (include any physical and mental health issues and care needed);
 - School issues (include academic performance and behavioral issues);
 - Address how the caregiver will meet the medical/dental, therapeutic, social, and academic needs of the children to be placed.
- Dealing with children who have been physically, emotionally, sexually abused and/or neglected.
 - Address the relative's sensitivity to and feelings about children who may have been subjected to abuse and/or neglect. Include the relative's understanding of how these issues and feelings will affect the relative, the family and the child.
 - Address the relative's ability to help the child who has experienced abuse and neglect.
- Financial situation.
 - Explore the relative's employment history, income, expenses, and ability to manage money.
 - Address the relative's ability to manage the expenses of caring for the placed child.
- Relative Support Systems
 - Current accessible supports of relatives. Examine with the relative the supports that are available through other family members. Discuss the community support services known to the relative.
 - Needed supportive services. Identify supportive services that may be needed by the relative to help provide for the child's safety, permanency, and well-being. Examples of potential supportive services may include day care services, tutoring services, training, etc.

- Explain how the caregiver may use identified family and community supports to meet the needs of the child.

Once a decision is made that the relative placement is suitable, the Placement Process as outlined in the Foster Care Chapter must be followed. A memorandum of understanding is a suggested tool to clarify expectations for both the relative provider and the agency. A suggested format is provided at the end of this section.

Involvement of Kinship Families Who Are Not A Placement Resource

Relatives not chosen as the placement resource for the child may still be able to have an active role in the child's life. It is critical that the agency help children maintain and/or establish safe and nurturing connections with their families. Some of the ways in which relatives can become or stay involved include:

- Writing letters to child and family;
- Telephoning the child and family;
- Attending family group meetings where planning for the child takes place;
- Assisting with parent/child visits;
- Attending school, church, community activities with the child;
- Providing pictures and family history for the child's Life Book;
- Assisting parents in getting to appointments and;
- Providing respite or other temporary care.

26-7A-19. Options of court following temporary custody hearing for abused or neglected child.

If the child is an apparent, alleged, or adjudicated abused or neglected child, after the temporary custody hearing the court may:

(1) Order the release of the child from temporary custody, either with or without restriction or condition or upon written promise of the child's parents, guardian, or custodian regarding the care and protection of the child; or

(2) Continue the temporary custody of the child under the terms and conditions for duration and placement that the court requires, including placement of temporary custody of the child with the Department of Social Services, in foster care or shelter. The court and the Department of Social Services shall give placement preference to a relative or custodian who is available and who has been determined by the department to be qualified, provided that placement with the relative or custodian is in the best interest of the child. If temporary custody of the child is continued by the court, the court may provide for visitation of the child by the child's parents, guardian, custodian, or family members in keeping with the best interests of the child. If the child is in temporary custody of the Department of Social Services and has not been adjudicated as an abused or neglected child, the court shall review the child's temporary custody placement at least once every sixty days.

As used in this section, the term, relative, means an adult who is related to the child by blood, adoption, or marriage, and who is the child's grandparent, aunt, uncle, sibling, brother-in-law, sister-in-law, niece, nephew, great grandparent, great uncle, great aunt, first cousin, second cousin, stepparent, or stepsibling.

As used in this section, the term, custodian, means an adult who is the biological parent, adoptive parent, or guardian of the child's sibling or half-sibling.

Source: SL 1991, ch 217, § 22A; SL 2005, ch 140, § 1.

26-7A-19.1. Preference for placement of abused or neglected child with relatives after hearing.

Subsequent to a temporary custody hearing, if a placement is made of an apparent, alleged, or adjudicated abused or neglected child, placement preference shall be given to a relative entitled to placement under § 26-7A-19.

Source: SL 2005, ch 140, § 2.

26-8A-29.1. Request for hearing by relative denied adoptive placement --Time limits -- Intervention.

Except under circumstances where placement was with another relative of the child, any relative who has been denied adoptive placement by the Department of Social Services may request a hearing to determine if the placement was an abuse of discretion. The request shall be filed with the circuit court having jurisdiction pursuant to § 26-8A-29 and shall be filed within thirty days of written notification from the department by regular mail to the relative's last known address. The hearing shall be held within thirty days of the filing of the request for hearing and may be continued for not more than thirty days upon good cause shown. The relative shall be granted limited intervention only for the purpose of the placement review hearing.

No intervention may be allowed in a proceeding involving an apparent, alleged, or adjudicated abused or neglected child, including an adoption or guardianship proceeding for a child placed in the custody of the Department of Social Services pursuant to § 26-8A-27, except as provided by this chapter and under the Indian Child Welfare Act, (25 U.S.C. §§ 1901 to 1963, inclusive), as amended to January 1, 2005.

Source: SL 2005, ch 140, § 3.

Technical Assistance Brief



Indian Child Welfare Act Checklists

for Juvenile and Family Court Judges



Permanency Planning for Children Department

National Council of Juvenile
and Family Court Judges

Indian Child Welfare Act Checklists for Juvenile and Family Court Judges

"These Indian Child Welfare Act Checklists were created to assist juvenile and family court judges in assuring that the necessary inquiries are being made to determine as early as possible in every case whether the Indian Child Welfare Act applies. These checklists will help judges ensure that the necessary parties have been notified and are present in all cases where the ICWA may be applicable.

It is in the best interests of the child that the required inquiries be made from the time of the initial removal hearing, and that the inquiries continue throughout every stage of the case. Failure to make the necessary inquiries, notify the necessary parties, and follow the standards established within the ICWA can result in the case having to start over from the beginning, to the obvious detriment of the child. The checklists are designed to help avoid this result by assisting judges on a step-by-step basis in meeting the ICWA requirements at each hearing stage.

Leadership by the court is essential to ensure ICWA compliance. These children should not be subject to their placements and permanency plans being disrupted well into the final stages of the case. Because this affects cases in every state, the checklists have been drawn from the RESOURCE GUIDELINES and formatted so that they can be used by courts throughout the country, whether in a state with no tribes within its borders and small Native American populations, or states such as Alaska, where 60 percent of the children in the state dependency system are Alaska Natives for whom the ICWA applies.

Much has been written in recent years about the impact to affected children if the requirements of the ICWA are not met, most notable the significant delay in achieving permanency for these children as well as widespread non-compliance with the requirement that a qualified expert testify at hearings including the initial removal hearing. Because there are disproportionately high numbers of Native American and Alaska Native children in juvenile dependency systems in every state in the country, no court can overlook the requirement to make the necessary ICWA inquiries. The NCJFCJ Permanency Planning for Children Department hopes that you will find these new checklists to be useful to you in assuring compliance with the ICWA on all cases that come before your respective courts."

Honorable Dale R. Koch, Multnomah County Circuit Court, Portland, Oregon



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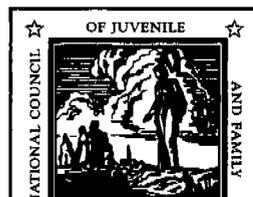
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Office of Juvenile Justice and
Delinquency Prevention
Governor's Commission on the Indian Child Welfare Act
November 2005



WHEN DOES THE INDIAN CHILD WELFARE ACT APPLY?

THE INDIAN CHILD WELFARE ACT APPLIES WHEN:

- The proceedings are child custody proceedings as the ICWA defines that term 25 U.S.C. § 1903(1); **and**
- The child is an "Indian child" as the ICWA defines that term under 25 U.S.C. § 1903(4).

If the proceedings are not child custody proceedings, or the child does not meet the definition of Indian child, the ICWA does not apply.

THE FOLLOWING ARE "CHILD CUSTODY PROCEEDINGS" UNDER THE ICWA:

- Foster care placements – this includes any action where child is removed from its parent or Indian custodian for temporary placement in a home or institution, including guardianship and conservatorship, **and** where parent or custodian cannot have child returned upon demand but where parental rights have not been terminated. 25 U.S.C. § 1903(1)(i)
- Termination of parental rights. 25 U.S.C. § 1903(1)(ii)
- Pre-adoptive placements. 25 U.S.C. § 1903(1)(iii)
- Adoptive placements. 25 U.S.C. § 1903(1)(iv)

THE FOLLOWING ARE NOT "CHILD CUSTODY PROCEEDINGS" UNDER THE ICWA:

- An award of custody pursuant to a divorce where one of the parents will obtain custody of the child. 25 U.S.C. § 1903(1)
- A placement based upon an act which, if committed by an adult, would be deemed a crime. 25 U.S.C. § 1903(1)

CONSTRUCTION/APPLICATION

- A placement that meets the definition of foster care placement under the ICWA and results from an act that *would not* be deemed a crime if committed by an adult, such as a status offense, is a child custody proceeding under the ICWA.

- A child custody placement pursuant to a divorce *where someone other than one of the parents* will obtain custody of the child is also a child custody proceeding under the ICWA.

THE CHILD IS AN "INDIAN CHILD" UNDER THE ICWA IF:

- He or she is an unmarried person who is under the age of 18, and
- The child is a member of a federally recognized Indian tribe; **or**
- The child is the biological child of a member of a federally recognized Indian tribe **and** child is eligible for membership in any federally recognized Indian tribe. 25 U.S.C. § 1903(4)

DEFINITIONS UNDER THE ICWA:

- "**Extended family member:**" defined by the law or custom of the Indian child's tribe, or in the absence of such law or custom, is a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step-parent. 25 U.S.C. § 1903(2)
- "**Indian:**" any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation. 25 U.S.C. § 1903(3) For purposes of the ICWA, tribes are arbiters of their own membership. (In The Interest of J.W., 498N.W.2d 417, 1993 Iowa App. Lexus 8)
- "**Indian child's tribe:**" the Indian tribe in which an Indian child is a member or eligible for membership, or in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts. 25 U.S.C. § 1903(5)
- "**Indian custodian:**" any person who has legal custody of an Indian child under tribal law or custom or under State law; or to whom temporary physical care,

custody and control has been transferred by the parent of such child. 25 U.S.C. § 1903(6)

- **“Indian tribe:”** any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians. 25 U.S.C. § 1903(8)
- **“Qualified expert witness:”** although not defined under the ICWA, a House Report prepared in conjunction with the ICWA states that the phrase “is meant to apply to expertise beyond the normal social worker qualifications.” H.R. No. 95-1386, 95th Cong., 2d Sess., reprinted in 6 U.S.C.C.S.A.N. 7530, 7454 (1978) In addition, the Bureau of Indian Affairs has promulgated “Guidelines for State Courts” which interpret the ICWA. The following characteristics are set forth at 44 Federal Register 67,593 (1979) as those most likely to qualify a witness as an expert under the ICWA:
 - a) A member of the Indian child’s tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices.
 - b) A lay expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child’s tribe.
 - c) A professional person having substantial education and experience in the area of his or her specialty.

Thus, a “qualified expert witness” is not an *expert on the ICWA*, but an *expert on the child’s tribe*.

PRELIMINARY PROTECTIVE HEARING CHECKLIST FOR ICWA CASES

WHO SHOULD ALWAYS BE PRESENT:

- Judge or judicial officer;
- Parents whose rights have not been terminated, including any putative father who has *acknowledged* paternity, even if he has not legally established paternity;
- Indian custodian or other custodial adults; 25 U.S.C. §§ 1903(6) and 1912
- Extended relatives, as defined by child's tribe, other tribal members, or other Indian families who may serve as placement resource for child; 25 U.S.C. §§ 1903(2) and 1915(b)
- Expert witness under 25 U.S.C. § 1912(e);
- Assigned caseworker;
- Tribal caseworker;
- Agency attorney;
- Attorney for parents;
- Attorney for child's Indian tribe;
- GAL/CASA or advocate for the child;¹
- Court reporter; and
- Security personnel.

WHO MAY ALSO BE NEEDED:

- Interpreter;
- Age-appropriate children;
- Adoptive parents;
- Domestic violence advocate for parent;
- Judicial caseload management staff;
- Law enforcement officers;
- Services providers; and
- Other witnesses, including tribal members, elders, or child's extended relatives.

COURT CAN MAKE SURE PARTIES AND KEY WITNESSES ARE PRESENT BY:

- Requiring quick and diligent notification efforts by the agency.
- Requiring both oral and written notification in language understandable to each party and witness.
- Requiring notice to include reason for removal, purpose

of hearing, availability of legal assistance.

- Requiring caseworkers to encourage attendance of parents, Indian custodians, and other parties.

FILING THE PETITION:

- A sworn petition or complaint should be filed at or prior to the time of the preliminary protective hearing.
- The petition should be complete and accurate.

KEY INQUIRIES THE COURT SHOULD MAKE:

- Is the child under 18, unmarried and:
 - a member of a federally recognized tribe or
 - eligible for membership in a federally recognized Indian tribe and the biological child of a member of a federally recognized tribe? 25 U.S.C. § 1903(4)
- Was the child in the custody of an Indian custodian prior to the hearing? 25 U.S.C. § 1903(6)
- If child is an Indian child, does the child either reside or is the child domiciled on a reservation or is the child already a ward of a tribal court, depriving the court of jurisdiction? 25 U.S.C. § 1911(a) If the child resides or is domiciled on reservation but is temporarily off reservation, the court may order an emergency removal from the parent or Indian custodian to prevent imminent physical damage or harm to the child. 25 U.S.C. § 1922
- Has agency mailed proper notice to child's putative father, including father who has *acknowledged* paternity, even if he has not legally established paternity? 25 U.S.C. § 1903(9)
- Was proper notice and inquiry mailed to *all* tribes in which the child may be eligible for membership, including a family chart or genogram to facilitate the tribe's membership determination? 25 U.S.C. § 1912
- If the child's tribe is not known at this time, was written notice sent to the U.S. Secretary of the Interior? 25 U.S.C. § 1912
- What efforts, if any, have been made by the agency to identify extended family or other tribal members or Indian families, for placement of the child? Has the agency attempted to create a family chart or genogram.

soliciting assistance from neighbors, family, or members of the Indian community who may be able to offer information? 25 U.S.C. § 1915(b)

- Is the parent able to read and/or understand English? If not, what efforts have been made to ensure that the parent understands the proceedings and any action the court will order?

KEY DECISIONS THE COURT MUST MAKE:

- Has the agency made active efforts to identify responsible extended family or other tribal members or Indian families to serve as a placement for the child, if necessary? 25 U.S.C. § 1915(b)
- Is it in the best interest of the child to appoint counsel for the child? 25 U.S.C. § 1912(b)
- If the state law makes no provision for the appointment of counsel, has the court notified the Secretary upon appointment of counsel so that reasonable fees and expenses may be appropriated? 25 U.S.C. § 1912(b)
- In assessing whether an individual who meets the placement preferences is an appropriate placement for the child, has the agency relied upon the social and cultural standards of the Indian community in which the parent or extended family reside, or with which the parent or extended family maintain social and cultural ties? 25 U.S.C. § 1915(d)
- What additional efforts need to be made to ensure that the child is placed with extended family or within his/her tribal community?
- What culturally relevant services will allow the child to remain at home?
- Will parties voluntarily agree to participate in services?
- Are restraining orders or orders expelling an allegedly abusive parent from the home appropriate or necessary?
- Are orders needed for examinations, evaluations, or other immediate services?
- What are the terms and conditions of visitation by parents or Indian custodian?

REQUIRED NOTICE AND ADVICE OF RIGHTS:

- Review notice to missing parties and relatives.
- Serve parties with copy of the petition.
- Advise parties of their rights:
 - Advise the parent and/or Indian custodian that they have a right to a court-appointed attorney if they are indigent. 25 U.S.C. § 1912(b)
 - Advise the parents of the content of the petition, their right to examination of reports and other documents under 25 U.S.C. § 1912(c), their rights to request an additional 20 days to prepare for the hearing under 25 U.S.C. § 1912(a), and all other admonitions as to the consequences of failure to comply with ASFA and state statutory requirements in order to prevent the filing and adjudication of a Petition to Terminate Parental Rights. This admonition would also include an explanation of the grounds for a Termination of Parental Rights proceeding. This admonition should be repeated in each subsequent hearing held after the Preliminary Hearing.
 - Advise the Indian custodian of his/her right to be a full party to the case. 25 U.S.C. § 1911(c)
 - Ensure that the agency mails notice of next scheduled hearing and a copy of the petition and advice of rights under the ICWA to the child's parent if he/she is not at the hearing. Notice must be sent by registered mail, return receipt. 25 U.S.C. § 1912
 - Ensure that the agency mails notice of next scheduled hearing and a copy of the petition and advice of rights under the ICWA to the Indian custodian if he/she is not at the hearing. Notice must be sent by registered mail, return receipt. 25 U.S.C. § 1912
 - Ensure that the agency mails notice of the next scheduled hearing and a copy of the petition and advice of rights under the ICWA to the child's tribe. Notice must be sent by registered mail, return receipt. 25 U.S.C. § 1912

PRELIMINARY PROTECTIVE HEARING CHECKLIST FOR ICWA CASES (cont.)

SUBMISSION OF REPORTS TO THE COURT:

- The court should require submission of agency and/or law enforcement reports at least one hour prior to the hearing.
- Reports to the court should describe all circumstances of removal, any allegations of abuse or neglect, and all efforts made to try to ensure safety and prevent need for removal.

KEY WRITTEN FINDINGS THE COURT MUST MAKE:

- Whether, at the time of removal, the child was already a ward of a tribal court (if known) thereby depriving the state court of jurisdiction. 25 U.S.C. § 1911(a)
- Whether, at the time of removal, the child was in the custody of an Indian custodian. 25 U.S.C. § 1903(6)
- Whether active efforts were made prior to removal of child to provide remedial services and rehabilitative programs designed to prevent the breakup of the family, and whether the efforts were successful. 25 U.S.C. § 1912(d)
- Whether there was *clear and convincing evidence*, including testimony of a qualified expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(e)
- Whether the parent, Indian custodian, or child's tribe requested an additional 20 days to prepare for the hearing. 25 U.S.C. § 1912(a)

IF CHILD IS PLACED OUTSIDE OF THE HOME:

- Specify why continuation of the child in the home would be contrary to the child's welfare.
- Specify whether child is to be placed in a home that meets the priority placement preferences mandated by 25 U.S.C. § 1915(b):
 - A member of the Indian child's extended family;
 - A foster home licensed, approved, or specified by the Indian child's tribe;
 - An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

- If the child is not to be placed within the priority placements mandated by 25 U.S.C. § 1915(b), specify whether:
 - The child's tribe issued a resolution establishing different order of preference and the placement is the least restrictive setting appropriate to the particular needs of the child. 25 U.S.C. § 1915(c); or
 - There is *good cause* not to follow the placement preferences. 25 U.S.C. § 1915(a)
- Order the agency to make ongoing, diligent search to locate placement that meets the preferences established within the ICWA.
- Specify the terms of visitation with the parent(s), Indian custodian, and extended family.
- Order the agency to arrange for the child to visit with other tribal members if no extended family is available and to coordinate with the child's tribe to arrange for the child to attend significant cultural and familial events.

¹ The court should make every effort within its discretion to appoint an advocate for the child who is either a member of the child's tribe, or who is familiar with and respectful of the child's cultural needs.

ADJUDICATION HEARING CHECKLIST FOR ICWA CASES

WHO SHOULD ALWAYS BE PRESENT:

- Judge or judicial officer;
- Parents whose rights have not been terminated, including any putative father who has *acknowledged* paternity, even if he has not legally established paternity; 25 U.S.C. § 1903(9)
- Indian custodian or other custodial adults; 25 U.S.C. § 1903(6)
- Extended relatives, as defined by child's tribe; 25 U.S.C. § 1903(2)
- Expert witness under 25 U.S.C. § 1912(e);
- Assigned caseworker;
- Tribal caseworker or representative;
- Agency attorney;
- Attorney for parents or Indian custodian;
- Attorney for child's tribe;
- GAL/CASA or advocate for the child;¹
- Court reporter; and
- Security personnel.

WHO MAY ALSO BE NEEDED:

- Interpreter;
- Age-appropriate children;
- Adoptive parents;
- Domestic violence advocate for parent;
- Judicial caseload management staff;
- Law enforcement officers;
- Services providers; and
- Other witnesses, including tribal members, elders, or child's extended relatives.

KEY DECISIONS THE COURT SHOULD MAKE:

- Whether child is an Indian child under the ICWA. 25 U.S.C. § 1903(4)
- Whether state court lacks jurisdiction because child is already a ward of a tribal court. 25 U.S.C. § 1911(a)
- Which allegations of the petition have been proved or admitted.
- Whether there is a legal basis for continued court and agency intervention.
- Whether the agency made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the family. If so, were these

- efforts successful? 25 U.S.C. § 1912(d)
- Whether parent is able to read English.

ADDITIONAL DECISIONS:

If the disposition hearing will not occur within a short time after the adjudication hearing, the judge will need to make temporary decisions at the conclusion of the adjudication, such as:

- Determine where the child is to be placed prior to disposition hearing.
- Order further testing or evaluation of the child, parent(s), or Indian custodian in preparation for the disposition hearing and ensure that all assessments or evaluations are culturally appropriate.
- Make sure the agency is, in preparation for disposition, making prompt and diligent efforts to identify and evaluate extended family or, if no family member is available, other tribal members or other Indian families, as caretaker.
- Order the alleged perpetrator to stay out of the family home and have no contacts with the child.
- Direct the agency to continue its efforts to notify non-custodial parents, including unwed fathers whose paternity has been acknowledged or established. 25 U.S.C. § 1903(9)
- Set terms for visitation, support, and other intra-family communication including parent-child and sibling visits when the child is in foster care prior to disposition.

THE COURT'S WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW MUST:

- Specify whether the child is an Indian child under ICWA and, if not known, whether the child's tribe has been provided adequate notice, sufficient information, and an opportunity to determine the child's membership eligibility. 25 U.S.C. § 1903(4)
- Specify what efforts, if any, have been made to identify the child's tribe.
- Specify whether the agency has mailed notice and necessary information to *all* tribes in which the child may be eligible for membership to enable each tribe to ascertain whether child is either a member or eligible for membership. 25 U.S.C. § 1912(a)

- Specify whether written notice was sent to the U.S. Secretary of the Interior if the child's tribe is not yet known. 25 U.S.C. § 1912
- Specify whether child either resides or is domiciled on a reservation, or is already a ward of a tribal court, thereby depriving the state court of jurisdiction. 25 U.S.C. § 1911(a)
- Specify whether the child was in the custody of an Indian custodian at the time of removal. 25 U.S.C. § 1903(6)
- Specify whether the agency mailed notice of the hearing and a copy of the petition and advice of rights to the Indian custodian, registered mail, return receipt. 25 U.S.C. § 1912
- Specify whether the agency mailed notice of the hearing and a copy of the petition and advice of rights to the child's Indian tribe, if known, by registered mail, return receipt. 25 U.S.C. § 1912
- Ascertain whether the child's tribe seeks to intervene in the proceedings and, if so, grant that request. 25 U.S.C. § 1911(c) If the child is eligible for membership in more than one tribe, ascertain which tribe is the child's tribe for purposes of the ICWA. 25 U.S.C. § 1903(5)
- Ascertain whether the child's Indian custodian, if there is one, seeks to intervene in the proceedings and, if so, grant that request. 25 U.S.C. § 1911(c)
- If child's tribe, parent, or Indian custodian requested an additional 20 days in which to prepare for the hearing, grant that request and reschedule the hearing. 25 U.S.C. § 1912(a)
- Specify whether a parent, Indian custodian, or the child's tribe has filed a motion or petition to transfer the case to tribal court. 25 U.S.C. § 1911(b)
- If the court declined to transfer the case, specify whether either parent vetoed the transfer, the tribal court declined to accept jurisdiction, or the reasons, if any, why there is good cause not to transfer the case to the tribal court. 25 U.S.C. § 1911(b)
- Specify whether the court advised the parent(s) or Indian custodian that they have a right to a court-appointed attorney if they are indigent. 25 U.S.C. § 1912(b)
- Provide sufficiently detailed information to justify why the court found by *clear and convincing evidence*, including testimony from an expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(e)
- Provide sufficiently detailed information to justify agency and court choices for treatment and services.
- Be written in easily understandable language so that all parties know how the court's findings relate to subsequent case planning.
- Indicate whether the parent can read English and, if not, what steps will be taken to ensure that the parent understands the court's written order.
- Set date and time of next hearing.

¹ The court should make every effort within its discretion to appoint an advocate for the child who is either a member of the child's tribe, or who is familiar with and respectful of the child's cultural needs.

DISPOSITION HEARING CHECKLIST FOR ICWA CASES

WHO SHOULD ALWAYS BE PRESENT:

- Judge or judicial officer;
- Parents whose rights have not been terminated, including any putative father who has *acknowledged* paternity, even if he has not yet legally established paternity, 25 U.S.C. § 1903(9)
- Indian custodian, 25 U.S.C. § 1903(6), or other custodial adults;
- Extended relatives, as defined by child's tribe, 25 U.S.C. § 1903(2), or other tribal members or Indian families who may serve as a placement for the child;
- Assigned caseworker;
- Tribal caseworker or representative;
- Agency attorney;
- Attorney(s) for parent(s) or Indian custodian;
- Attorney for child's Indian tribe;
- GAL/CASA or advocate for the child;
- Court reporter; and
- Security personnel.

WHO MAY ALSO BE NEEDED:

- Interpreter;
- Age-appropriate children;
- Adoptive parents;
- Domestic violence advocate for parent;
- Judicial caseload management staff;
- Law enforcement officers;
- Services providers; and
- Other witnesses, including tribal members, elders, or child's extended relatives.

SUBMISSION OF PREDISPOSITION REPORTS TO THE COURT SHOULD INCLUDE:

- A statement of family changes needed to correct the problems necessitating state intervention, with timetables for accomplishing them;
- A description of services to be provided to assist the family, including those that the tribe or an Indian organization may offer and make available;
- A description of services to be provided to ensure the child's ongoing connection to his/her culture, including attendance at significant cultural events, while placed outside of his/her family; and
- A description of actions to be taken by parent(s) or Indian custodian to correct the identified problems and any steps the parent or Indian custodian has taken thus far.

WHEN THE AGENCY RECOMMENDS FOSTER PLACEMENT, AN AFFIDAVIT DOCUMENTING ACTIVE EFFORTS SHOULD BE SUBMITTED. THE FOLLOWING ARE SOME KEY ELEMENTS OF THE AFFIDAVIT:

- A description of the active efforts made by the agency to provide remedial services and rehabilitative programs designed to prevent the breakup of the family and an explanation why these efforts were unsuccessful. 25 U.S.C. § 1912(d)
- A description of the efforts made to coordinate with the child's tribe or any Indian organization in assisting the Indian parent or Indian custodian with services needed to avoid the need for placement, and an explanation if the services were unsuccessful.
- An explanation of why the child cannot be protected from the identified problems in the home even if services are provided to the child and family.
- An explanation of the active efforts made to contact the child's tribe, extended family, and other local Indian organizations for assistance in identifying and contacting extended family and other tribal members or Indian families about providing an appropriate placement for the child.
- A description of arrangements made by the agency to ensure visitation with extended family, or, if there is no family in the area, with other tribal members, to support the child's cultural connections.
- A description of the agency's plan to coordinate with the child's tribe and family to identify significant cultural and important familial events and arrange for the child's attendance.

KEY DECISIONS THE COURT MUST MAKE:

- Does the agency's proposed case plan address the needs of the child and the parent(s) or Indian custodian?
- Is the parent able to read the proposed case plan and, if not, what efforts will be made to ensure that the parent fully understands the requirements of the plan?
- Is removal of the child necessary to prevent serious emotional or physical damage to the child? 25 U.S.C. § 1912(e)
- Where should the child be placed?

THE COURT'S WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW SHOULD:

- Determine the legal disposition of the case, including the custody of the child, based upon the statutory options provided under federal law, unless state law provides a higher degree of protection, 25 U.S.C. § 1921, or unless there is a governing state-tribal agreement.
 - State the long-term plan for the child (e.g., maintenance of the child in the home of a parent or Indian custodian, reunification with a parent (or Indian custodian), guardianship or permanent placement with a relative or other tribal member or Indian family, or placement of child in a permanent adoptive home).
 - Identify the active efforts that have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian child's family. 25 U.S.C. § 1912(d)
 - Specify that there is *clear and convincing evidence* that continued custody of the child by the parent (or Indian custodian) would likely result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(e)
 - Specify whether the child was placed within the placement preferences under the ICWA, 25 U.S.C. § 1915(b), and, if not, whether the child's tribe issued a resolution establishing a different order of preference, as long as the placement is the least restrictive setting appropriate to the particular needs of the child. 25 U.S.C. § 1915(c)
 - Specify whether the agency relied upon the social and cultural standards of the Indian community in which the parent or extended family reside or with which the parent or extended family maintain social and cultural ties when the agency determined whether an individual is an appropriate placement for the child.
 - If the child's tribe did not issue a resolution indicating a different order of preference for the placement of the child, specify the reasons why there is good cause to deviate from the placement preferences. 25 U.S.C. § 1915(b)
 - If there is not good cause to deviate from the placement preferences, and there is no tribal resolution re-ordering the placement preferences, order the agency to move the child to a home that complies with the placement preferences. 25 U.S.C. § 1915(b)
- If placement or services are ordered that were not agreed upon by the parties, specify the evidence or legal basis upon which the order is made.
 - If applicable, specify why continuation of the child in the home would be contrary to the child's welfare.
 - If the state's case plan conflicts with or does not meet the requirements of the ICWA, disapprove or modify the agency's proposed case plan.

¹ The court should make every effort within its discretion to appoint an advocate for the child who is either a member of the child's tribe, or who is familiar with and respectful of the child's cultural needs.

REVIEW HEARING CHECKLIST FOR ICWA CASES

WHO SHOULD ALWAYS BE PRESENT:

- Judge or judicial officer;
- Parents whose rights have not been terminated, including any putative father who has *acknowledged* paternity, even if he has not yet legally established paternity;
- Indian custodian, 25 U.S.C. § 1903(6), or other custodial adults;
- Extended relatives, as defined by child's tribe, 25 U.S.C. § 1903(2), or other tribal members or Indian families who may serve as a placement for the child;
- Foster parents;
- Assigned caseworker;
- Tribal caseworker or representative;
- Agency attorney;
- Attorney(s) for parent(s);
- Attorney for child's Indian tribe;
- GAL/CASA or legal advocate for the child;
- Court reporter; and
- Security personnel.

WHO MAY ALSO BE NEEDED:

- Interpreter;
- Age-appropriate children;
- Adoptive parents;
- Domestic violence advocate for parent, if any;
- Judicial caseload management staff;
- Law enforcement officers;
- Services providers; and
- Other witnesses, including extended relatives, tribal members or elders.

SUBMISSION OF REPORTS TO THE COURT:

- A statement of family changes needed to correct the problems necessitating state intervention, with timetables for accomplishing them.
- A description of services to be provided to assist the family, specifically identifying those made available with assistance from the tribe or an Indian organization.
- A description of services to be provided to ensure the child's ongoing connection to his/her culture while placed outside of his/her family, including attendance at significant cultural events.
- A description of actions to be taken by the parents to correct the identified problems, and of the parents' compliance with the case plan thus far.

AFFIDAVIT DOCUMENTING ACTIVE EFFORTS:

When the agency recommends continued foster placement, an affidavit documenting active efforts made must be submitted. The following are some of the requisite elements of the affidavit:

- A description of the active efforts made to reunify the family since the last disposition or review hearing and, if those efforts were not successful, an explanation why. 25 U.S.C. § 1912(d)
- A description of the efforts made to coordinate with the child's tribe or any Indian organization in assisting the Indian parent or Indian custodian with services needed to avoid the need for placement, and an explanation why these services were unsuccessful.
- An explanation of why the child cannot be protected from serious emotional or physical harm if the child remains in the home even if services are provided to the child and family. 25 U.S.C. § 1912(e)
- An explanation of the diligent efforts made to contact the child's extended family about providing a placement for the child, or, if family members are not known, diligent efforts made to contact the child's tribe and other local Indian organizations for assistance in identifying and contacting extended family, other tribal members, or Indian families for placement.
- Efforts made by agency to ensure child's visitation with extended family, or, if none is available, with other tribal members, to ensure the child's ongoing participation in his/her culture.
- Efforts made by agency to coordinate with the child's tribe and family to make arrangements for child to attend significant cultural and important familial events.

KEY DECISIONS THE COURT MUST MAKE:

- Whether there is a need for continued placement of the child.
- Whether active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family and, if so, whether the services were successful. 25 U.S.C. § 1912(d)
- Whether efforts were made to ensure that the parent understands the case plan if the parent does not read English.
- Whether the court-approved, long-term permanent plan for the child remains the best plan for the child.
- Whether the services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances.

- Whether the child is placed according to the placement preferences in the ICWA, and, if not, whether the child should not be moved into a preference placement. 25 U.S.C. § 1915(b)
- Whether the terms of visitation need to be modified.
- Whether any additional court orders need to be made to move the case toward successful completion.
- What time frame should be established for goals to achieve reunification or other permanent plan for each child.

THE COURT'S WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW SHOULD:

- Indicate whether the agency has identified the child's tribe.
- Specify whether the agency sent proper notice of the hearing and a copy of the petition and advice of rights to the parent(s), Indian custodian (if any), and child's tribe by registered mail, return receipt. 25 U.S.C. § 1912(a)
- Specify whether the tribe has been afforded a full opportunity to participate in the proceedings and, if so, whether the agency provided the child's tribe with copies of the petition, reports, and information concerning the child. 25 U.S.C. § 1911(c and d) and § 1912(a)
- Set forth findings as to why the child is in need of either continued placement outside the parent's home or continued supervision, articulating the *clear and convincing evidence* that continued custody of the child by the parent or Indian custodian would likely result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(e)
- Set forth findings as to whether family reunification and an end to court supervision continues to be the long-term case goal, and why.
- Set forth detailed findings of fact and conclusions of law as to whether the agency has made active efforts to provide remedial services and rehabilitative programs designed to eliminate the need for placement of the child outside the home of the parent or Indian custodian and whether the efforts were successful. 25 U.S.C. § 1912(d)
- Set forth detailed findings as to whether the agency has made ongoing, diligent search to locate extended family, a tribal member, or other Indian family for placement if the child is not already within a preference placement. 25 U.S.C. § 1915(b)
- Set forth orders for the agency to make additional

efforts necessary to meet the needs of the family and move the case toward completion, including culturally relevant services that may be available with assistance from the tribe or local Indian/native organization.

- Be written in easily understandable language that allows the parent(s) or Indian custodian to fully understand what action they must take to have the child returned to their care (interpreter should be provided for parent or Indian custodian whose first language is not English).
- Approve proposed changes in the case plan and set forth any court-ordered modifications needed as a result of information presented at the review.
- Identify an expected date for final reunification or other permanent plan for the child.
- Where the state's case plan conflicts with or does not meet the requirements of the ICWA, disapprove or modify the agency's proposed case plan to conform to the requirements of the ICWA.
- Make any necessary orders to resolve the problems that are preventing reunification or the completion of another permanent plan for the child.
- Set date and time for next hearing, if needed.

¹ The court should make every effort within its discretion to appoint an advocate for the child who is either a member of the child's tribe, or who is familiar with and respectful of the child's cultural needs.

PERMANENCY PLANNING HEARING CHECKLIST FOR ICWA CASES

WHO SHOULD ALWAYS BE PRESENT:

- Judge or judicial officer;
- Parents whose rights have not been terminated, including any putative father who has acknowledged paternity, even if he has no established paternity; 25 U.S.C. § 1903(9)
- Relatives with legal standing or other custodial adults as defined by 25 U.S.C. § 1903(6);
- Expert witness under 25 U.S.C. § 1912(e);
- Representative from child's tribe;
- Assigned caseworker;
- Attorney for child;
- Attorney for parents or Indian custodian;
- Attorney for child's tribe;
- CASA, GAL, or advocate for the child;¹
- Court reporter; and
- Security personnel.

WHO MAY ALSO BE NEEDED:

- Interpreter;
- Age-appropriate children;
- Extended family members;
- Foster parents;
- Prospective adoptive parents;
- Judicial case management staff;
- Service providers; and
- Other witnesses, including tribal members or elders.

SUBMISSION OF REPORTS TO THE COURT:

Reports for a Permanency Planning Hearing should:

- Specify the relief being sought and address the issues that the judge needs to determine.
- Set forth a plan to carry out the placement decision.

When the petition or report requests that a child be returned home on a date certain, it should set forth:

- How the conditions or circumstances leading to the removal of the child have been corrected.
- A description of actions taken by the parent(s) or Indian custodian to correct the identified problems.
- A description of the active efforts made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, including efforts made by the tribe, an Indian organization, or any other agency or organization.
- The frequency of recent visitation and its impact on the child.
- A plan for the child's safe return home and follow-up supervision after family reunification.

When the petition or report requests termination of parental rights, it should set forth:

- Facts and circumstances supporting the grounds for termination;

- A description of the active efforts made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family and an explanation why these efforts were unsuccessful.
- A description of the active efforts made to coordinate with the child's tribe or an Indian organization in assisting the Indian parent or custodian with services needed to avoid termination of parental rights and an explanation why these efforts were unsuccessful.
- An explanation of why the child cannot be protected from the identified problems in the home.
- A summary of the agency's understanding of the tribe's position regarding the permanency plan, including an attachment of any correspondence or supporting documentation sent by the tribe to the agency.
- An explanation of the active efforts made to contact the child's tribe, extended family, and other local Indian organizations for assistance in identifying and contacting extended family and other tribal members or Indian families about providing an appropriate placement for the child.
- If the child is not placed with an extended family member, another tribal member, or another Indian family, an explanation of why the child cannot be moved to a placement that meets the preferences established within the ICWA. 25 U.S.C. § 1915(a) and (b)
- A description of arrangements made by the agency to ensure visitation with extended family, and of all efforts made to support the child's cultural connections.
- A permanency plan for the child.

When another planned permanent living arrangement is proposed, the report should set forth:

- Facts and circumstances refuting the grounds for termination of parental rights and showing that although the child cannot be placed with parents, termination is not in the best interests of the child.
- A description of why the planned permanent living arrangement is in the best interests of the child.
- An explanation of the active efforts made to contact the child's tribe, extended family, and other local Indian organizations for assistance in identifying and contacting extended family and other tribal members or Indian families to identify a culturally appropriate placement for the child.
- If the child is not placed with an extended family member, another tribal member, or another Indian family, an explanation of why the child cannot be moved to a placement that meets the preferences established within the ICWA. 25 U.S.C. § 1915(a) and (b)
- A description of arrangements made by the agency to

- ensure visitation with extended family, or, if there is no extended family, with other tribal members, to support the child's cultural connections.
- A summary of the agency's understanding of the tribe's position regarding the permanency plan, including an attachment of any correspondence or supporting documentation sent by the tribe to the agency.
 - A plan to ensure the stability of the planned permanent living arrangement.

AFFIDAVIT DOCUMENTING ACTIVE EFFORTS:

When the agency recommends a permanency plan, an affidavit documenting active efforts made must be submitted. The following are some of the requisite elements of the affidavit:

- A description of the active efforts made to reunify the family since the last disposition or review hearing and, if those efforts were not successful, an explanation why. 25 U.S.C. § 1912(d)
- A description of the efforts made to coordinate with the child's tribe or any Indian organization in assisting the Indian parent or Indian custodian with services needed to avoid the need for placement, and an explanation why these services were unsuccessful.
- An explanation of why the child cannot be protected from serious emotional or physical damage if the child remains in the home even if services are provided to the child and family. 25 U.S.C. § 1912(e)
- An explanation of the diligent efforts made to contact the child's extended family about providing a placement for the child, or, if family members are not known, diligent efforts made to contact the child's tribe and other local Indian organizations for assistance in identifying and contacting extended family, other tribal members, or Indian families for placement.
- Efforts made by agency to ensure child's visitation with extended family, or, if none is available, with other tribal members, to ensure the child's ongoing participation in his/her culture.
- Efforts made by agency to coordinate with the child's tribe and family to make arrangements for child to attend significant cultural and important familial events.

KEY DECISIONS THE COURT SHOULD MAKE:

- Can the child be safely returned home on a specific date?
- Whether active efforts were made to provide remedial services and rehabilitative programs to prevent the breakup of the family?
- If the child cannot be safely returned home, is there a placement option with a member of the child's family, as defined by Indian custom?

- If placement can not be found within the child's family, can placement be found with a member of the child's tribe?
- Will the child be legally freed for adoption?

THE COURT'S WRITTEN FINDING OF FACT AND CONCLUSIONS OF LAW SHOULD:

- Indicate whether the agency has identified the child's tribe.
- Specify whether the agency sent proper notice of the hearing and a copy of the petition and advice of rights to the parent(s), Indian custodian (if any), and child's tribe by registered mail, return receipt. 25 U.S.C. § 1912(a)
- Specify whether the tribe has been afforded a full opportunity to participate in the proceedings and, if so, whether the agency provided the child's tribe with copies of the petition, reports, and information concerning the child. 25 U.S.C. § 1911(c and d) and § 1912(a)
- Set forth findings as to why the child is in need of either continued placement outside the parent's home or continued supervision, articulating the *clear and convincing evidence* that continued custody of the child by the parent or Indian custodian would likely result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(e)
- Set forth detailed findings of fact and conclusions of law as to whether active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and eliminate the need for placement of the child outside the home of the parent or Indian custodian and whether the efforts were successful. 25 U.S.C. § 1912(d)
- Set forth detailed findings as to whether the agency has made an ongoing, diligent search to locate extended family, a tribal member, or other Indian family for placement if the child is not already within a preference placement. 25 U.S.C. § 1915(b)
- Be written in easily understandable language that allows the parent(s) or Indian custodian to fully understand what action they must take to have the child returned to their care (interpreter should be provided for parent or Indian custodian whose first language is not English).
- Set forth the court's determination of permanency and provide documentation for the plan to return home, proceed to termination of parental rights, or plan another permanent living arrangement.

¹ The court should make every effort within its discretion to appoint an advocate for the child who is either a member of the child's tribe, or who is familiar with and respectful of the child's cultural needs.

TERMINATION OF PARENTAL RIGHTS HEARING CHECKLIST FOR ICWA CASES

WHO SHOULD ALWAYS BE PRESENT:

- Judge or judicial officer;
- Parents, including any putative father who has *acknowledged* paternity, even if he has not yet legally established paternity;
- Indian custodian, 25 U.S.C. § 1903(6), if there is one;
- Expert witness under 25 U.S.C. § 1912(e);
- Assigned caseworker;
- Caseworker or representative from child's Indian tribe;
- Agency attorney;
- Attorney(s) for parent(s);
- Attorney for child's Indian tribe;
- GAL/CASA or legal advocate for the child;¹
- Court reporter; and
- Security personnel.

WHO MAY ALSO BE NEEDED:

- Interpreter;
- Domestic violence advocate for parent;
- Age-appropriate children whose testimony is required;
- Judicial case management staff;
- Law enforcement officers;
- Services providers; and
- Other witnesses, including tribal members, elders or the child's extended relatives. 25 U.S.C. § 1903(2)

KEY DECISIONS THE COURT MUST MAKE:

- Whether written notice was provided to the child's tribe by registered mail, return receipt requested. 25 U.S.C. § 1912(a)
- Whether written notice was provided to the parents or Indian custodian by registered mail, return receipt requested. 25 U.S.C. § 1912(a)
- Whether active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family. 25 U.S.C. § 1912(d)
- Whether efforts were made to ensure that the parent understood the case plan if the parent does not read English.
- Whether the active efforts were unsuccessful. 25 U.S.C. § 1912(d)
- Whether there is evidence *beyond a reasonable doubt*, including testimony of an expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(f)

THE COURT'S WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW SHOULD:

- Specify whether active and reasonable efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family. 25 U.S.C. § 1912(d)
- Specify what evidence, including testimony of a qualified expert witness, supports the finding *beyond a*

reasonable doubt that continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(e)

- Specify any other state statutory grounds supporting termination of parental rights, if state law requires satisfaction of dual burden of proof.

THE COURT'S WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW AT THE UNCONTESTED TERMINATION OF PARENTAL RIGHTS HEARING MUST ALSO INCLUDE:

If the parent was present and consented to termination of parental rights:

- Thoroughly describe the conditions and circumstances under which parental consent to termination of parental rights was obtained. Parental consent *must* be executed in writing in the presence of the judge and must be accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and that the parent or Indian custodian fully understood these terms. 25 U.S.C. § 1913(a)
- Certify that either the parent or Indian custodian fully understood the explanation of the terms and consequences of the consent to termination of parental rights in English, or that it was interpreted into a language that the parent or Indian custodian understood. 25 U.S.C. § 1913(a)
- Certify that the consent to termination of parental rights was not given prior to or within ten days after the birth of the child, as the consent would not be valid under these circumstances. 25 U.S.C. § 1913(a)
- Determine whether the consent was voluntary and informed, that it was not obtained through fraud or duress, and that all alternatives to termination of parental rights were explained. 25 U.S.C. § 1913(d)

If termination of parental rights was uncontested because the parent failed to appear, or appeared but neither contested nor consented to termination, adhere to the checklist for contested terminations listed above.

¹ The court should make every effort within its discretion to appoint an advocate for the child who is either a member of the child's tribe, or who is familiar with and respectful of the child's cultural needs.

ADOPTION HEARING CHECKLIST FOR ICWA CASES

WHO SHOULD ALWAYS BE PRESENT AT THE UNCONTESTED ADOPTION HEARING:

- Judge;
- Adoptive parents;
- Assigned caseworker, if any;
- Tribal caseworker or representative;
- GAL/CASA or advocate for the child;
- Court reporter or suitable technology; and
- The child.

WHO SHOULD ALWAYS BE PRESENT AT THE CONTESTED ADOPTION HEARING:

- Judge;
- Prospective adoptive parents;
- Assigned caseworker;
- Agency attorney;
- GAL/CASA or advocate for the child;
- Tribal representative and/or attorney;
- Parties contesting the adoption (including Indian custodian if there is one);
- Attorneys for all parties;
- Court reporter or suitable technology; and
- Security personnel.

WHO MAY ALSO BE NEEDED AT THE CONTESTED ADOPTION HEARING:

- The child;
- Interpreter;
- Judicial case management staff; and
- Other witnesses, including tribal elders, members of the child's extended family, and other tribal members.

KEY DECISIONS THE COURT MUST MAKE:

- Whether written notice was provided to the child's tribe by registered mail, return receipt requested, even if the child's tribe has not been a party to any prior proceedings related to the welfare of the child. 25 U.S.C. § 1912(a)

THE COURT'S WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW SHOULD:

- Determine whether the child is within the exclusive jurisdiction of a tribe because the child either resided or was domiciled on a reservation or was already a ward of a tribal court at the time that the child custody proceedings began, thereby depriving the state court of jurisdiction.
- Determine whether all the necessary consents to adoption have been provided, including the consent of the agency with the custody of the child, the consent of the child (if the child is old enough that consent is required under state law), and the consent of a parent or Indian custodian whose rights have not been terminated.
- Thoroughly describe the conditions and circumstances under which parental consent to adoption was obtained. When there has been no prior termination of parental rights, parental consent *must* be executed in writing in the presence of the judge and must be

accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and that the parent or Indian custodian fully understood these terms. 25 U.S.C. § 1913(a)

- Certify that either the parent or Indian custodian fully understood the explanation of the terms and consequences of the consent to adoption in English, or that it was interpreted into a language that the parent or Indian custodian understood. 25 U.S.C. § 1913(a)
- Certify that the consent to adoption was not given prior to or within ten days after the birth of the child, as the consent would not be valid under these circumstances. 25 U.S.C. § 1913(a)
- Determine whether the consent was voluntary and informed, that it was not obtained through fraud or duress, and that all alternatives to adoption were explained. 25 U.S.C. § 1913(d)
- Determine whether the child is placed in an adoptive home where the adopting individual is a member of:
 - The child's extended family;
 - The child's tribe; or
 - Another Indian family.
- If the child is not placed in one of the placement preferences established by federal law, determine whether:
 - The agency made a diligent search to locate a placement that meets the preferences established within the ICWA. 44 Fed. Reg. at 67,595
 - There is good cause not to place the child according to the placement preferences. 25 U.S.C. § 1915(a)
 - The child's tribe established a different order of preference by resolution. 25 U.S.C. § 1915(c)
 - If the child's tribe established a different order of preference for placement, ascertain whether the placement is the least restrictive setting which most approximates a family and in which the child's special needs, if any, may be met. 25 U.S.C. § 1915(b) and (c)
 - The child's consenting parent evidenced a desire for anonymity, in which case the court shall give weight to that desire in applying the preferences. 25 U.S.C. § 1915(c)
- Determine that the child is doing well in the adoptive home and that the adoptive parents have made a clear and knowledgeable commitment to care for the child on a permanent basis.
- Determine that the adoptive parents fully understand the legal and financial consequences of adoption. Review with the parents and agency the need for and sufficiency of any adoption subsidy arrangements.
- Certify that the parent understands that he/she may withdraw consent to adoption for any reason prior to the entry of the final decree of termination or adoption, as the case may be, and that the child will be returned to the parent.
- At contested adoption hearings, determine whether the adoption should be granted. A contested adoption hearing must be conducted with procedural fairness, and should include notice to the parties and the child's

tribe even if the tribe has not yet become a party in previous stages of the child custody proceedings.

- Conclude the proceeding without undue delay, applying principles of case flow management.
 - The court which enters the final decree of adoption must, upon application, inform the Indian child who has reached the age of 18 of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect the rights flowing from the individuals' tribal relationship.
- 25 U.S.C. § 1971

¹ The court should make every effort within its discretion to appoint an advocate for the child who is either a member of the child's tribe, or who is familiar with and respectful of the child's cultural needs.

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“Native American Resource Directory for Juvenile and Family Court Judges”

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(Contains tribal contact information)

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