

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.