

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

400M0324

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1051 - 01/13/2006

Introduced by: The Committee on Judiciary at the request of the Department of Social Services

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding notice to a tribe of
2 a child custody proceeding subject to the Indian Child Welfare Act.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 26-7A-15 be amended to read as follows:

5 26-7A-15. The officer or party who takes a child into temporary custody, with or without
6 a court order, except under a court order issued during a noticed hearing after an action has been
7 commenced, shall immediately, without unnecessary delay in keeping with the circumstances,
8 inform the child's parents, guardian, or custodian of the temporary custody and of the right to
9 a prompt hearing by the court to determine whether temporary custody should be continued. If
10 the child's parents, guardian, or custodian cannot be located after reasonable inquiry, the officer
11 or party taking temporary custody of the child shall report that fact and the circumstances
12 immediately to the state's attorney. The state's attorney shall notify the child's parents, guardian,
13 or custodian, without unnecessary delay, of the time, date, and place of the temporary custody
14 hearing. If the temporary custody hearing concerns an apparent abused or neglected Indian child,
15 the state's attorney or Department of Social Services shall make reasonable efforts to inform the



1 Indian custodian and the designated tribal agent for the Indian child's tribe, if known, of the
2 time, date, and place of the temporary custody hearing. The information regarding the temporary
3 custody hearing may be provided to the Indian custodian or ~~Indian child's tribe~~ the designated
4 tribal agent orally or in writing, including by telephone or facsimile. The hearing shall be held
5 within forty-eight hours if it concerns any apparent abused or neglected child or if it concerns
6 any apparent delinquent child pursuant to § 26-8C-3 or within twenty-four hours if it concerns
7 any apparent child in need of supervision pursuant to § 26-8B-3, excluding Saturdays, Sundays,
8 and court holidays, after taking the child into temporary custody, unless extended by order of
9 the court. Failure to notify the child's parents, guardian, or custodian, or to inform the Indian
10 custodian or the ~~Indian child's tribe~~ designated tribal agent, of the temporary custody hearing
11 is not cause for delay of the hearing if the child is represented by an attorney at the hearing. As
12 used in this section, the terms, Indian child, Indian custodian, and Indian child's tribe, are
13 defined as in 25 U.S.C. § 1903, as amended to January 1, 2005.

14 Section 2. That chapter 26-7A be amended by adding thereto a NEW SECTION to read as
15 follows:

16 As used in this chapter, the term, designated tribal agent, means the agent, agency, or entity
17 designated by the tribe, through tribal code or resolution, to receive notices of child custody
18 proceedings subject to the Indian Child Welfare Act. The tribe may provide, in writing, to the
19 director of the Division of Child Protection Services, Department of Social Services, the name
20 or title, address, telephone number, and facsimile number, if applicable, of the designated agent.
21 The department shall make the information available electronically by posting the information
22 on the department's website not later than ten business days after the information is received by
23 the director. If a tribe does not designate a tribal agent for receipt of notice, notice shall be given
24 in accordance with 25 C.F.R. 23.12.

Section 3. That § 26-7A-15.1 be amended to read as follows:

26-7A-15.1. 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. The notice to the Indian child's tribe shall be sent to the designated tribal agent. However, if the tribe appears by counsel or by a representative of the tribe pursuant to § 26-8A-33, the notice shall be sent to counsel or to the representative, as applicable. 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~~ the 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. The notice shall be served on counsel for the tribe or the representative for the tribe pursuant to § 26-8A-33, as applicable;

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

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

9 (a) The name and tribal affiliation, if known, of the Indian child;

10 (b) A copy of the petition unless the notice is served by publication pursuant to
11 § 26-7A-48;

12 (c) The name and address of the state's attorney;

13 (d) A statement listing the rights of the Indian child's parents, Indian custodians,
14 and tribes, under the Indian Child Welfare Act, 25 U.S.C. § 1901, et. seq., as
15 amended to January 1, 2005, including:

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

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

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

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

24 (e) If the petition alleges the child to be an abused or neglected child, a statement

1 that the termination of parental or custodial rights is a possible remedy under
2 the proceedings;

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

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

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

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

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

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