

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

840P0583

## HOUSE BILL NO. 1302

Introduced by: Representatives Van Norman, Ahlers, Bradford, Burg, Dennert, Elliott, Engels, Feinstein, Halverson, Lucas, Moore, Sigdestad, and Thompson and Senators Two Bulls, Bartling, Heidepriem, Hoerth, Hundstad, Katus, Kloucek, Maher, Nesselhuf, and Turbak Berry

1 FOR AN ACT ENTITLED, An Act to revise certain notification requirements related to the  
2 placement of children under the Indian Child Welfare Act.

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

4 Section 1. That § 26-7A-15.1 be amended to read as follows:

5 26-7A-15.1. In any proceeding under chapters 26-7A, 26-8A, or 26-8B, to which the terms  
6 of the "Indian Child Welfare Act", 25 U.S.C. § 1901 et seq., as amended to January 1, 2005  
7 2008, apply:

8 (1) If the state's attorney knows or has reason to know that an Indian child is involved,  
9 the state's attorney shall notify the parent or Indian custodian and the Indian child's  
10 tribe, if known, of the pending proceedings and of their right of intervention. The  
11 notice shall be sent by registered mail with return receipt requested but may be  
12 personally served on any person entitled herein to receive notice in lieu of mail  
13 service. The notice to the Indian child's tribe shall be sent to the designated tribal  
14 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) If the social worker or court appointed special advocate (CASA) worker has been contacted by a relative of an Indian child about the relative's desire to take temporary or permanent placement of an Indian child who has been removed from the child's home through 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, 2008, apply, the worker shall document the contact in the file and shall send a notice within three business days informing the relative of the steps that are required in order for the relative to be eligible as a caretaker;

~~(2)~~(3) The state's attorney shall provide 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;

~~(3)~~(4) 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

1 by the parent or Indian custodian and the tribe or the Secretary. The parent or Indian  
2 custodian or the tribe shall, upon request, be granted up to twenty additional days to  
3 prepare for the proceeding;

4 ~~(4)~~(5) The notice required in this section shall be written in clear and understandable  
5 language and shall include the following:

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

7 (b) A copy of the petition unless the notice is served by publication pursuant to  
8 § 26-7A-48;

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

10 (d) A statement listing the rights of the Indian child's parents, Indian custodians,  
11 and tribes, under the Indian Child Welfare Act, 25 U.S.C. § 1901, et. seq., as  
12 amended to January 1, ~~2005~~ 2008, including:

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

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

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

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

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

24 (f) A statement that if the Indian child's parents or Indian custodian are unable to

1 afford counsel, counsel may be appointed to represent them;

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

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

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

7 ~~(5)~~(6) Each party may examine all reports or other documents filed with the court upon  
8 which any decision with respect to such action may be based.

9 As used in this section, the terms, Indian, Indian child, parent, Indian custodian, tribe, Indian  
10 child's tribe, foster care placement, termination of parental rights, and secretary, are defined as  
11 in 25 U.S.C. § 1903, as amended to January 1, ~~2005~~ 2008.