South Dakota: Making Dollars and Sense of Indian Child Removal

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South Dakota – Making Dollars and Sense of Indian Child

Removal

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I. INTRODUCTION

Janice Howe’s heart dropped.\(^1\) A social worker called and said her daughter, Erin Yellow Robe, was going to be arrested for drugs and her grandchildren were going to be taken into state custody.\(^2\) This was impossible, thought Howe; Erin never showed signs of drugs or any other problems.\(^3\)

The next morning, a car pulled up outside of Yellow Robe’s house.\(^4\) Holding onto her twin babies, Yellow Robe would not let go.\(^5\) Once the social worker gained control of the twins, she was off.\(^6\) Standing there watching the car drive away, Howe realized the worker left the older girls.\(^7\) “Weird”, thought Howe, “Why can’t we keep all of the babies?”\(^8\) The twins were taken to a white foster home about 100 miles away.\(^9\)

Howe and her daughter sat crying on the steps of their home waiting for the police to take Yellow Robe to jail.\(^10\) Hours, days, weeks, then a whole summer went by and Yellow Robe was never arrested.\(^11\)

Two months after the twins were removed, Howe waited at the school bus stop to pick up the older girls.\(^12\) The bus arrived, but the girls did not.\(^13\) A social worker had taken them from school and placed them in a white foster home as well.\(^14\) Howe asked the social worker to move the children to a native home, but nothing changed.\(^15\)
Howe waited months until she was granted a visit. She missed braiding the children’s long hair, which is only cut in the event of a death in the family. At long last, a visit was granted. Howe burst into tears when she saw that the children’s hair had been cut. They looked thin, their socks had holes, and they begged their mother to take them home.

A year and a half later, Howe was running out of hope and options. In a bold move, she went to her tribal council meeting and told her whole story. The council passed an unprecedented resolution warning the state if they did not return the Yellow Robe children, the state would be charged with kidnapping and prosecuted. A few weeks later, a car pulled up outside Howe’s home and the children came running out. “We get to stay! We get to stay!” yelled the children.

The state offered no explanation. No apology.

This story may be all too common for many Native American families in South Dakota. In the fall of 2011, National Public Radio broke a story claiming South Dakota is removing Native American children for profit. Since this story was publicized, the state has remained tight-lipped, advocates have threatened litigation, and Congress has asked for answers.

This article will begin exploring the issue by looking at the demographics of South Dakota as a whole contrasted against the demographics and culture of the state’s child welfare program. Then, the policies and procedures South Dakota has implemented in order to receive money from child removal will be examined including a tension between the state’s courts and legislative policy. Next, a
comparison of money spent and funding sources will be compared to the state of Idaho, a state with double the population of South Dakota. Finally, while this problem is multi-layered, two initial policy and procedure changes would help to cure the current child removal economy that is pervasive in South Dakota. First, making federal funding dependent on ICWA compliance would ensure South Dakota is following the policies and procedures of ICWA. Secondly, creating an expert ICWA consultant team within the state’s child welfare program would provide more oversight to make sure ICWA is being followed and cultural misunderstandings minimized.

II. DEMOGRAPHICS AND CULTURE: INDIAN CHILD VICTIMS

The Child Economy

South Dakota is a poor state with a relatively small population and economy. However, it appears that South Dakota has found a way to generate a new economy by generating funds from the removal of Indian children. While the state may not be filling its coffers with money from Indian child removal, it is creating jobs to fill the Department of Social Services. More foster families are recruited and more adoptions are subsidized. More social worker and foster parent training programs are required, and group homes are established and staffed, thereby funneling money into an almost non-existent state economy.
Demographics

South Dakota is home to nine different tribes: Cheyenne River Sioux; Crow Creek Sioux; Flandreau Santee Sioux; Lower Brule Sioux; Oglala Sioux; Rosebud Sioux; Sisseton Wahpeton Oyate; Standing Rock Sioux; and Yankton Sioux. These nine tribes occupy more than 6.4 million acres, about 13 percent of the total land base in the state. Also of importance, over two-thirds of South Dakota’s Indian population, 62,283 people, reside on Indian reservations.

In South Dakota, Indians make up eight percent of the state’s total child population, yet Indian children make up 60 percent of the state’s child foster care population. However, South Dakota is more heavily populated with Indians than the nation as a whole. This provides South Dakota with more opportunities to remove Indian children than states with smaller Indian populations. In 2011, Indians made up 8.9 percent of South Dakota’s total population. The density of Indians in South Dakota is in stark contrast to the national population, of which only 1.2 percent is Native American.

Each year, South Dakota removes an average of 700 Indian children from their homes. In 2004, approximately 750 Indian children were placed in foster care. The Crow Creek Tribe alone lost more than thirty-three children in recent years. In 2010, the Crow Creek reservation only had a total population of 1,230 people to begin with. The impact of removing thirty-three children in such a small population would be felt for generations.
Summary of Indian Child Removal

With so many Indians in South Dakota, the history of child removal is an age-old issue, familiar to many. From assimilation to foster care, Indian schools to group homes, Indian child removal continues to surface through different policies. For Indians living in South Dakota, having their children removed by government actors is a shadow of threat they have lived under for decades.

For more than a century, many Indian children were removed from their home, family, and culture and placed in boarding schools. This was all done as part of the U.S. government’s program of assimilation. Indian children were not allowed to speak their native language, practice their ceremonial rites, to grow their hair long. When awareness of the dangers caused by the policy of assimilation became apparent, Congress put an end to the policy in 1958.

In order to provide protection to Indian children and their culture, the federal government created the Indian Child Welfare Act, commonly known as ICWA, in 1978. The United States Congress recognized that there was no resource more vital to the continued existence and integrity of Indian tribes than their children and that the United States had a direct interest and trust in protecting Indian children. Congress also recognized that an alarmingly high percentage of Indian families are broken up by the removal of their Indian children. Removal of these children is often unwarranted and is done by nontribal public and private agencies that may not understand Indian culture. After these Indian children are removed,
an alarmingly high percentage of these children are placed in non-Indian foster and adoptive homes and institutions where their native traditions are lost.\textsuperscript{52}

ICWA further lays out adoptive and foster care placement policy stating that preference shall be given first to a member of the child’s extended family, other members of the child’s tribe, or with members of another Indian tribe.\textsuperscript{53} However, despite ICWA’s placement preferences and protections, Indian children are more than twice as likely to be sent to foster care as children of other races, even in similar circumstances.\textsuperscript{54} Additionally, in South Dakota each year since 2002, more Native American children have been adopted by white families than by Native American families.\textsuperscript{55}

\textbf{South Dakota and ICWA Policy Today}

Nearly ninety percent of Indian children sent to foster care in South Dakota are placed in non-native homes or group care.\textsuperscript{56} While these non-ICWA compliant placements are taking place, licensed foster care Indian homes remain empty.\textsuperscript{57} With similar violations going on throughout the country, the federal government had to take action.\textsuperscript{58} A 2005 government audit found at least 32 states are failing in one way or another to abide by ICWA.\textsuperscript{59} In 2004, South Dakota’s Legislature enacted Bill 211 that established the Governor’s Commission on the Indian Child Welfare Act.\textsuperscript{60}

The commission evaluated a total of 94 files of which 62 were non-emergency removal cases.\textsuperscript{61} Of the files reviewed, 45 percent did not clearly indicate whether ICWA preferences for Indian child placement were followed.\textsuperscript{62} Furthermore, 10
percent involved non-ICWA placement preferences. Of the non-emergency cases reviewed, only 26 percent had placement with an extended family member. These numbers are remarkable because they show that 55 percent of the total non-emergency files reviewed by the commission either did not indicate compliance or were wholly non-compliant with the requirements of ICWA.

Of the 32 emergency removal case files reviewed by the commission, ICWA placement preferences could not be determined in 45 percent of the files. Again this percentage is startling because nearly half of all the emergency files reviewed by the commission did not indicated whether ICWA was being followed.

While there is still a need for more native foster homes, currently available Indian foster homes remain empty. One such empty home is that of Marcella Dion. She is a Native foster home provider who states she has lots of room for children but her home has been empty for six years. Suzanne Crow has also been a licensed Native foster home provider for over a year but has never been asked to take any children. Crow asked a social worker why she had not received any native foster children and was only told that there was a long process before a placement can be made. In 2004, South Dakota had a total of 769 licensed foster homes of which 84 were Native American homes. The number of Native American foster homes has slowly rose from 56 homes in 2001 to 84 homes in 2004.

Less than 12 percent of Indian children in South Dakota have been physically or sexually abused in their homes, which is well below the national average. According to Department of Child Protective Services data, of 10,172 reports or
claims of abuse, 7,531 or almost 75 percent, were claims of physical neglect. Most Indian children are removed for neglect, which tends to be a subjective term. Subjective policy interpretation and minimal social worker training and experience is a recipe for problems.

Social worker turnover is often very high and many workers have never set foot on a reservation prior to their employment. State officials acknowledge that only 11 of their 183 caseworkers are Native American. Non-native American Indian workers can not comprehend that many tribal members don’t have money to buy gas to go to parenting classes two hours away or that food is often shared among families. South Dakota’s definition of abused or neglected encompasses those whose environment is injurious to the child’s welfare. It is clear that this definition is interpreted by South Dakota in a way that blurs the line between neglect and impoverishment. What may appear to be unusual or neglectful situations to an outsider may be something else entirely to an insider. Tribal leaders say that poverty is what social workers all too often call neglect. Social workers fail to see the care and treatment of Indian children through a Native lens.

To further compound the problem of social worker’s misunderstanding of Native culture, Indian families are unfamiliar with navigating the state foster system and receive little help from tribal liaisons. Further, on impoverished reservations, tribal courts can be overrun and underfunded, forcing courts to operate only part time. Families do not know how to get a hearing and can’t afford lawyers. While some tribes have liaisons within their tribal governmental
leadership to help Indian families navigate the state systems, tribes report that the liaisons leave them wanting. These factors make Indian children easier to remove under questionable circumstances.

Legislative Action

In a decision by the Supreme Court of South Dakota in an effort to uphold ICWA standards, the Court declared it was unlawful for the state to remove Indian children without actively trying to return them to their families. With the courts of South Dakota issuing opinions in accordance with ICWA, the state turned to other methods of circumventing ICWA. In a clear showing of tensions between the motive of the legislature and the courts, South Dakota’s legislature moved in the opposite direction of the courts by enacting two bills that made it even easier for the state to remove Indian children. Senate Bill 55, which was passed in 2005, restricted the authority of an Indian family member; parent, grandparent, aunt or uncle, to appeal a recommendation made to a state court by the Department of Social Services regarding removal and placement of Indian children. To have the authority to appeal a foster care placement recommendation, relatives have to: (1) have already sought adoptive custody of the foster child and been denied, (2) have been sent a notification by the Department of Social Services by regular mail alerting the relatives of their kin’s placement with a person other than a relative of the child, (3) have received that letter at their last known address, and (4) have responded to the demand of appeal within 30 days after the letter was sent.
Further, Senate Bill 55 gave an unprecedented grant of discretion to the Department of Social Services. The Department of Social Services gained the power to refuse to place an Indian foster child with a relative because the Department believes that it is not in the best interest of the child to be cared for by that relative. This bill was enacted in 2005, and amended South Dakota Codified Law § 26-7A-19.

House Bill 1226, passed and enacted in 2005, later as South Dakota Codified Laws § 26-7A-15, established rules of parental notification of proceedings. The Department must only make reasonable efforts to inform the Indian custodian and the Indian child’s tribe of the removal and placement. This is in opposition to the ICWA notice standard which requires active efforts. Lastly, failure to notify the child’s parents, guardian, custodian, or the child’s tribe of the temporary custody hearing is not grounds for delay of the hearing if the child is represented by an attorney at the hearing. This is important because the standard to notify the child’s family of any proceeding is lower than that required by ICWA. With such a low notice standard, Indian children become even easier to remove with little interference from families and tribes.

III. MOTIVATION: HOW IT PAYS

The Money and Where it Comes From

South Dakota is a poor state and receives a substantial amount of money from the federal government. In fiscal year 2011, South Dakota received more than $1.9 billion from the federal government to go towards their total state
expenditures, which is about $4.1 billion.\textsuperscript{100} This federal funding represents more than 46 percent of funding for the entire state of South Dakota.\textsuperscript{101} Of those federal funds, $642.9 million, more than 33 percent of the total federal funds received, goes to paying for South Dakota’s Social Service expenses.\textsuperscript{102} The pie chart below illustrates this funding scheme.

\textbf{Figure 3.1: South Dakota Funding Break Down}\textsuperscript{103}

South Dakota employs over 241 full-time employees to staff its Child Protective Services program\textsuperscript{104} and in 2004, and there were 23 offices throughout the state.\textsuperscript{105} Additionally, South Dakota’s Department of Social Services employs over 177 full-time employees for administrative purposes alone.\textsuperscript{106} With almost 420 full-time jobs, staffing to support a child removal economy is already in place.\textsuperscript{107}

Federal funds received by states to fund child welfare programs are primarily appropriated through Title IV-E of the Social Security Act.\textsuperscript{108} These Title IV-E
funds, however, are only available to state governments.\textsuperscript{109} In the 112\textsuperscript{th} U.S. Congress, which gathered in the years 2011-2012, Senate Appropriation Bill 3295 was created providing $4.81 billion to state governments under Title IV-E of the Social Security Act.\textsuperscript{110} It further appropriated another $2.2 billion for the first quarter of fiscal year 2014.\textsuperscript{111} During fiscal year 2004, expenditures for child placement in South Dakota totaled $20.9 million with only 28 percent of the funding coming from the state and the rest coming from federal funds.\textsuperscript{112} In federal fiscal year 2004, South Dakota received an additional $20,000 in federal funds for post-adoption services alone.\textsuperscript{113}

Funding schemes in South Dakota are variable depending on the child placement circumstances. Basic foster care placements are 75 percent funded by federal money and 25 percent by state funds.\textsuperscript{114} Eligible Title IV-E placements are paid for 65.57 percent by the federal government and 34.43 percent by the state.\textsuperscript{115} Children’s homes are paid 68.68 percent by federal funding and 31.32 percent by state funding.\textsuperscript{116} Further, TANF (Temporary Assistance for Needy Families) funds are also available during the first 365 days of care if the child is not eligible for Title IV-E funding.\textsuperscript{117}

\textbf{South Dakota’s Dramatic Adoption Funding Policy}

One of the most startling ways South Dakota produces revenue from child removal is its policy regarding adoptions. Some foster care programs receive money to subsidize their adoption placement programs. Eligible adoption placements in South Dakota receive $4,000 in subsidies for placements of healthy children and
$12,000 for placements of special needs children. South Dakota has created factors to determine whether a child qualifies as special needs. Administrative Rule of South Dakota 67:14:14:02 states, “special needs and circumstances include: (a) A child’s age, race, or religion” making it possible for all Indian children to be classified as special needs. Additionally, all children who have been abused and/or neglected are considered special needs children. Every single child adopted from the foster care program in South Dakota was adopted under the label of a “special needs” adoption between the years 1996-2003. This makes South Dakota one of the few states that treat all adopted children as special needs. Further, South Dakota receives an additional $2,000 above the baseline bonus of $4,000 for every special needs child adopted. South Dakota received about $820,800 just for this bonus program from the federal government between 1998-2009.

South Dakota’s Appetite for Funds

As the money pours in, little is done to ensure that states and departments are complying with the Indian Child Welfare Act. A former South Dakota Governor, the late Bill Janklow, stated that the federal money that goes to social services was very important. Further, he stated, “We’re not a high income state. We’re like North Dakota without oil. We’re like Nebraska without Omaha and Lincoln. We don’t have resources. We don’t have wealth. We don’t have high-income jobs. We don’t have factories opening here hiring people in high wage jobs.”

In contrast, South Dakota’s Department of Child Protective Services states that they have come together as families, providers, tribes, state and local agencies,
and community stakeholders to create a formal Collaborative Circle dedicated to achieving better outcomes. South Dakota’s Collaborative Circle, a group working to better the child welfare system, states they are actively seeking culturally appropriate services and opportunities for proper development, understanding, and reunification through kinship care for native children. However, despite the Department’s claims, the numbers continue to speak for themselves.

Retired Senator Bill Napoli was on the state Senate Appropriations Committee. He says he remembers when South Dakota first saw the large amounts of money the federal government was sending the Department of Social Services in the late 90’s. He states that is when the state saw a real influx of kids being taken away from their families. The money the state receives from the federal government is funneled into the state economy. The department supports almost 700 foster families who receive as much as $9,000 a year per child, and 14,000 families who receive thousands in adoption subsidies. Further, dozens of independent group homes also receive millions of dollars in contract work to take care of foster children when private home placements are not available.

Additionally, the state outsources much of its social work to a group called Children’s Home Society which gets almost all of the state contracts. According to Children’s Home Society’s website, they serve over 2,000 children each year through residential treatment, education, emergency shelter, forensic interview and exam centers, foster care and adoption services, relative placements, and prevention services. Initially, Children’s Home Society was in financial trouble until it
brought on Dennis Daugaard to serve as the COO. This was not Daugaard’s only job as he was then serving as South Dakota’s Lieutenant Governor and has served as Governor since 2010. In most cases, Children’s Home Society does not compete for these contracts. For almost seven years, Daugaard’s colleagues in state government just chose the organization and sent it money, more than $50 million in all. Other groups, such as Canyon Hills Center, claim they didn’t know about many of the contracts until after they were given to Children’s Home Society. Children’s Home Society is a powerhouse. It not only examines all potential foster families and homes, it houses the most children, trains state case workers, holds all state training classes for foster parents, and does all of the state’s examination of children who may have been abused. Tribal critics say this is a waste of resources because the tribes would examine potential foster homes for free. Tribal agencies claim home studies, social worker training, and family placements should be done by people who know and understand the children’s culture.

**IV. The Numbers: A Comparison**

**Budget to Budget**

To get a clearer understanding of just how much this funding affects the state, a funding comparison to other states demonstrates the full depth of this problem. This section will attempt to make a side-by-side comparison of the state budget of South Dakota with the budget of Idaho. However, it should be noted that not all state budget publications are created equal. The depth of information from
state to state varies, as does the grouping of state departments. Therefore, some departments cannot be compared on an one-to-one basis.

In order to get an accurate picture of state expenditures and funding for comparison purposes, I have compared the budget of South Dakota to that of a larger populated state, Idaho.

**Figure 4.1: U.S. Census Child Population for Select States**¹⁴⁷

<table>
<thead>
<tr>
<th>STATE</th>
<th>TOTAL POPULATION</th>
<th>CHILDREN UNDER 5</th>
<th>CHILDREN AGE 5-13</th>
<th>CHILDREN AGE 14-17</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Dakota</td>
<td>824,082</td>
<td>59,591</td>
<td>99,698</td>
<td>43,867</td>
</tr>
<tr>
<td>Idaho</td>
<td>1,584,985</td>
<td>119,336</td>
<td>216,522</td>
<td>92,258</td>
</tr>
</tbody>
</table>

As the table above suggests, the state of Idaho has about double the total population and twice as many children as South Dakota.¹⁴⁸

In order to get a clear picture of the above-mentioned state budgets, I have broken down and analyzed both state’s budgets for two years.

**South Dakota State Budget Breakdown**

Below are two tables providing funding breakdown for relevant governmental departments for the State of South Dakota. The following tables plainly show that South Dakota receives substantial amount of money from the federal government.¹⁴⁹ Not only is South Dakota receiving large amounts of money from the federal government but they are also spending huge sums in the areas of health, human and social services.¹⁵⁰
### Figure 4.2: South Dakota Fiscal Year 2011 Budget\(^{151}\)

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>STATE FUNDS</th>
<th>FEDERAL FUNDS</th>
<th>OTHER</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total State Budget</td>
<td>$1,132,109,581</td>
<td>$1,962,659,152</td>
<td>$1,008,497,204</td>
<td>$4,103,265,937</td>
</tr>
<tr>
<td>Health, Human, and Social Services</td>
<td>$400,840,591</td>
<td>$832,642,685</td>
<td>$45,906,966</td>
<td>$1,279,390,242</td>
</tr>
<tr>
<td>Social Services</td>
<td>$283,899,887</td>
<td>$642,946,502</td>
<td>$8,062,044</td>
<td>$934,908,433</td>
</tr>
<tr>
<td>Children’s Services</td>
<td>$32,521,212</td>
<td>$52,831,304</td>
<td>$4,407,394</td>
<td>$89,759,910</td>
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<tr>
<td>Child Protective Services</td>
<td>$25,768,853</td>
<td>$32,827,439</td>
<td>$1,223,781</td>
<td>$59,820,073</td>
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<tr>
<td>Child Care Services</td>
<td>$5,186,601</td>
<td>$16,409,007</td>
<td>$752,526</td>
<td>$22,348,134</td>
</tr>
<tr>
<td>Health</td>
<td>$7,782,285</td>
<td>$45,272,377</td>
<td>$31,609,365</td>
<td>$84,664,027</td>
</tr>
</tbody>
</table>

### Figure 4.3: South Dakota Fiscal Year 2012 Budget\(^{152}\)

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>STATE FUNDS</th>
<th>FEDERAL FUNDS</th>
<th>OTHER</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total State Budget</td>
<td>$1,148,828,812</td>
<td>$1,949,727,376</td>
<td>$1,032,421,827</td>
<td>$4,130,978,015</td>
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<tr>
<td>Health, Human, and Social Services</td>
<td>$424,666,893</td>
<td>$804,202,113</td>
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<tr>
<td>Social Services</td>
<td>$362,738,166</td>
<td>$661,527,114</td>
<td>$9,050,460</td>
<td>$1,033,315,740</td>
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<td>Children’s Services</td>
<td>$32,028,146</td>
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<td>$4,381,389</td>
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<td>Child Protective Services</td>
<td>$26,886,695</td>
<td>$30,877,355</td>
<td>$1,217,940</td>
<td>$58,981,990</td>
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<tr>
<td>Child Care Services</td>
<td>$3,345,727</td>
<td>$16,252,562</td>
<td>$739,819</td>
<td>$20,338,108</td>
</tr>
<tr>
<td>Health</td>
<td>$6,979,125</td>
<td>$42,700,633</td>
<td>$32,919,643</td>
<td>$82,599,401</td>
</tr>
</tbody>
</table>
It is clear from these two budget years that funding and spending from different sources is relatively similar with each year experiencing only minor fluctuations. In every category it is evident that federal dollars always exceed that of state dollars allocated to each department. In many categories, federal funds make up more than half of the total funding.

Looking at the budget as a whole, the largest portion of the budget goes to the Department of Health, Human, and Social Services in both budget years. In 2011, the Department of Health, Human, and Social Services made up a total of 31.2 percent of the total budget. Again in 2012, it made up 30.84 percent of the total state budget, more than any other department. In fiscal year 2011, Children’s Services was the tenth largest line item in the entire budget. In 2012, it fell slightly to the eleventh largest line item in the whole budget. In 2011, Children’s Protective Services reported it employed more than 241 full-time employees. The number of full-time employees for the department remained stable in the 2012 fiscal year.

If spending only for Child Protective Services is taken into account, South Dakota is spending nearly $295 dollars for every child in the state. However, this number jumps to over $425 per child if administrative costs are added in.

In 2011, on average each month, the state had about 863 children in foster care, 105 in group or residential facilities, 187 in psychiatric treatment facilities, 1,462 placed in subsidized adoptions, 163 placed in subsidized guardianships, and 210 in kinship care for a total of 2,963 children in some type of foster placement.
Additionally, children who are waiting to be adopted are held in the system prior to adoption for an average length of stay of over three years. This number is starkly contrasted with the national length of stay average of 1-11 months.

Idaho State Budget Breakdown

Below are two tables providing funding breakdown for relevant governmental departments for the State of Idaho. It is clear from the tables below that Idaho, with double the state population, spends and receives about the same amount of money as South Dakota on most of its major budget items. However, perhaps most notably, Idaho actually spends less on its child welfare program than does South Dakota.

**Figure 4.4: Idaho Fiscal Year 2011 Budget**

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>GENERAL FUNDS</th>
<th>DEDICATED FUNDS</th>
<th>FEDERAL FUNDS</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total State Budget</td>
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<td>$2,207,547,600</td>
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<td>Health &amp; Human Services</td>
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<td>$157,336,400</td>
<td>$1,407,549,400</td>
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<tr>
<td>Department of Health &amp; Welfare</td>
<td>$138,098,800</td>
<td>$51,210,300</td>
<td>$255,697,100</td>
<td>$445,096,200</td>
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<tr>
<td>Child Welfare</td>
<td>$19,858,400</td>
<td>$1,149,700</td>
<td>$33,422,200</td>
<td>$54,430,300</td>
</tr>
</tbody>
</table>
Figure 4.5: Idaho Fiscal Year 2012 Budget$^{171}$

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>GENERAL FUNDS</th>
<th>DEDICATED FUNDS</th>
<th>FEDERAL FUNDS</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total State Budget</td>
<td>$2,529,000,000</td>
<td>$1,204,200,000</td>
<td>$2,304,900,000</td>
<td>$6,038,100,000</td>
</tr>
<tr>
<td>Health &amp; Human Services</td>
<td>$592,052,500</td>
<td>$228,761,900</td>
<td>$1,447,025,900</td>
<td>$2,267,840,300</td>
</tr>
<tr>
<td>Department of Health &amp; Welfare</td>
<td>$128,683,800</td>
<td>$46,507,500</td>
<td>$253,959,600</td>
<td>$429,150,900</td>
</tr>
<tr>
<td>Child Welfare</td>
<td>$19,508,300</td>
<td>$1,044,700</td>
<td>$32,758,000</td>
<td>$53,311,000</td>
</tr>
</tbody>
</table>

While as noted above, Idaho has double the total population and double the child population of South Dakota, they spend far less on children’s services and welfare than does South Dakota.$^{172}$ The total amount spent in Idaho on children’s services and welfare is almost equal to the total amount the federal government alone spends on children’s services and welfare in South Dakota.$^{173}$ Additionally, the federal dollars going to Idaho’s children’s services is far below that of South Dakota.$^{174}$ With double the amount of children in Idaho, this difference is further exacerbated.$^{175}$

In fiscal year 2011, the Department of Child Welfare employed about 392.67 full-time employees and 380.77 full-time employees in 2012.$^{176}$

Children in Idaho usually wait an average of 2.5 years in foster care before adoption if reunification is not an option.$^{177}$

Direct Comparisons

The chart below details the vast disparity in per child spending between Idaho and South Dakota.
The numbers on the left represent the amount of dollars spent per each child in the state while the factors along the bottom axis detail where the money comes from. It is apparent that South Dakota spends and receives far more money per child than Idaho. South Dakota spends and receives double the amount of money than Idaho in every category shown above in about a two-to-one ratio.

With more funding available, disparity in the number of state workers is exaggerated as well. Although South Dakota has less than half of the number of children as Idaho, South Dakota employs 100 fewer full-time employees to staff its Department of Child Protective Services. If administrative employees are factored in, however, South Dakota’s full-time employee count jumps to 419 employees, dwarfing the number of full time employees in Idaho, which is 392.67.
After a careful review of these numbers, it is evident that, per child, South Dakota is receiving more money, including more federal money, than states with larger populations. While it is not entirely clear that South Dakota is making money from Indian Child removal that goes into their state coffers, it is clear that a child removal economy is being created.

By removing more children, South Dakota requires more foster homes, group homes, and other services. Additionally, South Dakota is providing more children for adoptions. The boom in this area of the state budget is evidence of an economy that is growing because of high rates of Indian child removal with Indian children making up about 60 percent of the total foster child population. With spending in this area at a two-to-one ratio compared to Idaho, South Dakota’s child removal economy appears strong. For a poor state, money in the bank may not always be best, but money spread around to the population can stimulate a new industry. All the money that is spent and received by the state has a positive and measurable impact on the state business activity, available jobs, and overall state income. These dollars trigger successive rounds of earnings and purchases as they continue to circulate through the state’s economy creating a ripple effect.

V. A Solution: Taking Away the Incentive and Providing More Oversight

After a detailed analysis of the problem of South Dakota’s child removal based economy, mere suggestions to solve the problem would seem naive. Such a complex and dynamic problem will require many changes to the current system on both a federal and state policy level. However, if changes are not made, even one
policy at a time, the problem will only balloon until there is no hope of return to a child protection program actually based on the welfare of children rather than dollars.

With such a large financial incentive to remove children, any solution to the problem would have to be multi-faceted. Looking at the many layers involved in child removal makes it clear that any plan of action would require greater involvement from the federal government, the state, and tribes. However, two initial changes in policy and procedure will start moving South Dakota in the right direction. First, all federal funding for child welfare programs should be dependent on ICWA compliance. Second, the South Dakota Department of Social Services child welfare program should have an internal consulting team that investigates Indian child removal situations.

First, in order to curb the dollars South Dakota is receiving, all federal funds that are received in relation to the removal of an Indian child should be contingent on ICWA compliance. This would help to eliminate financial motivation to remove Indian children and place them long term in non-ICWA compliant placements and environments. South Dakota would have to ensure it is complying with ICWA before it sees any money come in from the federal government. Making federal funding contingent upon ICWA compliance would help to eliminate removal for purely financial motives.

This policy should not create a system that puts some type of sanction on South Dakota for their current or prior ICWA violations. Removing funding entirely
or requesting South Dakota to pay back funds already dispersed will affect children currently in the system who have become victims of the state. This proposal would only make all future funding for removal of Indian children contingent upon ICWA compliance, thereby children currently in the system will not be harmed by loss of recourses, such as counseling and other services, for their removal which has already taken place.

Furthermore, if funding was dependant on ICWA compliance, Indian child removal would become more difficult because the state would have to open more ICWA compliant foster homes and other programs. Requiring South Dakota to obey ICWA may help to curb the state’s appetite for removal if they know that funding to pay for the removal and subsequent care will only occur if all ICWA rules are being followed.

Secondly, to ensure that Indian children are not being removed from their homes without cause, an ICWA consultant team should be created within the Department of Social Services child welfare program.

This position already exists, in part. Some tribes within the state have internal ICWA coordinators. Additionally, the Department of Child Protective Services also employs a single ICWA coordinator. In order to make this strategy the most effective, the tribes should retain their ICWA coordinator but the single position within the Department of Child Protection should be expanded to a team. The team should be comprised of an expert on each tribe located within the state. Hiring for these positions could possibly include preference for native applicants in
order to ensure people with in-depth knowledge of tribal customs fill the positions. The team would be assigned to oversee each Indian child removal for their respective tribes. This would help to eliminate removals based on any cultural misunderstandings.

Further, making the ICWA coordination team a stronger position within the Department of Child Protection will help to ensure that all the cases are receiving their due attention. Each removal case would receive its own independent, expert, and thorough review. Since each ICWA coordinator would be an expert for their assigned tribe, they would be better suited to deal with tribal leaders, families, and find suitable placements. This would help eliminate any disconnect between tribal ICWA consultants and the state.

Additionally, this team of consultants would be well suited to communicate to the federal government and file appropriate paperwork proving that all Indian child placements are ICWA compliant. Because of the close work with case files, tribes, and knowledge of customs, the team of consultants would be best equipped to verify that all Indian child placements are compliant.

Finally, these positions would need to be federally funded in order to eliminate any conflict of interest between the consultant and the state. Having a federally paid team would insulate the consultants from state pressure to overlook or permit Indian child removal in situations where such removal is not warranted.

VI: CONCLUSION
While there may be many reasons for the high rate of Indian child removal in the state of South Dakota, it is hard to argue that money does not play some role in the equation. While not every removal of an Indian child is unwarranted and without cause, it seems fair to say that there is motivation to remove Indian children in questionable circumstances.

In the 2004 Governor’s Commission ICWA report, the Commission stated, “There is a perception by some that the state’s goal is to obtain more federal funding by removing children from their homes and terminating parental rights. Statements to the effect that Child Protective Services ‘harvests children as a cash crop’ and runs ‘nothing more than a state sponsored kidnapping program’ are offensive and totally inaccurate.”

Claims such as these that were being made in 2004 continue today. There is little reason for anyone to target a state’s child welfare program without reason. South Dakota continues to get a substantial amount of money to fund its child welfare programs in amounts that cannot be ignored.


2 *Id.*

3 *Id.*

4 *Id.*

5 *Id.*

6 *Id.*

7 *Id.*

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.*
30 See Sullivan and Walters, supra note 1.
32 See, Sullivan and Walters, supra note 1.
33 Id.
36 Id. at 247.
39 Id.
40 Sullivan and Walters, supra note 1.
41 State of South Dakota Office of the Governor, supra note 37.
42 Id.

44 Sullivan and Walters, _supra_ note 1.
45 _Id._
46 _Id._
47 _Id._
49 _Id._
50 _Id._
51 _Id._
52 _Id._
54 Sullivan and Walters, _supra_ note 1.
56 Sullivan and Walters, _supra_ note 1.
57 _Id._
58 _Id._
59 Sullivan and Walters, _supra_ note 1.
60 State of South Dakota Office of the Governor, _supra_ note 37; In the 2004 Legislature, the Senate of South Dakota enacted Bill 211 that established the Governor’s commission on the Indian Child Welfare Act (ICWA). The commission was charged to study the requirements of the federal Indian Child Welfare Act (25 U.S.C. Section 1901-1963) 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 can assist in pursuing the policies of the act. The data cited per this footnote is from the report created in 2004 and to my knowledge there is no comparable more recent data.
62 _Id._
63 _Id._
64 _Id._
65 _Id._
66 _Id._
67 _Id._
68 Sullivan and Walters, _supra_ note 1.
69 _Id._
70 _Id._
71 _Id._
72 _Id._
73 State of South Dakota Office of the Governor, _supra_ note 37.
74 _Id._
CLASP, *Child Welfare in South Dakota*,

76 Sullivan and Walters, *supra* note 1.
77 *Id.*
78 *Id.*
79 *Id.*
80 *Id.*
81 S.D. Codified Laws § 26·8A·2.
83 These tribal liaisons are charged with making sure ICWA is being followed, namely that the children being removed by the state are placed with relatives or tribal members. Tribal officials are not satisfied with the liaisons stating that they fail to show up at council meetings and answer questions. Sullivan and Walters, *supra* note 1.
84 *Id.*
85 *Id.*
86 *Id.*
87 *People ex rel. J.S.B., Jr.*, 691 N.W.2d 611, 613 (S.D. 2005).
88 *See, e.g.*, S.D. Codified Laws § 26·7A·19 (amended by South Dakota Senate Bill 55, Ch. 140, 2005); *see also* S.D. Codified Laws § 26·7A·15 (amended by South Dakota House Bill 1226, Ch. 139, 2005).
89 *Id.*
90 S.D. Codified Laws § 26·7A·19.
91 *Id.*
92 *Id.*
93 *Id.*
94 *Id.*
95 S.D. Codified Laws § 26·7A·15.
96 *Id.*
98 S.D. Codified Laws § 26·7A·15.
103 *Id.*
104 *Id.*


State of South Dakota Office of the Governor, supra note 37.

Id.

State of South Dakota Office of the Governor, supra note 37.

Id.

Id.

Id.

Id.

Id.

Sullivan and Walters, supra note 1.


Id.

State of South Dakota Office of the Governor, supra note 37.


Id.


Sullivan and Walters, supra note 1.

Id.


Sullivan and Walters, supra note 1.

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Sullivan and Walters, supra note 1.

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Id.
170 State of Idaho Legislature, supra note 168.
172 United States Census Bureau, supra note 29; State of Idaho Legislature, supra note 168; South Dakota Bureau of Finance & Management, supra note 31.
175 United States Census Bureau, supra note 29.
176 State of Idaho Legislature, supra note 168.
178 South Dakota Bureau of Finance & Management, supra note 31; State of Idaho Legislature, supra note 168.
179 South Dakota Bureau of Finance & Management, supra note 31; State of Idaho Legislature, supra note 168.
180 South Dakota Bureau of Finance & Management, supra note 31; State of Idaho Legislature, supra note 168.
181 South Dakota Bureau of Finance & Management, supra note 31; State of Idaho Legislature, supra note 168.
182 United States Census Bureau, supra note 29; State of Idaho Legislature, supra note 168; South Dakota Bureau of Finance & Management, supra note 31.
183 State of Idaho Legislature, supra note 168; South Dakota Bureau of Finance & Management, supra note 31; South Dakota Bureau of Finance & Management, supra note 106.
184 South Dakota Bureau of Finance & Management, supra note 31; State of Idaho Legislature, supra note 168.
185 State of South Dakota Office of the Governor, supra note 37.
186 State of Idaho Legislature, supra note 168; South Dakota Bureau of Finance & Management, supra note 31.
187 Sullivan and Walters, supra note 1.
188 State of South Dakota Office of the Governor, supra note 37.
189 Sullivan and Walters, supra note 1.