

HOUSE BILL REPORT

SHB 3051

As Passed House:

February 13, 2004

Title: An act relating to notice provisions for proceedings involving the Indian child welfare act.

Brief Description: Revising notice provisions for proceedings involving Indian children.

Sponsors: By House Committee on Juvenile Justice & Family Law (originally sponsored by Representatives Pettigrew, Cairnes, Santos, McCoy, Sump, Linville, Buck, Chase and Upthegrove).

Brief History:

Committee Activity:

Juvenile Justice & Family Law: 2/3/04 [DPS].

Floor Activity:

Passed House: 2/13/04, 96-0.

Brief Summary of Substitute Bill

- Adds notice provisions regarding the Indian Child Welfare Act in the statutes dealing with third party custody petitions, adoptions, dependencies, and children in need of services and at-risk-youth proceedings.

HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY LAW

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Dickerson, Chair; Pettigrew, Vice Chair; Delvin, Ranking Minority Member; Carrell, Hinkle, Lovick and Upthegrove.

Staff: Trudes Tango Hutcheson (786-7384).

Background:

Congress passed the Indian Child Welfare Act (ICWA) "to protect the best interests of Indian children and to promote the stability and security of the Indian tribes." The ICWA contains numerous substantive and procedural provisions.

The ICWA applies to any state court custody proceeding that can or does result in the placement of an Indian child in a home other than the child's parent or Indian custodian. The ICWA does not apply in most juvenile delinquency proceedings (offenses that if committed by an adult would be a crime), but does apply to status offenses like truancy. The ICWA also does not apply in custody disputes in the context of divorce so long as custody is awarded to one of the parents. The ICWA does not apply when the parent makes voluntary placements, as long as the placements are based on written agreement and it is clear that the parent has the right to regain custody on demand.

Failure to verify whether the child is an Indian child, as defined under the ICWA, can jeopardize the validity of subsequent proceedings pertaining to the child.

Under the ICWA, when the court knows or has reason to know that an Indian child is involved, the petitioning party must notify the parent or Indian custodian and the child's tribe, by registered mail with return receipt requested, of the proceedings and their right to intervene. If the identity or location of the parent or custodian and the tribe cannot be determined, the notice must be given to the Secretary of the Interior, who shall have 15 days after receipt of the notice to provide notice to the parent or Indian custody and the tribe.

There are a variety of proceedings that could result in a child being placed with someone other than the child's parent. There are: (a) dependency proceedings; (b) third party custody proceedings; (c) adoptions, which include voluntary or involuntary termination of parental rights and sometimes pre-adoption placements; and (d) children in need of services (CHINS) and at-risk youth (ARY) petitions.

The third party custody, adoption, and dependency statutes provide that petitions filed in those proceedings shall contain a statement alleging whether the ICWA applies. In adoption cases, the adoption facilitator must file a sworn statement documenting efforts to determine whether the ICWA applies. In addition, under the ICWA, a custody proceeding involving an Indian child may not begin until 10 days after the tribe has received notice, and the tribe may request an additional 20 days to prepare for such proceedings.

Summary of Substitute Bill:

Notice provisions regarding the ICWA are added to the statutes dealing with (a) third party custody proceedings; (b) adoptions; (c) dependencies; and (d) CHINS and ARY proceedings.

Whenever the court or petitioner knows or has reason to know that an Indian child is involved, the petitioning party must promptly give notice to the child's parent or Indian custodian and the child's Indian tribe. Notice must be by certified mail, return receipt

requested. If the identity or location of the parent or Indian custodian or the tribe cannot be determined, notice must be given to the Secretary of the Interior. If the child may be a member of more than one tribe, notice must be sent to all tribes the petitioner has reason to know may be affiliated with the child. The notice must contain a statement notifying the parent or Indian custodian and the tribe of the pending proceeding and notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court.

A provision is added to the adoption statutes that states no termination, relinquishment, or placement proceeding shall be held until at least 10 days after receipt of notice by the tribe. The tribe may request an additional 20 days to prepare for the proceeding.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill helps to ensure that the ICWA provisions are implemented in a timely manner in the proceedings. There is no resource more important to tribes than the children. This will ensure meaningful involvement by the tribes in children's lives. It will require prompt and consistent notice at the earliest time possible. If there is not timely notice, there is no early involvement by the tribes. The bill honors the spirit of the ICWA and improves the tribes' role in the state. It will help make the ICWA work in Washington.

Testimony Against: None.

Persons Testifying: Representative Pettigrew, prime sponsor; Mel Tonasket, Colville Confederated Tribes; Tom Tremaine, Northwest Justice Project; and Randy Scott, Quinault Nation.

Persons Signed In To Testify But Not Testifying: None.