

SENATE BILL REPORT

SHB 2000

As Reported By Senate Committee On:
Children & Family Services & Corrections, April 2, 2003

Title: An act relating to third-party custody proceedings involving the Indian Child Welfare Act.

Brief Description: Changing provisions pertaining to third-party custody proceedings involving the Indian Child Welfare Act.

Sponsors: House Committee on Juvenile Justice & Family Law (originally sponsored by Representatives Pettigrew, Dickerson, McCoy, Kenney and Santos).

Brief History:

Committee Activity: Children & Family Services & Corrections: 4/1/03, 4/2/03 [DP].

SENATE COMMITTEE ON CHILDREN & FAMILY SERVICES & CORRECTIONS

Majority Report: Do pass.

Signed by Senators Stevens, Chair; Parlette, Vice Chair; Carlson, Deccio, Hargrove, McAuliffe and Regala.

Staff: Edith Rice (786-7444)

Background: Third party custody proceedings: A person other than the parent may seek legal custody of a child by filing a third-party custody petition if the child is not in the physical custody of one of the parents or the nonparent alleges that neither parent is a suitable custodian. To be awarded custody, the nonparent must prove that custody is in the child's best interests and that the parent is either unfit or that there would be detriment to the child if placed with the parent.

The Indian Child Welfare Act: Congress passed the Indian Child Welfare Act (ICWA) to protect the best interests of Native American children and to promote the stability and security of the tribes. The ICWA contains numerous substantive and procedural provisions. For example, the ICWA requires that notice of child custody proceedings be provided to the child's tribe as well as to the parents, and the tribe may intervene in proceedings.

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 parents. 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.

Summary of Bill: Every third party custody petition filed must contain a statement alleging whether the child is or may be an Indian child as defined under the ICWA. If the child is an Indian child as defined under the ICWA, then the provisions of the ICWA apply.

Every order entered in a third party custody proceeding must contain a finding that the ICWA does or does not apply. Where there is a finding that the ICWA applies, the order must also contain a finding that all notice requirements and evidentiary requirements under the ICWA have been satisfied.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: It is critical that appropriate notice go to Indian tribes where Indian children are involved. An interim work group met prior to this session and is expected to continue to work on this issue.

Testimony Against: None.

Testified: Jennifer Dewald, Samish Indian Nation (pro with amendment); Mike Moran, Samish Indian Nation (pro with amendment); Laverne Lamoureux, Department of Social and Health Services, Children's Administration (pro); Judge Paula Casey, Thurston County Superior Court, Superior Court Judges Association (pro); Commissioner Chris Wickham, Superior Court Judges Association (pro).