

SENATE BILL REPORT

SHB 3051

As Reported By Senate Committee On:
Children & Family Services & Corrections, February 26, 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: 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: Children & Family Services & Corrections: 2/25/04, 2/26/04 [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: 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.

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. 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.

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.

Current law provides that third party custody, adoption, and dependency petitions shall contain a statement alleging 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 Bill: Notice provisions regarding the ICWA are added to the statutes dealing with third party custody proceedings, adoptions, dependencies, and CHINS and ARY proceedings.

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

Testimony For: It is critical that tribes get timely notice regarding court proceedings involving their children so that they may participate in a meaningful way. This bill neither expands nor diminishes rights or jurisdiction under the law.

Testimony Against: None.

Testified: Mike Moran, Quileute Tribe; Tom Tremaine, Northwest Justice Project.