

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 3051

Chapter 64, Laws of 2004

58th Legislature
2004 Regular Session

INDIAN CHILD WELFARE ACT--NOTICE

EFFECTIVE DATE: 6/10/04

Passed by the House February 13, 2004
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 4, 2004
Yeas 44 Nays 0

BRAD OWEN

President of the Senate

Approved March 22, 2004.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 3051** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

March 22, 2004 - 5:10 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 3051

Passed Legislature - 2004 Regular Session

State of Washington

58th Legislature

2004 Regular Session

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

READ FIRST TIME 02/05/04.

1 AN ACT Relating to notice provisions for proceedings involving the
2 Indian child welfare act; and amending RCW 26.10.034, 26.33.040,
3 13.34.040, 13.34.070, and 13.32A.152.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 26.10.034 and 2003 c 105 s 7 are each amended to read
6 as follows:

7 (1)(a) Every petition filed in proceedings under this chapter shall
8 contain a statement alleging whether the child is or may be an Indian
9 child as defined in 25 U.S.C. Sec. 1903. If the child is an Indian
10 child as defined under the Indian child welfare act, the provisions of
11 the act shall apply.

12 (b) Whenever the court or the petitioning party in a proceeding
13 under this chapter knows or has reason to know that an Indian child is
14 involved, the petitioning party shall promptly provide notice to the
15 child's parent or Indian custodian and to the agent designated by the
16 child's Indian tribe to receive such notices. Notice shall be by
17 certified mail with return receipt requested. If the identity or
18 location of the parent or Indian custodian and the tribe cannot be
19 determined, notice shall be given to the secretary of the interior in

1 the manner described in 25 C.F.R. 23.11. If the child may be a member
2 of more than one tribe, the petitioning party shall send notice to all
3 tribes the petitioner has reason to know may be affiliated with the
4 child.

5 (c) The notice shall: (i) Contain a statement notifying the parent
6 or custodian and the tribe of the pending proceeding; and (ii) notify
7 the tribe of the tribe's right to intervene and/or request that the
8 case be transferred to tribal court.

9 (2) Every order or decree entered in any proceeding under this
10 chapter shall contain a finding that the Indian child welfare act does
11 or does not apply. Where there is a finding that the Indian child
12 welfare act does apply, the decree or order must also contain a finding
13 that all notice requirements and evidentiary requirements under the
14 Indian child welfare act have been satisfied.

15 **Sec. 2.** RCW 26.33.040 and 1991 c 136 s 1 are each amended to read
16 as follows:

17 (1)(a) Every petition filed in proceedings under this chapter shall
18 contain a statement alleging whether the ~~((Indian Child Welfare Act, 25~~
19 ~~U.S.C. Sec. 1901 et seq., applies to the proceeding. Every order or~~
20 ~~decree entered in any proceeding under this chapter shall contain a~~
21 ~~finding that the Indian Child Welfare Act does or does not apply. In~~
22 ~~proceedings under this chapter, the adoption facilitator shall file a~~
23 ~~sworn statement documenting efforts to determine whether the Indian~~
24 ~~Child Welfare Act, 25 U.S.C. Sec. 1901 et seq., applies)) child is or~~
25 may be an Indian child as defined in 25 U.S.C. Sec. 1903. If the child
26 is an Indian child as defined under the Indian child welfare act, the
27 provisions of the act shall apply.

28 (b) Every order or decree entered in any proceeding under this
29 chapter shall contain a finding that the Indian child welfare act does
30 or does not apply. Where there is a finding that the Indian child
31 welfare act does apply, the decree or order must also contain a finding
32 that all notice requirements and evidentiary requirements under the
33 Indian child welfare act have been satisfied.

34 (c) In proceedings under this chapter, the adoption facilitator
35 shall file a sworn statement documenting efforts to determine whether
36 an Indian child as defined under the Indian child welfare act, 25
37 U.S.C. Sec. 1903, is involved.

1 (d) Whenever the court or the petitioning party knows or has reason
2 to know that an Indian child is involved in any termination,
3 relinquishment, or placement proceeding under this chapter, the
4 petitioning party shall promptly provide notice to the child's parent
5 or Indian custodian and to the agent designated by the child's Indian
6 tribe to receive such notices. Notice shall be by certified mail with
7 return receipt requested. If the identity or location of the parent or
8 Indian custodian and the tribe cannot be determined, notice shall be
9 given to the secretary of the interior in the manner described in 25
10 C.F.R. 23.11. If the child may be a member of more than one tribe, the
11 petitioning party shall send notice to all tribes the petitioner has
12 reason to know may be affiliated with the child.

13 (e) The notice shall: (i) Contain a statement notifying the parent
14 or custodian and the tribe of the pending proceeding; and (ii) notify
15 the tribe of the tribe's right to intervene and/or request that the
16 case be transferred to tribal court.

17 (f) No termination, relinquishment, or placement proceeding shall
18 be held until at least ten days after receipt of notice by the tribe.
19 If the tribe requests, the court shall grant the tribe up to twenty
20 additional days to prepare for such proceeding.

21 (2) Every petition filed in proceedings under this chapter shall
22 contain a statement alleging whether the Soldiers and Sailors Civil
23 Relief Act of 1940, 50 U.S.C. Sec. 501 et seq. applies to the
24 proceeding. Every order or decree entered in any proceeding under this
25 chapter shall contain a finding that the Soldiers and Sailors Civil
26 Relief Act of 1940 does or does not apply.

27 **Sec. 3.** RCW 13.34.040 and 2000 c 122 s 2 are each amended to read
28 as follows:

29 (1) Any person may file with the clerk of the superior court a
30 petition showing that there is within the county, or residing within
31 the county, a dependent child and requesting that the superior court
32 deal with such child as provided in this chapter. There shall be no
33 fee for filing such petitions.

34 (2) In counties having paid probation officers, these officers
35 shall, to the extent possible, first determine if a petition is
36 reasonably justifiable. Each petition shall be verified and contain a

1 statement of facts constituting a dependency, and the names and
2 residence, if known to the petitioner, of the parents, guardian, or
3 custodian of the alleged dependent child.

4 (3) Every petition filed in proceedings under this chapter shall
5 contain a statement alleging whether the child is or may be an Indian
6 child as defined in 25 U.S.C. Sec. 1903. If the child is an Indian
7 child as defined under the Indian child welfare act, the provisions of
8 the act shall apply.

9 (4) Every order or decree entered under this chapter shall contain
10 a finding that the Indian child welfare act does or does not apply.
11 Where there is a finding that the Indian child welfare act does apply,
12 the decree or order must also contain a finding that all notice
13 requirements and evidentiary requirements under the Indian child
14 welfare act have been satisfied.

15 **Sec. 4.** RCW 13.34.070 and 2000 c 122 s 8 are each amended to read
16 as follows:

17 (1) Upon the filing of the petition, the clerk of the court shall
18 issue a summons, one directed to the child, if the child is twelve or
19 more years of age, and another to the parents, guardian, or custodian,
20 and such other persons as appear to the court to be proper or necessary
21 parties to the proceedings, requiring them to appear personally before
22 the court at the time fixed to hear the petition. If the child is
23 developmentally disabled and not living at home, the notice shall be
24 given to the child's custodian as well as to the child's parent. The
25 developmentally disabled child shall not be required to appear unless
26 requested by the court. When the custodian is summoned, the parent or
27 guardian or both shall also be served with a summons. The fact-finding
28 hearing on the petition shall be held no later than seventy-five days
29 after the filing of the petition, unless exceptional reasons for a
30 continuance are found. The party requesting the continuance shall have
31 the burden of proving by a preponderance of the evidence that
32 exceptional circumstances exist. To ensure that the hearing on the
33 petition occurs within the seventy-five day time limit, the court shall
34 schedule and hear the matter on an expedited basis.

35 (2) A copy of the petition shall be attached to each summons.

36 (3) The summons shall advise the parties of the right to counsel.

1 The summons shall also inform the child's parent, guardian, or legal
2 custodian of his or her right to appointed counsel, if indigent, and of
3 the procedure to use to secure appointed counsel.

4 (4) The summons shall advise the parents that they may be held
5 responsible for the support of the child if the child is placed in out-
6 of-home care.

7 (5) The judge may endorse upon the summons an order directing any
8 parent, guardian, or custodian having the custody or control of the
9 child to bring the child to the hearing.

10 (6) If it appears from affidavit or sworn statement presented to
11 the judge that there is probable cause for the issuance of a warrant of
12 arrest or that the child needs to be taken into custody pursuant to RCW
13 13.34.050, the judge may endorse upon the summons an order that an
14 officer serving the summons shall at once take the child into custody
15 and take him or her to the place of shelter designated by the court.

16 (7) If the person summoned as provided in this section is subject
17 to an order of the court pursuant to subsection (5) or (6) of this
18 section, and if the person fails to abide by the order, he or she may
19 be proceeded against as for contempt of court. The order endorsed upon
20 the summons shall conspicuously display the following legend:

21 NOTICE:
22 VIOLATION OF THIS ORDER
23 IS SUBJECT TO PROCEEDING
24 FOR CONTEMPT OF COURT
25 PURSUANT TO RCW 13.34.070.

26 (8) If a party to be served with a summons can be found within the
27 state, the summons shall be served upon the party personally as soon as
28 possible following the filing of the petition, but in no case later
29 than fifteen court days before the fact-finding hearing, or such time
30 as set by the court. If the party is within the state and cannot be
31 personally served, but the party's address is known or can with
32 reasonable diligence be ascertained, the summons may be served upon the
33 party by mailing a copy by certified mail as soon as possible following
34 the filing of the petition, but in no case later than fifteen court
35 days before the hearing, or such time as set by the court. If a party
36 other than the child is without the state but can be found or the
37 address is known, or can with reasonable diligence be ascertained,
38 service of the summons may be made either by delivering a copy to the

1 party personally or by mailing a copy thereof to the party by certified
2 mail at least ten court days before the fact-finding hearing, or such
3 time as set by the court.

4 (9) Service of summons may be made under the direction of the court
5 by any person eighteen years of age or older who is not a party to the
6 proceedings or by any law enforcement officer, probation counselor, or
7 department employee.

8 ~~(10) ((In any proceeding brought under this chapter where the court
9 knows or has reason to know that the child involved is a member or is
10 eligible to be a member of an Indian tribe, notice of the pendency of
11 the proceeding shall also be sent by registered mail, return receipt
12 requested, to the child's tribe. If the identity or location of the
13 tribe cannot be determined, such notice shall be transmitted to the
14 secretary of the interior of the United States.))~~

15 (a) Whenever the court or the petitioning party in a proceeding under this chapter knows
16 or has reason to know that an Indian child is involved, the petitioning
17 party shall promptly provide notice to the child's parent or Indian
18 custodian and to the agent designated by the child's Indian tribe to
19 receive such notices. Notice shall be by certified mail with return
20 receipt requested. If the identity or location of the parent or Indian
21 custodian and the tribe cannot be determined, notice shall be given to
22 the secretary of the interior in the manner described in 25 C.F.R.
23 23.11. If the child may be a member of more than one tribe, the
24 petitioning party shall send notice to all tribes the petitioner has
25 reason to know may be affiliated with the child.

26 (b) The notice shall: (i) Contain a statement notifying the parent
27 or custodian and the tribe of the pending proceeding; and (ii) notify
28 the tribe of the tribe's right to intervene and/or request that the
29 case be transferred to tribal court.

30 **Sec. 5.** RCW 13.32A.152 and 2000 c 123 s 18 are each amended to
31 read as follows:

32 (1) Whenever a child in need of services petition is filed by: (a)
33 A youth pursuant to RCW 13.32A.150; (b) the child or the child's parent
34 pursuant to RCW 13.32A.120; or (c) the department pursuant to RCW
35 13.32A.140, the filing party shall have a copy of the petition served
36 on the parents of the youth. Service shall first be attempted in
37 person and if unsuccessful, then by certified mail with return receipt.

1 (2) Whenever a child in need of services petition is filed by a
2 youth or parent pursuant to RCW 13.32A.150, the court shall immediately
3 notify the department that a petition has been filed.

4 (3)(a) Whenever the court or the petitioning party knows or has
5 reason to know that an Indian child is involved, the petitioning party
6 shall promptly provide notice to the child's parent or Indian custodian
7 and to the agent designated by the child's Indian tribe to receive such
8 notices. Notice shall be by certified mail with return receipt
9 requested. If the identity or location of the parent or Indian
10 custodian and the tribe cannot be determined, notice shall be given to
11 the secretary of the interior in the manner described in 25 C.F.R.
12 23.11. If the child may be a member of more than one tribe, the
13 petitioning party shall send notice to all tribes the petitioner has
14 reason to know may be affiliated with the child.

15 (b) The notice shall: (i) Contain a statement notifying the parent
16 or custodian and the tribe of the pending proceeding; and (ii) notify
17 the tribe of the tribe's right to intervene and/or request that the
18 case be transferred to tribal court.

Passed by the House February 13, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

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