

HOUSE BILL REPORT

SSB 6470

As Reported by House Committee On:
Judiciary

Title: An act relating to the burdens of proof required in dependency matters affecting Indian children.

Brief Description: Addressing the burdens of proof required in dependency matters affecting Indian children.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Kauffman, Hargrove, Prentice, Gordon, Regala, Keiser, McAuliffe, Stevens and Kline).

Brief History:

Committee Activity:

Judiciary: 2/18/10, 2/22/10 [DP].

Brief Summary of Substitute Bill

- Adds the evidentiary standards required under the Indian Child Welfare Act to the dependency statutes.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Kelley, Kirby, Ormsby, Roberts and Ross.

Staff: Trudes Tango (786-7384).

Background:

I. Dependencies and Termination of Parental Rights.

Any person or the Department of Social and Health Services (DSHS) may file a petition in court to determine if a child should be a dependent of the state due to abuse, neglect, abandonment, or because there is no parent, guardian, or custodian capable of caring for the child. If the court finds by a preponderance of the evidence that the child is dependent, the

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

court must enter a disposition order, which can include placing the child in foster care. After a period of time, if the parent fails to take corrective measures needed to allow the child to return home safely, the court can eventually terminate parental rights. The court must find by clear, cogent, and convincing evidence that, among other things, there is little likelihood the parent's conditions will be remedied in the near future and the continuation of the parent-child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home. Some of the allegations required to be established for termination may be waived if other circumstances, such as the parent's abandonment of the child, are established beyond a reasonable doubt.

II. The Indian Child Welfare Act.

The Indian Child Welfare Act (ICWA), which Congress passed in 1978, applies to any state court custody proceeding involving an Indian child that results in the placement of the Indian child with someone other than the child's parent or Indian custodian. The ICWA defines an "Indian child" as a person under the age of 18 who is either: (1) a member of a federally-recognized Indian tribe; or (2) eligible for membership in a federally-recognized Indian tribe and is the biological child of a member of an Indian tribe. The ICWA does not apply to juvenile delinquency proceedings and custody disputes in dissolutions.

The ICWA requires that the petitioning party provide notice to the Indian child's parent and tribe, gives the tribe either exclusive or concurrent jurisdiction over the case, and provides other substantive requirements. In the context of involuntary foster care placement and termination of parental rights, the ICWA requires a showing that "active efforts" have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have been unsuccessful.

A. Foster Care Placement.

In addition to the "active efforts" requirement, prior to an involuntary foster care placement, the ICWA requires a showing that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. This determination must be supported by clear and convincing evidence, including the testimony of qualified expert witnesses.

The ICWA provides the following placement preferences for an Indian child in foster care: (1) a member of the Indian child's extended family; (2) a foster home specified by the Indian child's tribe; (3) an Indian foster home approved by an authorized non-Indian licensing authority; or (4) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program to meet the Indian child's needs. The ICWA allows tribes to alter the order of preference.

State law also provides placement preferences for Indian children. Whenever appropriate, the Indian child must be placed in a foster care home in the following order of preference: (1) relatives; (2) an Indian family of the same tribe as the child; (3) an Indian family of a Washington Indian tribe of a similar culture to that tribe; or (4) any other family which can provide a suitable home for an Indian child, as determined through consultation with a local Indian child welfare advisory committee.

B. Termination of Parental Rights.

In the context of terminating parental rights, the ICWA requires the court to determine by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Summary of Bill:

The ICWA language relating to the evidentiary standards for foster care placement (clear and convincing evidence) and termination of parental rights (beyond a reasonable doubt) are stated specifically in the dependency statutes. The court may not order an Indian child to be removed from his or her home unless the court finds, by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. In a termination proceeding, the court may enter an order terminating parental rights to an Indian child if the court finds that termination is supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

When placing an Indian child in out-of-home care, the DSHS must follow the placement preferences in both state and federal law.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill simply puts some federal law into the state statute. Studies show that there is a disproportionate number of children of color, especially Indian children, who are removed from their homes and placed in foster care. State courts need a better understanding of the ICWA at key decision-making points. The bill will be helpful to practitioners dealing with these cases. The history of the ICWA is full of emotion and injustice. This bill is a step forward but there is much more to do regarding the state law and the ICWA.

(Opposed) None.

Persons Testifying: Senator Kauffman, prime sponsor; Mike Moran, Hoh Indian Tribe and Samish Indian Nation; and Miguel Perez-Gibson, Confederated Tribes of the Colville Reservation.

Persons Signed In To Testify But Not Testifying: None.