

HOUSE BILL REPORT

SHB 2000

As Passed House:

March 12, 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: By House Committee on Juvenile Justice & Family Law (originally sponsored by Representatives Pettigrew, Dickerson, McCoy, Kenney and Santos).

Brief History:

Committee Activity:

Juvenile Justice & Family Law: 2/25/03, 2/27/03 [DPS].

Floor Activity:

Passed House: 3/12/03, 92-0.

Brief Summary of Substitute Bill

- Requires a third party custody petition to contain a statement alleging whether the child is or may be an Indian child as defined under the federal Indian Child Welfare Act (ICWA).
- Requires every court order in a third party custody proceeding to contain a finding whether the ICWA does or does not apply and, if the ICWA applies, requires the order to contain a finding that all notice requirements and evidentiary requirements under the ICWA have been satisfied.

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, Eickmeyer, Hinkle and Upthegrove.

Staff: Trudes Tango Hutcheson (786-7384).

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

Testimony For: The bill will help identify Native American children much earlier so courts know if the ICWA applies or not. This bill does not give Native Americans special treatment. The bill provides a means for the DSHS to get involved in these very limited number of cases without having to resort to making the children dependent under a dependency proceeding. It's important to have a mechanism to know if the ICWA

applies because the ICWA requires notice to the tribes. If notice is not given to the tribes, the court's order could be eventually set aside and that creates instability for the children.

(With concerns) The Supreme Court has given the lower courts the authority to file a dependency in these cases. The phrase "subject to available resources" should be removed from the bill because that phrase would allow the DSHS to get out of providing services in these cases. The bill does not closely track the language in the ICWA and will result in problems. The language regarding jurisdiction creates confusion. The exact language of the ICWA should be used. The language deviates from the ICWA by equivocating about the commitment required under the ICWA to prevent the breakup of the Indian family. The bill should use the term "Indian family" to reflect the varying roles members of the extended family play in Indian communities.

Testimony Against: None.

Testified: (In support) Representative Pettigrew, prime sponsor; Kimberly Prochnau, Superior Court Judges Association; and Laverne Lamoureux, Department of Social and Health Services.

(With concerns) Marg Hutchenson and Randy Scott, Colville Confederated Tribes.