
**Juvenile Justice & Family Law
Committee**

HB 2000

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

Sponsors: Representatives Pettigrew, Dickerson, McCoy, Kenney and Santos.

Brief Summary of Bill

- Requires every court order in third party custody proceedings to contain a finding whether the Indian Child Welfare Act applies.
- Allows the court to refer a third party custody case involving the Indian Child Welfare Act to the Department of Social and Health Services to determine if the case is appropriate for a dependency petition.
- Requires the Department of Social and Health Services to offer or provide reunification services, within available resources, to the parent in a third party custody case involving the Indian Child Welfare Act.

Hearing Date: 2/25/03

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.

When determining custody, the court may order an investigation, hear the opinions of experts, and take into consideration the wishes of the child. The court may order remedial services, such as parenting classes and treatment, as a condition to custody. However, paying for such services is the responsibility of the parties. There is generally no casework

supervision available for third party custody matters.

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.

Generally, the tribal court has exclusive jurisdiction over child custody proceedings involving Native American children residing or domiciled within the reservation unless there is federal or state law vesting jurisdiction in the state. Cases involving Native American children who are not resident or domiciled on a reservation are filed in state court.

Under the ICWA a petitioner in an involuntary child custody proceeding must demonstrate to the court that, prior to the commencement of the proceeding, efforts were made to provide remedial services and rehabilitative programs to the parents to prevent the breakup of the Indian family and that such efforts were unsuccessful.

Dependency Proceedings

Any person may file with the court a petition alleging that a child is a dependent child. A child is dependent if the child has been abandoned, abused, or neglected, or has no parent or custodian capable of adequately caring for the child. The juvenile court has exclusive original jurisdiction over dependency proceedings.

If the court finds that the child is dependent, the court must conduct a hearing to determine the child's placement. The Department of Social and Health Services (DSHS) develops a service plan establishing the counseling or other services that the DSHS has determined the parents need. Generally, the goal of the dependency process is to provide services to reunify the family if the dependent child has been removed from the parent's custody.

Summary of Bill:

If the court knows or has reason to believe that a child in a third party custody proceeding is an Indian child as defined under the ICWA, then the court may order the DSHS to review the case to determine if it is appropriate for a dependency petition.

If the DSHS has reviewed the case and determines that there is no basis for a dependency petition, the DSHS shall, subject to available resources, offer or provide reasonably available services with the goal of reunifying the child with the parents. The services shall be offered or provided for a period not to exceed 15 months, during which the court must determine if reunification is likely to occur in the near future or if entry of a permanent custody order is in the child's best interests. This does not create an entitlement to services or create judicial

authority to order services to any person if the services are unavailable or unsuitable or if the person is not eligible.

Every petition filed in third party custody proceedings must contain a statement alleging whether the ICWA applies, and every order entered by the court in a third party custody proceeding must contain a finding that the ICWA does or does not apply.

Appropriation: None.

Fiscal Note: Requested on February 21, 2003.

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