

HOUSE BILL NO. 317

INTRODUCED BY J. WINDY BOY, M. WEATHERWAX, C. KEOGH, D. HAWK, E. KERR-CARPENTER, A. BUCKLEY, K. SULLIVAN, K. KORTUM, T. FRANCE, E. STAFMAN, M. CAFERRO, M. THANE, F. SMITH, M. FOX, S. MORIGEAU, J. ETCHART, K. ABBOTT, P. TUSS, S. STEWART PEREGOY, B. CARTER, Z. ZEPHYR, M. ROMANO, L. SMITH, D. BAUM, E. MATTHEWS, S. HOWELL

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA INDIAN CHILD WELFARE ACT; PROVIDING REQUIREMENTS FOR DETERMINING INDIAN STATUS AND INDIAN TRIBE; ESTABLISHING REQUIREMENTS FOR COURT PROCEEDINGS, EVIDENCE, AND CONSENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 40-6-405, 40-6-407, 40-6-413, 40-6-414, 40-6-1001, 40-7-135, 41-3-102, 41-3-103, 41-3-109, 41-3-128, 41-3-205, 41-3-301, 41-3-306, 41-3-307, 41-3-422, 41-3-423, 41-3-425, 41-3-427, 41-3-432, 41-3-437, 41-3-444, 41-3-609, 42-2-102, 42-2-604, 42-4-102, 42-4-103, 42-4-203, 42-4-209, 42-5-101, 42-5-107, 47-1-104, AND 52-2-117, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 20] may be cited as the "Montana Indian Child Welfare Act".

NEW SECTION. **Section 2. Legislative findings -- purpose.** (1) The legislature recognizes that in possibly no other area of concurrent tribal and state law is it more important that tribal sovereignty be respected than in an area as socially and culturally determinative as family relationships. The legislature finds that the state is committed to protecting the essential tribal relations and best interests of Indian children by promoting practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the health, safety, or welfare of the child, or the interests of the child's tribe. Whenever out-of-home placement of an Indian child is necessary in a proceeding subject to the terms of the federal Indian Child Welfare Act and [sections 1 through 20], the best interests of the Indian child may be served by placing the Indian child in accordance with the placement priorities expressed in [sections 1 through 20].

- 1 (ii) the length of the child's past residence or domicile on or near the reservation of each tribe;
- 2 (iii) the tribal membership of the child's custodial parent or Indian custodian;
- 3 (iv) the interest asserted by each tribe in the child custody proceeding;
- 4 (v) whether there has been a previous adjudication with respect to the child by a court of one of
- 5 the tribes; and
- 6 (vi) self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-
- 7 identify with a tribe.

8 (4) A determination of the Indian child's tribe for the purposes of [sections 1 through 20] does not

9 constitute a determination for any other purpose.

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11 **NEW SECTION. Section 7. Jurisdiction -- transfer of jurisdiction.** (1) An Indian tribe has exclusive

12 jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the

13 reservation of that tribe unless:

14 (a) the tribe has consented to the state's concurrent jurisdiction pursuant to Public Law 280 or 25

15 U.S.C. 1919;

16 (b) the tribe has expressly declined to exercise its exclusive jurisdiction; or

17 (c) the state is exercising emergency jurisdiction in compliance with [section 16].

18 (2) If an Indian child is already a ward of a tribal court at the start of the child custody proceeding,

19 the Indian tribe may retain exclusive jurisdiction regardless of the residence or domicile of the child.

20 (3) Except as provided in subsections (4) and (6), in a child custody proceeding involving an Indian

21 child who is not residing or domiciled within the reservation of the Indian child's tribe, the court shall, in the

22 absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe on

23 the motion of any of the following:

24 (a) either of the Indian child's parents;

25 (b) the Indian child's Indian custodian;

26 (c) the Indian child's tribe; or

27 (d) the Indian child if the child is 12 years of age or older.

28 (4) A tribe to which jurisdiction is being transferred shall respond within 75 days to a motion or

1 order transferring jurisdiction to the tribal court. A failure of the tribe to respond within 75 days must be  
2 construed as a declination to accept the transfer of the case.

3 (5) If the Indian child's tribe has not formally intervened, the moving party shall serve a copy of the  
4 motion and all supporting documents on the tribal court to which the moving party seeks transfer.

5 (6) If either of the Indian child's parents objects to transfer of the proceeding to the Indian child's  
6 tribe, the court may not transfer the proceeding.

7 (7) (a) If a state court believes or any party asserts that good cause to deny transfer exists, the  
8 reasons for that belief or assertion must be provided orally or in writing on the record and to the parties to the  
9 child custody proceeding. Any party to the child custody proceeding must have the opportunity to provide the  
10 court with the reasons that good cause exists to deny transfer of the proceeding.

11 (b) In determining whether good cause exists, the court may not consider:

12 (i) whether the child custody proceeding is at an advanced stage;

13 (ii) whether there have been prior proceedings involving the child for which no petition to transfer  
14 was filed;

15 (iii) whether transfer could affect the placement of the child;

16 (iv) the child's cultural connections with the tribe or its reservation; or

17 (v) socioeconomic conditions or any negative perception of the tribal or bureau of Indian affairs  
18 social services or judicial systems.

19 (c) If the court denies transfer of jurisdiction, the court shall state its reasons for the denial orally on  
20 the record or in a written order.

21 (8) (a) Following entry of an order transferring jurisdiction to the Indian child's tribe and pending  
22 receipt of a tribal court order accepting jurisdiction, the state court:

23 (i) may conduct additional hearings and enter orders that are in the best interests of the child and  
24 strictly comply with the requirements of the federal Indian Child Welfare Act and [sections 1 through 20]; and

25 (ii) may not enter a final order in a child custody proceeding, except an order dismissing the  
26 proceeding and returning the Indian child to the care of the parent or Indian custodian from whose care the  
27 child was removed.

28 (b) On receipt of an order from a tribal court accepting jurisdiction, the court shall:

(i) dismiss the child custody proceeding with prejudice; and

(ii) expeditiously provide the tribal court with all records related to the proceeding, including but not limited to the pleadings and any court record. The state court shall work with the tribal court to ensure the transfer of the custody of the Indian child and the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.

(9) If the Indian child's tribe accepts jurisdiction, the state court shall enter an order relieving the office of the state public defender and any public defender assigned pursuant to 41-3-425 and 47-1-104 from further representation.

(10) If the Indian child's tribe declines jurisdiction, the state court shall enter an order vacating the order transferring jurisdiction and proceed with adjudication of the child custody proceeding in compliance with the federal Indian Child Welfare Act, [sections 1 through 20], and any applicable state-tribal agreement.

**NEW SECTION. Section 8. Notice.** (1) The petitioning party shall provide notice of the initial petition filed in an involuntary child custody proceeding and a petition seeking termination of parental rights when the petitioning party knows or has reason to know that the child is or may be an Indian child. Notice must be provided as required in subsection (2) to:

(a) the Indian child's parent or Indian custodian; and

(b) the child's tribe or tribes.

(2) (a) Notice to the tribe must be made by certified mail, return receipt requested, and must meet the requirements of subsection (4). The notice must be sent to the person designated in the most current Federal Register as the designated tribal agent for service of notice for the purposes of the federal Indian Child Welfare Act. The petitioning party shall file the return receipt with the court as proof of notice.

(b) Notice to the parent or Indian custodian must be made by personal service, or alternative means as provided in 41-3-422 if personal service cannot be accomplished, and must meet the requirements of subsection (4).

(c) If the identity or location of the parent or Indian custodian and the tribe cannot be determined, the notice must be given to the secretary of the U.S. department of the interior by certified mail, return receipt requested, in accordance with the provisions of 25 CFR, part 23.