

ENROLLED HOUSE
BILL NO. 1905

By: Adair, Williams and
Glover of the House

and

Haney of the Senate

An Act relating to children; amending 10 O.S. 1991, Sections 40.1, 40.3, 40.4 and 40.6, which relate to the Oklahoma Indian Child Welfare Act; declaring state policy for certain Indian children; expanding purpose and application of the Oklahoma Indian Child Welfare Act; specifying responsibility of certain persons to send certain notices of proceedings; requiring the Department of Human Services to utilize services of Indian child's tribe in adoption cases; setting certain requirements and conditions; requiring certain time periods and notices; amending 43 O.S. 1991, Section 503, which relates to the Uniform Child Custody Jurisdiction Act; exempting certain Indian child proceedings; providing for certain jurisdiction to be superceded; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 10 O.S. 1991, Section 40.1, is amended to read as follows:

Section 40.1 The purpose of the Oklahoma Indian Child Welfare Act is the clarification of state policies and procedures regarding the implementation by the State of Oklahoma of the federal Indian Child Welfare Act, P.L. 95-608. It shall be the policy of the state to recognize that Indian tribes and nations have a valid governmental interest in Indian children regardless of whether or not said children are in the physical or legal custody of an Indian parent or Indian custodian at the time state proceedings are initiated. It shall be the policy of the state to cooperate fully with Indian tribes in Oklahoma in order to ensure that the intent and provisions of the federal Indian Child Welfare Act are enforced.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 40.3, is amended to read as follows:

Section 40.3 A. The Oklahoma Indian Child Welfare Act, in accordance with the federal Indian Child Welfare Act, applies to all child custody proceedings involving any Indian child except the following:

1. A child custody proceeding arising from a divorce proceeding; or

2. A child custody proceeding arising from an adjudication of delinquency, unless there has been a request for termination of parental rights.

B. The Except as provided for in subsection A of this section, ~~the Oklahoma Indian Child Welfare Act applies only to a child who is~~

~~a member of an Indian tribe or who is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe to all state voluntary and involuntary child custody court proceedings involving Indian children, regardless of whether or not the children involved are in the physical or legal custody of an Indian parent or Indian custodian at the time state proceedings are initiated.~~

C. The court shall seek a determination of the Indian status of the child in accordance with the preceding standard in the following circumstances:

1. The court has been informed by an interested party, an officer of the court, a tribe, an Indian organization or a public or private agency that the child is Indian; or

2. The child who is the subject of the proceeding gives the court reason to believe he is an Indian child; or

3. The court has reason to believe the residence or domicile of the child is a predominantly Indian community.

D. The court shall seek verification of the Indian status of the child from the Indian tribe or the Bureau of Indian Affairs. A determination of membership by an Indian tribe shall be conclusive. A determination of membership by the Bureau of Indian Affairs shall be conclusive in the absence of a contrary determination by the Indian tribe.

E. The determination of the Indian status of a child shall be made as soon as practicable in order to ensure compliance with the notice requirements of ~~Section 5 of the Oklahoma Indian Child Welfare Act~~ 40.4 of this title.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 40.4, is amended to read as follows:

Section 40.4 In ~~any involuntary~~ all Indian child custody ~~proceeding~~ proceedings of the Oklahoma Indian Child Welfare Act, including voluntary court proceedings and review hearings, the court shall ensure that the district attorney or other person initiating the proceeding shall send notice to the parents or to the Indian custodians, if any, and to the tribe that is or may be the tribe of the Indian child, and to the appropriate Bureau of Indian Affairs area office, by registered mail return receipt requested. The notice shall be written in clear and understandable language and include the following information:

1. The name and tribal affiliation of the Indian child;

2. A copy of the petition by which the proceeding was initiated;

3. A statement of the rights of the biological parents or Indian custodians, and the Indian tribe:

a. to intervene in the proceeding,

b. to petition the court to transfer the proceeding to the tribal court of the Indian child, and

c. to request an additional twenty (20) days from receipt of notice to prepare for the proceeding; further extensions of time may be granted with court approval;

4. A statement of the potential legal consequences of an adjudication on the future custodial rights of the parents or Indian custodians;

5. A statement that if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent them; and

6. A statement that tribal officials should keep confidential the information contained in the notice.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 40.6, is amended to read as follows:

Section 40.6 The placement preferences specified in 25 U.S.C. Section 1915, shall apply to all preadjudicatory placements, as well as preadoptive, adoptive and foster care placements. In all placements of an Indian child by the Oklahoma Department of Human Services (DHS), or by any person or other placement agency, DHS, the person or placement agency shall utilize to the maximum extent possible the services of the Indian tribe of the child in securing placement consistent with the provisions of the Oklahoma Indian Child Welfare Act. This requirement shall include cases where a consenting parent evidences a desire for anonymity in the consent document executed pursuant to Section 60.5 of this title. If a request for anonymity is included in a parental consent document, the court shall give weight to such desire in applying the preferences only after notice is given to the child's tribe and the tribe is afforded twenty (20) days to intervene and request a hearing on available tribal placement resources which may protect parental confidentiality, provided that notice of such hearing shall be given to the consenting parent.

SECTION 5. AMENDATORY 43 O.S. 1991, Section 503, is amended to read as follows:

Section 503. The provisions of this act shall apply to all custody proceedings brought within this state, whether as an initial proceeding or modification, and regardless of the absence of jurisdictional dispute. The provisions of the Uniform Child Custody Jurisdiction Act shall not apply to an Indian child who is a ward of a tribal court or otherwise subject to tribal court child custody proceedings as defined by the federal Indian Child Welfare Act. Applicable provisions of the federal Indian Child Welfare Act and the Oklahoma Indian Child Welfare Act shall supercede the provisions of the Uniform Child Custody Jurisdiction Act in a child custody proceeding as defined by the federal Indian Child Welfare Act which would otherwise be governed by the Uniform Child Custody Jurisdiction Act.

SECTION 6. This act shall become effective September 1, 1994.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 2nd day of March, 1994.

Speaker of the House of Representatives

Passed the Senate the 5th day of April, 1994.

President of the Senate