

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2295

By: Roach

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Sections 40.3, as amended by Section 2, Chapter 30, O.S.L. 1994, 40.4, as amended by Section 3, Chapter 30, O.S.L. 1994, and 40.6, as amended by Section 4, Chapter 30, O.S.L. 1994 (10 O.S. Supp. 1997, Sections 40.3, 40.4 and 40.6), which relate to the Oklahoma Indian Child Welfare Act; providing for determination of Indian status of child; requiring notice; providing procedures; requiring time limitations; providing for certain hearing and determination; providing when determination of the Indian status of child shall be made in voluntary and involuntary proceedings; requiring written orders; providing for res judicata relating to parents in voluntary action for subsequent proceedings; prohibiting alteration of Indian child status; providing for penalty for false statements; requiring notification to certain persons; adding to information in notice; defining term relating to placement preferences with Indian families; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 40.3, as amended by Section 2, Chapter 30, O.S.L. 1994 (10 O.S. Supp. 1997, 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. Except as provided for in subsection A of this section, the Oklahoma Indian Child Welfare Act applies 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 40.4 of this title.~~ In child custody proceedings, the determination of the Indian status of a child shall be made as soon as practicable after the initiation of the proceeding in order to ensure compliance with the notice requirements of Section 40.4 of this title, in accordance with the following procedures:

1.
 - a. The petitioning party in involuntary proceedings shall serve written notice to the parent that a determination of the Indian status of the child will be made at a hearing,
 - b. The notice shall be served in the manner required by the Oklahoma Adoption Act for notice of adoption hearings, and shall specify the right of the parent to offer proof of the parent's and/or child's membership or eligibility for membership with a federally recognized Indian tribe,
 - c. The parent shall have a minimum of ten (10) days notice prior to such a hearing and shall be granted up to an additional twenty (20) days upon request,
 - d. A copy of the notice shall be sent to the child's tribe, if the tribal affiliation is known or suspected, and shall be sent to the Bureau of Indian Affairs, if the tribal affiliation is unknown but Indian status is known or suspected,
 - e. The hearing on determination of the child's Indian status shall be specifically set for such purpose or

held in conjunction with a hearing for other purposes,
and

f. A court's determination of the Indian status of the
child shall be based on the child's status as of the
date of the hearing; and

2. In voluntary child custody proceedings, the determination
regarding the Indian status of a child shall be made by the court on
the date of voluntary relinquishment of parental rights or consent
to adoption. A court's determination of the Indian status of the
child shall be based on the child's status as of the date of such
voluntary action.

F. 1. A court's determination of Indian or non-Indian status
of a child who is subject to child custody proceedings, voluntary or
involuntary, shall be reflected by written order of the court.

2. A determination regarding the Indian status of a child shall
be res judicata as to the rights of the parent or parents who were
parties to the determination or who appeared for or took voluntary
action. The determination shall be controlling for purposes of the
Oklahoma Indian Child Welfare Act and the federal Indian Child
Welfare Act applicability affecting the rights of said parent or
parents or the child's status through such parents in said
proceeding and in all subsequent proceedings, regardless of whether
the Indian status of the child is established later in the
proceeding or in subsequent proceedings as to a parent who was not a
party to a prior determination affecting the other parent.

3. An acquisition of membership with a federally recognized
Indian tribe by a parent or the child involved in the proceeding
after a determination of non-Indian status of a child shall not
alter the Indian status of the child for purposes of proceedings
pursuant to this title.

G. Any parent who willfully and deliberately makes a false
statement under oath regarding the Indian status of the child or

parent shall have committed perjury which, upon conviction, shall be punishable as otherwise provided by law.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 40.4, as amended by Section 3, Chapter 30, O.S.L. 1994 (10 O.S. Supp. 1997, Section 40.4), is amended to read as follows:

Section 40.4 A. In all voluntary and involuntary Indian child custody proceedings of the Oklahoma Indian Child Welfare Act, ~~including voluntary court proceedings and review~~ excluding relinquishment of parental rights and consent to adoption hearings, the court shall ensure that the district attorney or other person initiating the proceeding shall send notice to the last-known address of the following by certified mail, return receipt requested:

1. 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;~~

2. The child's tribe, if the tribal affiliation is known or suspected; and

3. The Bureau of Indian Affairs, if the actual or possible tribal affiliation is unknown but Indian status is known or suspected.

B. 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 object to any motion to transfer the proceeding to the tribal court of the Indian child, and
- d. 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 3. AMENDATORY 10 O.S. 1991, Section 40.6, as amended by Section 4, Chapter 30, O.S.L. 1994 (10 O.S. Supp. 1997, Section 40.6), is amended to read as follows:

Section 40.6 A. The placement preferences with Indian families specified in 25 U.S.C. Section 1915, shall apply to all preadjudicatory placements, as well as preadoptive, adoptive and foster care placements.

B. 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 Department of Human Services, 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~~ the Oklahoma Adoption Act. 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.

C. For purposes of placement preferences with Indian families pursuant to this section and 25 U.S.C. Section 1915, the term "Indian family" means a family unit in which a prospective adoptive or foster parent is an Indian.

SECTION 4. This act shall become effective November 1, 1998.

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