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BILL



ANALYSIS

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Senate Bill 1232 (as introduced 8-15-12)
Sponsor: Senator Judy K. Emmons
Committee: Families, Seniors, and Human Services

Date Completed: 9-18-12

CONTENT

The bill would add Chapter XIIB, the "Michigan Indian Family Preservation Act", to the Probate Code. The bill would do the following:

- Require that, in Indian child custody proceedings, the best interests of the Indian child be determined in accordance with Federal law and Chapter XIIB.
- Require courts to protect the best interests of Indian children and promote the stability and security of Indian tribes and families.
- Specify that an Indian tribe would have exclusive jurisdiction over any child custody proceeding involving an Indian child who lived or was domiciled within the tribe's reservation, and allow a State court to exercise certain limited jurisdiction.
- Specify circumstances under which a State court could exercise jurisdiction over an Indian child custody proceeding and when it would have to transfer the proceeding to an Indian tribe's jurisdiction.
- Require notification of the parent or Indian custodian of an Indian child in a child custody proceeding.
- Require the Department of Human Services (DHS) to seek to determine at initial contact whether a child was an Indian child, and to exercise due diligence to determine, document, and contact an Indian child's extended family members.
- Establish procedures for voluntary petitions for guardianship or adoptive placement of an Indian child.
- Allow a parent or Indian custodian who consented to guardianship to withdraw consent at any time, and allow a parent who executed a consent to adoption to withdraw it at any time before entry of a final order for adoption.
- Establish requirements for notice and proceedings when an Indian child was the subject of a child protective proceeding alleging neglect, including criteria for removing an Indian child from a parent or Indian custodian and placing the child in foster care.
- Require a court to accept the testimony of an expert witness who was a member of an Indian tribe or approved by the tribe, and/or who had knowledge of tribal customs and how they pertained to family organization and child rearing practices.
- Require a court to return an Indian child to his or her parent or Indian custodian if it determined that a petitioner improperly removed the child, unless doing so would subject the child to a substantial and immediate danger.
- Specify that the parent or Indian custodian would have the right to court-appointed counsel if the court determined indigence.
- Require an Indian child to be placed in the least restrictive setting that

most approximated a family and in which his or her special needs, if any, could be met, and specify orders of preference for certain types of placement.

- Establish procedures for dealing with petitions for involuntary guardianship, including determining whether the child was an Indian child and whether a tribe had exclusive jurisdiction.
- Establish procedures for adoption proceedings.
- Establish procedures for dealing with an Indian child taken into custody under the juvenile code.
- Authorize the State to enter into agreements with tribes in Michigan regarding the care and custody of Indian children and jurisdiction over child custody proceedings.
- Require a Michigan court to give a copy of a final decree of adoption of an Indian child to the U.S. Secretary of the Interior and the tribal enrollment officer.
- Require the DHS to publish an annual census of all Indian children in the Department's care and custody, without individually identifiable information.
- Allow an Indian child, parent, Indian custodian, or tribe to petition a court to invalidate an action for foster care placement or the termination of parental rights.

"Indian" would mean any member of any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians.

"Indian child" would mean an unmarried person who is under the age of 18 and is either a member of an Indian tribe or eligible for membership in an Indian tribe, as determined by that tribe.

"Indian custodian" would mean any Indian person who has custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control have been transferred by the child's parent.

Indian Child Custody Proceedings

Best Interests of the Child. In Indian child custody proceedings, the best interests of the Indian child would have to be determined in accordance with the Federal Indian Child Welfare Act and the policy specified in the Chapter XIIB. Courts and agencies responsible for child welfare would have to cooperate fully with Indian tribes in order to ensure that the Indian Child Welfare Act was enforced in Michigan.

Courts and agencies also would have to protect the best interests of Indian children and promote the stability and security of Indian tribes and families, by establishing minimum standards for the removal of Indian children from their families and placing the children in child custody proceedings, including out-of-home care placements, preadoptive placements, or adoptive placements that would reflect the unique value of Indian culture. Courts and agencies also would have to use practices, in accordance with the Indian Child Welfare Act, Chapter XIIB, and other applicable law, that were designed to prevent the voluntary or involuntary out-of-home care placement of Indian children and, when out-of-home care placement, adoptive placement, or preadoptive placement was necessary, place an Indian child in a placement that reflected the unique values of the child's tribal culture and that was best able to assist him or her in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community.

Jurisdiction. An Indian tribe would have exclusive jurisdiction over any child custody proceeding involving an Indian child who lived or was domiciled within the tribe's reservation. If a child were a ward of a tribal court, the tribe would retain exclusive jurisdiction, regardless of the residence or domicile, or subsequent change in the child's residence or domicile.

The State court could exercise limited emergency jurisdiction if an Indian child who lived or was domiciled within the reservation were temporarily off the reservation and the State had removed the child in an emergency situation to prevent imminent physical damage or harm to the child. The court would have to comply with the emergency removal hearing requirements outlined in Michigan Court Rules and the

juvenile code. The emergency jurisdiction would terminate when the removal or placement was no longer necessary to prevent imminent physical damage or harm to the child.

In any State court child custody proceedings for an Indian child not living or domiciled within the reservation of the child's tribe, the court, in the absence of good cause to the contrary, would have to transfer the proceeding to the Indian tribe's jurisdiction, absent objection by either parent and upon the petition of either parent or the child's Indian custodian. The transfer could be declined by the tribal court.

When a court made a good cause determination, adequacy of the tribe, tribal court, or tribal social services could not be considered. A court could determine that good cause not to transfer a case to tribal court existed only if the person opposing the transfer showed by clear and convincing evidence that either of the following applied:

- The Indian tribe did not have a tribal court.
- The requirement of the parties or witnesses to present evidence in tribal court would cause undue hardship to them that the Indian tribe was unable to mitigate.

In any State court child custody proceeding, an Indian child, the Indian custodian of the child, and the Indian child's tribe would have a right to intervene at any point in the proceeding.

Official tribal representatives would have the right to participate in any proceeding that was subject to the Indian Child Welfare Act and Chapter XIIB. An official tribal representative would not have to be an attorney.

The State would have to give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings, to the same extent given to the public acts, records, and judicial proceedings of any other entity.

Notice & Determination of Indian Heritage

In a child custody proceeding, if the court knew or had reason to know that an Indian

child was involved, the petitioner would have to notify the parent or Indian custodian and the child's tribe, by registered mail with return receipt requested, of the pending child custody proceeding and of the right to intervene. If the identity or location of the parent or Indian custodian and the tribe could not be determined, notice would have to be given to the Secretary of the Interior. The Secretary would have 15 days after receiving the notice to give the requisite notice to the parent or Indian custodian and the tribe.

No foster care placement or termination of parental rights proceeding could be held until at least 10 days after the parent or Indian custodian and the tribe or the Secretary received the notice. Upon request, the parent, Indian custodian, or tribe would have to be granted up to 20 additional days to prepare for the proceeding. If the petitioner or court later discovered that the child could be an Indian child, all further proceedings would have to be suspended until notice was received by the tribe or the Secretary. If the court determined after a hearing that the parent or tribe was prejudiced by lack of notice, the earlier decisions made by the court would be vacated and the case would have to proceed from the first hearing. The petitioner would have the burden of proving lack of prejudice.

The DHS would have to actively seek to determine whether a child at initial contact was an Indian child. If the Department could make an initial determination as to which Indian tribe or tribes a child brought to its attention could be a member of, the Department would have to exercise due diligence to contact the tribe or tribes in writing so that the tribe could verify membership or eligibility for membership. If the DHS could not make an initial determination as to which tribe or tribes a child could be a member of, at a minimum the Department would have to contact in writing the tribe or tribes located in the county where the child was located and the Secretary of the Interior.

Circumstances under which a court, the DHS, or other party to a child custody proceeding had reason to believe a child involved in a child custody proceeding was an Indian would include any of the following:

- Any party to the case, Indian tribe, Indian organization, or public or private agency informed the court that the child was an Indian child.
- Any public or State-licensed agency involved in child protective services or family support discovered information that suggested that the child was an Indian child.
- The child gave the court reason to believe he or she was an Indian child.
- The residence or domicile of the child, his or her biological parents, or the Indian custodian was known by the court to be a predominantly Indian community.
- An officer of the court involved in the proceeding had knowledge that the child could be an Indian child.

The DHS would have to exercise due diligence to determine, document, and contact an Indian child's extended family members in accordance with the Federal Fostering Connections to Success and Increasing Adoptions Act. The bill specifies that, if applicable, determinations and documentation should be conducted in consultation with the child or parent's tribe.

A written determination or oral testimony by a person authorized by an Indian tribe to speak on its behalf, regarding a child's membership or eligibility for membership in the tribe, would be conclusive as to that tribe.

The petitioner would have to document all efforts made to determine a child's membership or eligibility for membership in an Indian tribe and would have to provide that documentation, upon request, to the court, Indian tribe, Indian child, Indian child's lawyer guardian ad litem, parent or Indian custodian.

Each party to a foster care or termination of parental rights proceeding involving an Indian child could examine all reports or other documents filed with the court upon which any decision with respect to that proceeding could be based.

Voluntary Petition for Guardianship or Adoptive Placement

If both parents or the Indian custodian voluntarily consented to a petition for guardianship under the Estates and

Protected Individuals Code (EPIC), or to adoptive placement or the termination of parental rights for the express purpose of adoption by executing a release under the Michigan Adoption Code, the requirements described below would have to be met.

To be valid, consent would have to be executed on a form approved by the State Court Administrative Office (SCAO), in writing, recorded before a judge of a court of competent jurisdiction. The form would have to be accompanied by the presiding judge's certification that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court also would have to certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or custodian understood. Consent would not be valid if it were given before the birth of the Indian child, or within 10 days after birth.

Notice of the pending proceeding would have to be given as prescribed by Michigan Supreme Court rule, the Indian Child Welfare Act, and Chapter XIIB. Consent would have to contain the following information:

- The Indian child's name and date of birth.
- The name of the child's tribe and any identifying number or other indication of the child's membership in the tribe, if any.
- The name and address of the consenting parent or Indian custodian.
- A sworn statement for the translator, if any, attesting to the accuracy of the translation.
- The signature of the consenting parent, parents, or Indian custodian recorded before the judge, verifying an oath of understanding of the significance of the voluntary placement and the parent's right to petition to terminate the voluntary placement or consent at any time.
- For consent for voluntary placement of the Indian child in foster care, the name and address of the person or entity who would arrange the foster care placement, as well as the name and address of the prospective foster care parents if known at the time.

- For consent to termination of parental rights or adoption of an Indian child, the name and address of the person or entity that would arrange the preadoptive or adoptive placement.

If the placement were for the purposes of adoption, a consent of the Indian child's parent or Indian custodian would have to be executed in conjunction with either a consent to adopt or a release, as required under the Michigan Adoption Code. A parent or Indian custodian who executed a consent could withdraw it any time before entry of a final order of adoption, by filing a written demand requesting the child's return. Once a demand was filed with the court, the court would have to order the child's return. Such a withdrawal of consent would constitute a withdrawal of a release or a consent to adopt executed under the Michigan Adoption Code.

A parent or Indian custodian who executed a consent under these provisions for the purpose of guardianship could withdraw consent at any time by sending written notice to the court substantially in compliance on a form approved by the SCAO that the parent or custodian revoked consent and wanted the child returned.

A release executed under the Michigan Adoption Code during a pendency of a neglect proceeding under the juvenile code would be subject to Section 15 of Chapter XIIB. If the release followed the initiation of a neglect proceeding, the court would have to make a finding that culturally appropriate services were offered.

A parent who executed a consent to adoption under the Michigan Adoption Code could withdraw that consent at any time before entry of a final order for adoption, by filing notification of the withdrawal of consent with the court.

In a direct placement, a consent by a parent or guardian would have to be accompanied by a verified statement signed by the parent or guardian that contained all of the following:

- That the parent or guardian had received a list of support groups and a copy of the written document regarding adoption information that the Foster Care and Adoption Services Act requires an

adoption facilitator to give to each individual who inquires about services.

- As required by the Michigan Adoption Code, that the parent or guardian had received counseling related to the adoption of his or her child or waived the counseling with the signing of the verified statement.
- That the parent or guardian had not received or been promised any money or anything of value for the consent to adoption, except for lawful payments that were itemized on a schedule filed with the consent.
- That the validity and finality of the consent were not affected by any collateral or separate agreement between the parent or guardian and the adoptive parent.
- That the parent or guardian understood that it served the welfare of the child for the parent to keep the child placing agency, court, or DHS informed of any health problems that he or she developed that could affect the child.
- That the parent or guardian understood that it served the child's welfare for the parent or guardian to keep his or her address current with the child placing agency, court, or DHS in order to permit a response to any inquiry concerning medical or social history for an adoptive parent of a minor adoptee or from an adoptee who was at least 18.

Neglect Proceedings

Under Section 15 of Chapter XIIB, if an Indian child were the subject of a child protective proceeding alleging neglect under the juvenile code, including instances in which the parent or Indian custodian executed a release under the Michigan Adoption Code during the pendency of the proceeding, or if the child were the subject of a guardianship proceeding under EPIC or the juvenile code, the following requirements would have to be met:

- Notice of the pending proceeding would have to be given as prescribed by Michigan Supreme Court rule, the Indian Child Welfare Act, and Chapter XIIB.
- The proceeding would have to be conducted in accordance with Michigan Supreme Court rules and Section 15.
- Section 25 of Chapter XIIB would apply in a guardianship proceeding under EPIC.

(Section 25, as proposed by the bill, deals with petitions for involuntary guardianship.)

An Indian child could be removed from a parent or Indian custodian, placed into foster care, or, for an Indian child already taken into protective custody, remain removed from a parent or Indian custodian pending further proceedings, only upon a showing of all of the following:

- Clear and convincing evidence that included testimony of at least one expert witness who had knowledge of child rearing practices of the Indian child's tribe.
- That active efforts had been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.
- That the active efforts were unsuccessful, and that the continued custody of the child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the child.

The active efforts mentioned above would have to take into account the prevailing social and cultural conditions and way of life of the Indian child's tribe.

A party seeking a termination of parental rights to an Indian child would have to demonstrate to the court's satisfaction that active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that the active efforts were unsuccessful.

No termination of parental rights could be ordered in a proceeding without a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the child.

An Indian child who was the subject of any action for termination of parental rights under State law, any parent or Indian custodian from whose custody the child was removed, and the Indian child's tribe could petition any court of competent jurisdiction

to invalidate the action upon a showing that it violated any provision of Section 15.

Expert Witnesses

If the testimony of a qualified expert witness were required, the court would have to accept any of the following, in the following order of preference:

- A member of the Indian child's tribe, or a witness approved by the tribe, who was recognized by the tribal community as knowledgeable in tribal customs and how those customs pertained to family organization and child rearing practices.
- A person with knowledge, skill, experience, training, or education who could speak to the Indian child's tribe and its customs and how those customs pertained to family organization and child rearing practices.
- A person with knowledge, skill, experience, training, or education who could speak to tribal customs generally and how they pertained to family organization and child rearing practices.

A party to a child custody proceeding could present his or her own qualified expert witness to rebut the testimony of the petitioner's qualified expert witness.

Improper Removal or Retention of Custody

If a court determined at a hearing that a petitioner in an Indian child custody proceeding had improperly removed the child from custody of the parent or Indian custodian or had improperly retained custody after a visit or other temporary relinquishment of custody, the court would have to decline jurisdiction over the petition and immediately return the child to his or her parent or Indian custodian unless doing so would subject the child to a substantial and immediate danger or threat of danger.

Indigence & Court-Appointed Counsel

In a case in which a court determined indigence, the parent or Indian custodian would have the right to court-appointed counsel in a removal, placement, or termination proceeding. The court could, in its discretion, appoint counsel for the child upon a finding that the appointment was in the best interest of the child. If State law made no provision for appointment of

counsel in those proceedings, the court would have to notify the Secretary of the Interior promptly upon appointment of counsel.

If State law did not require the appointment of a lawyer-guardian ad litem for the child, the court could, in its discretion, appoint a lawyer-guardian ad litem for the child upon a finding that the appointment was in the best interest of the child.

If a State court appointed counsel for the proceedings and sought payment for that appointed counsel, the court would have to follow requirements outlined in Federal law for payment.

Placement

Except for a placement for guardianship under EPIC where both parents submitted a consent for the guardianship, an Indian child would have to be placed in the least restrictive setting that most approximated a family and in which his or her special needs, if any, could be met. The child would have to be placed within reasonable proximity to his or her home, taking into account any special needs of the child.

Absent good cause to the contrary, the foster care or preadoptive placement of an Indian child would have to be in the following order of preference:

- A member of the child's extended family.
- A foster home licensed, approved, or specified by the Indian child's tribe.
- An Indian foster home licensed or approved by the DHS.
- An institution for children approved by an Indian tribe or operated by an Indian organization that had a program suitable to meet the child's needs.

Absent good cause to the contrary, the adoptive placement of an Indian child would have to be in the following order of preference:

- A member of the child's extended family.
- A member of the child's tribe.
- An Indian family.

The burden of establishing good cause not to follow the order of preference would be on the party requesting the deviation.

The court could not find good cause to deviate from the placement preferences without first ensuring that all possible placements required under the order of preferences listed above had been thoroughly investigated and eliminated. All efforts made to place the child according to the preferences would have to be provided to the court in writing or stated on the record. The court would have to address efforts to place an Indian child in accordance with these provisions at each hearing until the placement met the requirements.

The court's determination of good cause not to follow the order of preference would have to be based on one or both of the following conditions:

- A request was made by a child of sufficient age.
- A child had an extraordinary physical or emotional need as established by testimony of an expert witness.

If an Indian child's tribe established a different order of preference, the DHS or court ordering the placement would have to follow the tribe's preference.

A record of each placement of an Indian child would have to be maintained by the DHS or court, showing the efforts to comply with the order of preference specified above. The record would have to be made available at any time upon the request of the Secretary of the Interior or the Indian child's tribe.

The standards to be applied in meeting the placement preferences would have to be the prevailing social and cultural standards of the Indian tribe or tribes in which the parent or extended family lived or maintained social and cultural ties.

Nothing in Chapter XIIB would prevent the emergency removal, protective custody, or subsequent placement of an Indian child who was a resident of or was domiciled on a reservation but was temporarily located off the reservation.

All efforts made to identify, locate, and place a child according to these provisions would have to be documented and, upon request, made available to the court, tribe, Indian child, Indian child's lawyer-guardian ad litem, parent, or Indian custodian.

Petition for Involuntary Guardianship

Under Section 25 of Chapter XIIB, if a petition for a guardianship were filed and determined to be involuntary, and the court knew or had reason to know that the child was an Indian child, the court could order the DHS or a court employee to conduct an investigation of the proposed guardianship and file a written report of the investigation. In addition to information required under EPIC, the report would have to include whether the child was an Indian child and the identity and location of the child's parents, if known. If the child were an Indian child, the report also would have to address all of the following:

- The tribe or tribes of which the child was a member or eligible for membership.
- Whether the child and family needed culturally appropriate and other services to preserve the Indian family.
- The identity and location of extended family members and, if none could be found, what efforts were made to locate them.

Notice of the pending proceeding would have to be given as prescribed by Michigan Supreme Court rule, the Indian Child Welfare Act, and Chapter XIIB. If the court knew or had reason to know that the proceedings involved an Indian child, the court would have to conduct a hearing to determine all of the following:

- Whether the tribe had exclusive jurisdiction.
- Whether the current placement with the guardian met the requirements of Chapter XIIB.
- Whether it was in the child's best interest to order the guardianship.
- If a lawyer-guardian ad litem should be appointed to represent the Indian child.

If the tribe had exclusive jurisdiction, the court would have to issue an order terminating the guardianship or dismissing the petition.

If a petition for guardianship were filed and were to be accompanied by consent to a voluntary placement of an Indian child, the consent would have to be executed in accordance with the provisions of Chapter XIIB dealing with voluntary placement. If the Indian child's parents did not execute a

consent, the petition would be considered to be for an involuntary guardianship and the requirements of Section 15 would have to be met.

A parent or Indian custodian who executed a consent for the purpose guardianship could withdraw his or her consent at any time by sending written notice to the court substantially in compliance on a form approved by the SCAO that the parent or Indian custodian revoked consent and wanted the child returned. The guardianship would be terminated when the court received from a parent or Indian custodian notice to withdraw consent to the guardianship, and the child would have to be returned immediately to parent or custodian.

If the court discovered a child could be an Indian child after a guardianship was ordered, the court would have to provide notice of the guardianship and the potential applicability of the Indian Child Welfare Act, in compliance with Michigan Court Rules and the Indian Child Welfare Act, to the tribe, the parents or Indian custodian, and the current guardian on a form approved by the SCAO.

Adoption Proceedings

If a release or consent to adoption under the Michigan Adoption Code were executed, consent to voluntary placement of an Indian child also would have to be executed by both parents in accordance with Chapter XIIB.

At any time during an adoption proceeding, a court could order visitation between the Indian child and one or more members of the child's tribe and extended family members.

Notice of the pending proceeding would have to be given as prescribed by Michigan Supreme Court rule, the Indian Child Welfare Act, and Chapter XIIB.

Upon application by an Indian individual who had reached the age of 18 and who was subject to adoptive placement, the court that entered the order of adoption would have to inform the individual of his or her tribal affiliation, if known, of the individual's biological parents; and provide any information necessary to protect any rights from the individual's tribal relationship.

After the entry of a final order of adoption of an Indian child in any State court, the parent could withdraw consent on the grounds that consent was obtained through fraud or duress and could petition the court to vacate the final order of adoption. Upon a finding that the consent was obtained through fraud or duress, the court would have to vacate the final order of adoption and return the child to the parent. No adoption that had been effective for at least two years could be invalidated under this provision unless otherwise permitted under State law.

Notwithstanding State law to the contrary, whenever a final order of adoption of an Indian child was vacated or set aside or the adoptive parents voluntarily consented to the termination of their parental rights to the child, a biological parent or prior Indian custodian could petition for return of custody and court would have to grant the petition unless there was a showing, in a proceeding subject to Indian Child Welfare Act, that the return of custody was not in the best interests of the child.

Child Taken into Custody

If an Indian child were taken into custody under the juvenile code, the subsequent placement would have to terminate immediately when the removal and placement were no longer necessary to prevent imminent physical damage or harm to the child. If a child were taken into custody under the juvenile code and the child were under the exclusive jurisdiction of an Indian tribe or were domiciled on a reservation but temporarily located off the reservation, the court would have to initiate a child custody proceeding immediately and do either of the following:

- Transfer the child to the jurisdiction of the appropriate Indian tribe.
- Return the child to the parent or Indian custodian.

State-Tribal Agreements

Chapter XIIB would authorize the State to enter into agreements with tribes in Michigan regarding the care and custody of Indian children and jurisdiction over child custody proceedings. This would include agreements that could provide for transfer of jurisdiction on a case-by-case basis and

agreements that provided for concurrent jurisdiction between the State and Indian tribes.

Unless an agreement provided otherwise, both of the following would apply:

- The agreements could be revoked by either party upon 180 days' written notice to the other party.
- Revocation of an agreement would not affect any action or proceeding over which the court already had jurisdiction.

The DHS, in consultation with Indian tribes in Michigan, would have to establish standards and procedures for the Department's review of cases subject to Chapter XIIB and methods for monitoring its compliance with the Indian Child Welfare Act and Chapter XIIB.

Adoption Decree

A Michigan court entering a final decree or order in any Indian child adoptive placement would have to give the Secretary of the Interior and the tribal enrollment officer of the appropriate tribe a copy of the decree or order together with other information necessary to show the following:

- The name, date of birth, and tribal affiliation of the child.
- The names and addresses of the biological parents, if known.
- The names and addresses of the adoptive parents.
- The identity of any agency having files or information relating to the adoptive placement.

If court records contained a statement of identifying information of the biological parent or parents that their identity remained confidential, the court would have to include the statement with the other information sent to the Secretary and the tribal enrollment officer.

Annual Census

The DHS annually would have to publish a census with no individually identifiable information of all Indian children in the Department's care and custody. The census would have to include, by county and statewide, information regarding the Indian children on all of the following:

- Legal status.
- Placement information and whether it complied with Chapter XIIB.
- Age.
- Sex.
- Tribe in which the child was a member or eligible for membership.
- Accumulated length of time in foster care.
- Other demographic information considered appropriate concerning all Indian children who were the subject of child custody proceedings.

and administrative costs to both State and local court systems.

Fiscal Analyst: Frances Carley
Dan O'Connor

Petition to Invalidate Court Action

An Indian child who was the subject of an action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody an Indian child was removed, and the Indian child's tribe could petition any court of competent jurisdiction to invalidate the action upon a showing that it violated Chapter XIIB.

Severability

If any provision of Chapter XIIB or its application to any person or circumstance were held invalid for any reason in a court of competent jurisdiction, the invalidity would not affect other provisions or any other application of Chapter XIIB that could be given effect without the invalid provision or application. For this purpose, the provisions of Chapter XIIB would be severable.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill's requirements to provide culturally sensitive child welfare services to Indian tribes and children are already Department of Human Services policy. Additionally, in the absence of a State-level policy, the Federal policy (under the Indian Child Welfare Act of 1978 – ICWA) should apply to relevant matters in the State of Michigan. However, since ICWA requirements are not presently codified in State law, evidently the requirements are sometimes overlooked and advocates for Indian children must engage in an appeals process, which can be lengthy. Therefore, by providing clarity in State law, the bill has the potential to marginally reduce caseload

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.