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BILL ANALYSIS



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Senate Bill 503 (as passed by the Senate)
Sponsor: Senator Judy K. Emmons
Committee: Families, Seniors and Human Services

Date Completed: 11-5-15

CONTENT

The bill would amend the Michigan Indian Family Preservation Act to do the following:

- **Specify that certain requirements would apply if a parent, rather than both of the parents or an Indian custodian, consented to adoptive placement of an Indian child or the termination of the parent's parental rights for the express purpose of adoption.**
- **Provide that, in a proceeding for removal of an Indian child from a parent or Indian custodian, an expert witness would have to testify that the continued custody of the Indian child by the parent or Indian custodian would likely result in serious emotional or physical damage to the child.**
- **Require a court that discovered that a child could be an Indian child after a guardianship was ordered, to notify the tribe, the parents or Indian custodian, and the current guardian that the Act potentially could apply.**

The bill also would refer to an "Indian child" throughout the Act in places that currently refer to "a child".

The bill would take effect 90 days after its enactment.

Voluntary Consent

The Act establishes standards and procedures for proceedings that involve an Indian child, including proceedings for custody, guardianship, and adoption.

Certain requirements must be met if both of the parents or the Indian custodian voluntarily consent 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 or consent under the Michigan Adoption Code. Under the bill, those requirements would apply if both of the parents or the Indian custodian voluntarily consented to a petition for guardianship under EPIC, or if *a parent* consented to adoptive placement or the termination of his or her parental rights for the express purpose of adoption by executing a release or consent under the Adoption Code.

The consent described above must contain certain information, including 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 parent's right to petition to terminate the voluntary placement or consent at any time. The bill would refer to the

parent's right to file a written demand, rather than to petition, to terminate the voluntary placement or consent.

Expert Witness Testimony

Under the Act, an Indian child may be removed from a parent or Indian custodian, be placed in 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 clear and convincing evidence that:

- Active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, taking into account the prevailing social and cultural conditions and way of life of the Indian child's tribe.
- The active efforts were unsuccessful.
- The continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

The evidence also must include testimony of at least one expert witness who has knowledge of child-rearing practices of the Indian child's tribe. Under the bill, the expert witness would have to testify that the continued custody of the Indian child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the Indian child.

Notice of Applicability

Under the Act, if a petition for a guardianship is filed and determined to be involuntary, and the court knows or has reason to know that the child is an Indian child, the court may order the Department of Health and Human Services or a court employee to conduct an investigation of the proposed guardianship and file a written report of the investigation.

If the court discovers that a child may be an Indian child after a guardianship is ordered, the court must provide notice of the guardianship and the potential applicability of the Federal 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. The bill would require the court to provide notice of the potential applicability of both the Michigan Indian Family Preservation Act and the Indian Child Welfare Act.

MCL 712B.3 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Ryan Bergan

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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.