
OLR Bill Analysis

sSB 1204

AN ACT CONCERNING THE CONNECTICUT INDIAN CHILD WELFARE ACT.

SUMMARY

This bill generally codifies into state law the federal Indian Child Welfare Act of 1978 (“ICWA,” see BACKGROUND) which governs jurisdiction over the removal of American Indian children from their families in custody, foster care, and adoption cases. In doing so, the bill expands ICWA’s coverage to the state-recognized Golden Hill Paugussett, Paucatuck Eastern Pequot, and Schaghticoke Tribes. (The federal ICWA already applies to federally recognized tribes.)

The bill requires exclusive jurisdiction over child custody proceedings involving Indian children in some cases and preferred jurisdiction in some other cases involving foster care placement or termination of parental rights. For these matters that remain in state court, the bill sets standards in numerous areas, such as (1) certain evidentiary standards that must be met for involuntary cases, (2) how a parent may consent to terminating parental rights or withdraw that consent, and (3) certain preferences on adoptive or foster care placements.

It also makes technical and conforming changes, including updating references to ICWA to refer to the bill itself rather than the federal law (§§ 30-32).

Under the bill, an “Indian child” is an unmarried person, under age 18, who is (1) a member of a federally or Connecticut-recognized Indian tribe or (2) eligible for tribal membership and a biological child of a tribe member.

EFFECTIVE DATE: Upon passage

§§ 3 & 4 — TRIBAL JURISDICTION

Exclusive Jurisdiction (§ 3)

Under the bill, an Indian tribe has exclusive jurisdiction in state court over child custody proceedings involving an Indian child who resides or is domiciled within the tribe's reservation, except where existing federal law vests the state with this jurisdiction. In the case of an Indian child who is a ward of a tribal court, the tribal court retains exclusive jurisdiction, regardless of the child's residence.

Transfer of Proceedings (§ 4)

The bill gives a preference for tribal jurisdiction in native child custody proceedings where the tribal court does not have exclusive jurisdiction. Specifically, upon the petition of either parent, the Indian custodian, or the Indian child's tribe, the state court must transfer to the tribe's jurisdiction any proceeding for the foster care placement of, or termination of parental rights to, an Indian child who is not domiciled or residing within his or her tribe's reservation. However, the court is not compelled to transfer the case if: (1) either parent objects, (2) the tribal court declines the transfer, or (3) there is good cause opposing the transfer.

The bill gives the Indian child's custodian and tribe the right to intervene at any point in these custody proceedings. It also requires the state 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 any other entity.

§§ 5-10 — NOTIFICATION AND RIGHTS IN INVOLUNTARY PROCEEDINGS

Required Notice Prior to Proceedings (§ 5)

Under the bill, in any involuntary proceeding in state court where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child must notify the parent or Indian custodian and the Indian child's tribe, of the pending proceedings and of their right to intervene. The party must send the notice by registered mail with return receipt requested. If the identity or location of the parent or custodian

and the tribe cannot be determined, the notice must be given, in the same way, to the:

1. U.S. Secretary of the Interior, in the case of an Indian child of a federally recognized tribe or
2. Department of Children and Families (DCF) commissioner, in the case of an Indian child of a state-recognized tribe.

The secretary or commissioner then has 15 days after receiving the notice to notify the parent or Indian custodian and the tribe.

The bill prohibits a foster care placement or termination of parental rights proceeding from being held until at least 10 days after receipt of the notice by the parent or Indian custodian and the tribe, secretary, or DCF commissioner. It further requires the parent, Indian custodian, or the tribe, upon request, be granted up to 20 more days to prepare for the proceeding.

Right to Court-Appointed Counsel (§ 6)

Under the bill, in any removal, placement or termination proceeding in which the state court determines indigency, the parent or Indian custodian has the right to court-appointed counsel. The bill also allows the court, in its discretion, to appoint counsel for the Indian child if it determines it to be in the child's best interest.

Access to Discovery (§ 7)

Upon request of any party to a foster care placement or parental rights termination proceeding involving an Indian child, the bill requires a state court to disclose all court-filed reports or other documents upon which it may base its decision. It makes these records and documents otherwise confidential and nondisclosable to the public, except as otherwise provided by law.

Preventative Measures (§ 8)

The bill requires a party seeking a foster care placement of, or to terminate the parental rights to, an Indian child under state law to first satisfy to the court that (1) active efforts were made to provide remedial

services and rehabilitative programs to prevent the Indian family's breakup and (2) these efforts were unsuccessful.

Determination of Damage to Child (§§ 9 & 10)

The bill prohibits the ordering of a foster care placement or parental rights termination unless there is a determination that the parent's, or Indian custodian's, continued custody of the child is likely to result in serious emotional or physical damage to the child. This determination must be supported by (1) clear and convincing evidence, for a foster care placement, or (2) evidence beyond a reasonable doubt, for terminating parental rights.

In either proceeding, the bill requires the evidence to include testimony of qualified expert witnesses.

§§ 11-15 — VOLUNTARY PROCEEDINGS

Parental Consent (§ 11)

Under the bill, when a parent or Indian custodian voluntarily consents to the foster care placement of an Indian child or to terminate parental rights, their consent is not valid unless:

1. it is executed in writing and recorded before a judge, and
2. the presiding judge certifies that the terms and consequences of the consent were fully (a) explained in detail and (b) understood by the parent or Indian custodian.

The court must also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the person understood. The bill invalidates any consent given prior to, or within 10 days after, the child's birth.

Withdrawal of Voluntary Consent (§§ 12-15)

The bill allows a parent or Indian custodian who voluntarily consents to a foster care placement under state law to withdraw their consent at any time and have the child returned to them. It also allows a parent to withdraw their voluntary consent for any reason and at any time before the entry of a final decree of termination of parental rights or adoption

of an Indian child, and the child must be returned to them.

The bill allows a parent to withdraw their consent and petition to vacate a final decree of adoption entered in state court, on the grounds that the consent was obtained through fraud or duress. Upon a finding that consent was obtained in this way, the court must vacate the decree and return the child to the parent. However, the bill prohibits an adoption that has been in effect for at least two years from being invalidated under these provisions unless otherwise permitted under state law.

The bill allows the following people to petition the court to invalidate an action shown to violate state or federal law: (1) the Indian child who is subject to the foster care placement or termination of parental rights under state law, (2) any custodial parent or Indian custodian from whom the child was removed, and (3) the child's tribe.

§§ 16-20 — ADOPTIVE AND FOSTER PLACEMENT PREFERENCES

In an adoptive placement of an Indian child under state law, the bill requires preference to be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the child's tribe; or (3) other Indian families.

It also requires any Indian child accepted for foster care or preadoptive placement to be placed in the least restrictive setting that most approximates a family and in which the child's special needs, if any, may be met. It also requires the child to be placed within reasonable proximity to his or her home, accounting for any special needs. In any foster care or preadoptive placement, a preference must be given, in the absence of good cause to the contrary, to a placement with:

1. a member of the child's extended family;
2. a foster home licensed, approved, or specified by the child's tribe;
3. an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

4. an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child's needs.

The bill requires the agency or court making these placements to follow a different preference order if the child's tribe sets one by resolution, so long as the placement is the least restrictive setting appropriate to the child's particular needs. Where appropriate, it requires the preference of the Indian child or parent to be considered, as long as when a consenting parent desires to remain anonymous, the court or agency must give weight to this desire in applying the preferences for foster care or preadoptive placement.

The standards to be applied in meeting the preference requirements under the bill must be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which they maintain social and cultural ties.

The bill requires the DCF commissioner to (1) maintain a record of each placement of an Indian child under state law, verifying compliance efforts with its preference requirements and (2) make the records available at any time upon the request of the U.S. Interior secretary or the child's tribe.

§§ 21 & 22 — RETURNS OF CUSTODY

Whenever a final decree of adoption of an Indian child has been vacated or set aside, or the adoptive parents voluntarily consent to terminate their parental rights, the bill allows a biological parent or prior Indian custodian to petition for the child's return to their custody. The court must grant the petition unless there is a showing, in a proceeding subject to the bill's requirements for involuntary proceedings (§§ 5-10, described above), that this return of custody is not in the child's best interests. These provisions apply despite any other provisions of state law.

Whenever an Indian child is removed from a foster care placement for further foster care, preadoptive, or adoptive placement, the bill

generally requires the placement to follow its provisions. The exception to this is in cases where an Indian child is returned to their parent or Indian custodian from whose custody he or she was originally removed.

§§ 25 & 26 — CHILD REMOVALS

Improper Removals (§ 25)

Under the bill, where any petitioner in an Indian child custody proceeding before a state court has improperly (1) removed the child from the custody of the parent or Indian custodian or (2) retained custody after a visit or other temporary custody relinquishment, the court must decline jurisdiction over the petition and immediately return the child to the parent or custodian. The only exception to this requirement is when doing so would subject the child to a substantial and immediate danger or threat of danger.

Emergency Removals (§ 26)

The bill specifies that its provisions must not be construed to prevent (1) the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from the child's parent or Indian custodian, or (2) the emergency placement of the child in a foster home or institution, under state law, to prevent the child's imminent physical damage or harm. In these circumstances, the DCF commissioner must:

1. ensure that the emergency removal or placement ends immediately when it is no longer necessary to prevent this harm to the child and
2. expeditiously initiate a child custody proceeding subject to the bill's provisions, transfer the child to the appropriate Indian tribe's jurisdiction, or restore the child to his or her parent or Indian custodian, as may be appropriate.

§§ 24, 27 & 29 — AGREEMENTS AND APPLICABILITY

Mutual Agreements or Compacts (§ 24)

Notwithstanding the law requiring legislative approval of state compacts with Indian tribes (CGS § 3-6c), the bill authorizes DCF to

enter into an agreement with a federally or state-recognized tribe located in Connecticut on the care and custody of Indian children and jurisdiction over custody proceedings. This includes agreements that may provide for (1) orderly transfer of jurisdiction, (2) services to Indian families, and (3) concurrent jurisdiction between the state and the tribe. Under the bill, these agreements must have a provision allowing either party to revoke the agreement upon 180 days' written notice to the other party and address the impact of a revocation on an ongoing proceeding over which a court had assumed jurisdiction.

Standard of Protection & Severability (§§ 27 & 29)

The bill specifies that in any case where:

1. federal law has a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under the bill, then the state court must apply the more protective federal standard; and
2. its provisions or their application to any person or circumstance are held invalid, then the remaining provisions or applications remain valid.

§§ 23 & 28 — ADOPTION-RELATED NOTIFICATIONS

Adoption Decree Notice (§ 28)

A state court entering a final decree or order in an Indian child's adoption after the bill's passage must give the U.S. Interior secretary a copy of the decree or order and other necessary information to show the (1) child's name and tribal affiliation, (2) names and addresses of the child's biological and adoptive parents, and (3) agency having files or information relating to the adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court must include the affidavit, and request that the secretary maintain this confidentiality and that the information not be subject to disclosure under the federal Freedom of Information Act (FOIA). In these cases, the information must also be exempt from disclosure under the state FOIA, except as

otherwise provided by law.

Tribal Affiliation Information (§ 23)

Upon application by an Indian person who has reached age 18 and was the subject of an adoptive placement under the bill, the court that entered the final decree must inform him or her of the tribal affiliation, if any, of their biological parents and give other necessary information to protect any rights derived from his or her tribal relationship.

BACKGROUND

ICWA

ICWA is a federal law that governs and sets standards for the removal and out-of-home placement of American Indian children as well as the termination of their parents’ parental rights to protect the best interests of Native American children and keep them connected to their families and tribes. Among other things, ICWA clarifies that tribes have sovereignty and exclusive jurisdiction over their members who reside on tribal land and establishes a process for transferring cases to tribal court.

Under the federal ICWA, an “Indian tribe” is any Indian tribe, band, nation, or other organized group or community of Indians federally recognized as eligible for the services provided to Indians by the federal secretary of the interior because of their status as Indians, including any Alaska Native (25 U.S.C. § 1901 et seq.).

A challenge to the ICWA is currently pending in the U.S. Supreme Court (*Haaland v. Brackeen*). The plaintiffs have alleged that the act’s restrictions on the placement of Native American children (1) exceeds congressional authority in an area that is traditionally reserved to the states and (2) violates equal protection principles.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Substitute
Yea 21 Nay 0 (03/28/2023)