

HOUSE BILL No. 2369

By Representative Haswood

2-8

1 AN ACT concerning children and minors; enacting the Kansas Indian
2 child welfare act; providing additional requirements for child custody
3 proceedings involving Indian children.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. (a) Sections 1 through 7, and amendments thereto, shall be
7 known and may be cited as the Kansas Indian child welfare act.

8 (b) The purpose of the Kansas Indian child welfare act is to
9 implement the provisions of the federal Indian child welfare act of 1978,
10 25 U.S.C. § 1901 et seq.

11 (c) It is hereby declared the policy of the state to: (1) Recognize that
12 Indian tribes and nations have a valid governmental interest in Indian
13 children regardless of whether such children are in the physical or legal
14 custody of an Indian parent or Indian custodian when state proceedings are
15 initiated; and (2) cooperate fully with Indian tribes to ensure that the intent
16 and provisions of the federal Indian child welfare act of 1978 are enforced.

17 Sec. 2. (a) As used in the Kansas Indian child welfare act:

18 (1) "Indian" means a person who is a member of an Indian tribe.

19 (2) "Indian child" means any unmarried or unemancipated person
20 who is 18 years of age or younger and is either:

21 (A) A member of an Indian tribe; or

22 (B) eligible for membership in an Indian tribe and the biological child
23 of a member of an Indian tribe.

24 (3) "Indian custodian" means any Indian person who has legal
25 custody of an Indian child under tribal law or custom or under state law or
26 to whom temporary physical care, custody and control has been transferred
27 by the parent of such child.

28 (4) "Indian tribe" means the same as defined in K.S.A. 50-6a07, and
29 amendments thereto.

30 (5) "Secretary" means the same as defined in K.S.A. 38-2202, and
31 amendments thereto.

32 Sec. 3. (a) The Kansas Indian child welfare act, in accordance with
33 the federal Indian child welfare act of 1978, applies to all child custody
34 proceedings involving an Indian child, except a child custody proceeding
35 arising from:

36 (1) A divorce proceeding; or

1 (2) an adjudication pursuant to the revised Kansas juvenile justice
2 code, K.S.A. 38-2301 et seq., and amendments thereto, unless there has
3 been a request for termination of parental rights.

4 (b) Except as provided in subsection (a), the Kansas Indian child
5 welfare act applies to all voluntary and involuntary state child custody
6 proceedings involving Indian children regardless of whether or not the
7 children involved are in the physical or legal custody of an Indian parent
8 or Indian custodian at the time state proceedings are initiated.

9 (c) The determination of the Indian status of a child shall be made as
10 soon as practicable to meet notice requirements pursuant to section 4, and
11 amendments thereto.

12 (d) The court shall determine the Indian status of a child when:

13 (1) The court has been informed by an interested party, an officer of
14 the court, a tribe, an Indian organization or a public or private agency that
15 the child who is the subject of the proceeding is an Indian child;

16 (2) the child who is the subject of the proceeding gives the court
17 reason to believe that the child is an Indian child; or

18 (3) the court has reason to believe the residence or domicile of the
19 child who is the subject of the proceeding is a predominantly Indian
20 community.

21 (e) The court shall verify the Indian status of the child with the Indian
22 tribe of which the child is alleged to be a member or the United States
23 bureau of Indian affairs. The court shall accept a determination of
24 membership by an Indian tribe as conclusive. If there is no such
25 determination, the court shall accept the determination of membership by
26 the United States bureau of Indian affairs as conclusive.

27 Sec. 4. (a) In all child custody proceedings subject to the Kansas
28 Indian child welfare act, including review hearings, the district attorney,
29 county attorney or any other person initiating the proceeding shall send
30 notice pursuant to subsection (b) to:

31 (1) The parent or to the Indian custodian, if any;

32 (2) the tribe that is or may be the tribe of the Indian child; and

33 (3) the appropriate United States bureau of Indian affairs area office.

34 (b) Except as provided by subsection (c), such notice shall be mailed
35 by certified mail with return receipt requested, written clearly and include:

36 (1) The name and tribal affiliation of the Indian child who is the
37 subject of the proceeding;

38 (2) a copy of the petition for the proceeding;

39 (3) the rights of the biological parent or Indian custodian, and the
40 Indian tribe to:

41 (A) Intervene in the proceeding;

42 (B) petition the court to transfer the proceeding to the tribal court of
43 the Indian child; and

1 (C) request an additional 20 days from receipt of the notice to prepare
2 for the proceeding that may be granted by the court;

3 (4) the potential legal consequences of an adjudication on the future
4 custodial rights of the parent or Indian custodian; and

5 (5) a statement that counsel will be appointed by the court to
6 represent such parent or Indian custodian if such parent or custodian is
7 unable to afford counsel.

8 (c) Tribal officials shall maintain the confidentiality of the
9 information in such notice.

10 (d) Notice of review hearings shall be sent through regular first-class
11 mail to the tribe of the Indian child, unless the tribe is present at the time
12 the review hearing is set and consents to the date of the review. A tribe's
13 right to notice pursuant to this subsection shall depend on whether such
14 tribe intervenes in the case. Any person who sends a notice pursuant to this
15 subsection shall file a certificate of mailing with the court prior to the
16 review hearing.

17 Sec. 5. (a) When a court order authorizes the temporary removal of an
18 Indian child from the parent or Indian custodian of such child, such order
19 shall be accompanied by an affidavit containing:

20 (1) The names, tribal affiliations and addresses of the Indian child,
21 the parent of the Indian child and the Indian custodian, if any;

22 (2) a specific and detailed account of the circumstances that led the
23 secretary to initiate the temporary custody; and

24 (3) information whether any assistance was provided to the parent or
25 Indian custodian for the safe return of the child to such parent's or Indian
26 custodian's custody.

27 (b) No order issued for temporary custody shall remain in force or in
28 effect for more than 30 days without a determination by the court,
29 supported by clear and convincing evidence and the testimony of at least
30 one qualified expert witness, whether the custody of the child by the parent
31 or Indian custodian is likely to result in serious emotional or physical
32 damage to the child. For good cause, the court may extend the order for an
33 additional period of 60 days.

34 Sec. 6. (a) The placement preferences specified in 25 U.S.C. § 1915
35 shall apply to all:

36 (1) Temporary or emergency placements;

37 (2) preadoptive placements;

38 (3) adoptive placements; and

39 (4) foster care placements.

40 (b) In deciding placement for an Indian child, the secretary shall use
41 to the maximum extent possible the services of the Indian tribe of the child
42 in the placement of the child pursuant to the Kansas Indian child welfare
43 act.

1 (c) Subsection (b) shall apply when a parent states a desire for
2 anonymity when relinquishing parental rights. The court shall give weight
3 to such statement in applying the preferences pursuant to subsection (a)
4 after notice is given to the child's tribe and such tribe is provided 20 days
5 to intervene and request a hearing on available tribal placement resources
6 that may protect parental confidentiality. Notice of such hearing shall be
7 given to the relinquishing parent.

8 Sec. 7. (a) The secretary shall enter into agreements with Indian tribes
9 in Kansas on behalf of the state regarding the care and custody of Indian
10 children and jurisdiction over child custody proceedings. Such agreements
11 shall include a procedure for the orderly transfer of jurisdiction on a case-
12 by-case basis and concurrent jurisdiction between the state and the Indian
13 tribe, as authorized by the federal Indian child welfare act, 25 U.S.C. §
14 1919. Any agreement entered into pursuant to this section shall be
15 enforceable in any case filed or pending at the time that an agreement
16 vesting concurrent jurisdiction is entered into between the state and an
17 Indian tribe.

18 (b) When an Indian child in custody of the secretary is placed by
19 either the secretary or the tribe having jurisdiction of the Indian child with
20 a foster home licensed and approved by a tribe, the secretary shall pay the
21 costs in the same manner and amount paid for the costs of state-licensed
22 or secretary-approved foster homes. The licensing tribe shall cooperate
23 with the secretary and comply with state law and policy that is required by
24 federal funding laws.

25 (c) The secretary shall maintain all records of each placement of any
26 Indian child in the custody of the secretary in addition to records
27 maintained by the secretary in the regular course of business. The secretary
28 shall make such records available within seven days of a request by the
29 tribe of the Indian child or by the United States secretary of the interior.
30 Such records maintained pursuant to this subsection shall include, but not
31 be limited to:

- 32 (1) All reports of the assigned case manager;
- 33 (2) documented efforts to rehabilitate the parents of the Indian child;
- 34 (3) a list of the names and addresses of families and tribe-approved
35 homes contacted regarding placement; and
- 36 (4) the reason for the final placement decision.

37 Sec. 8. This act shall take effect and be in force from and after its
38 publication in the statute book.