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300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: House Committee on Child Welfare and Foster Care
From: Office of Revisor of Statutes
Date: February 19, 2024
Subject: HB 2772: Establishing the Kansas Indian child welfare act and providing additional requirements for child custody proceedings involving an Indian child.

House Bill 2772 establishes new sections of law that shall be cited as the Kansas Indian Child Welfare Act. These sections propose procedures for the court and the secretary for children and families for child in need of care proceedings that involve a child who is or may be eligible to be a member of an Indian tribe.

Section 1 establishes the act’s name and the purpose of the sections to “to clarify state policies and procedures regarding the implementation by Kansas of the federal Indian child welfare act.” Section 2 is the definition section. It defines terms including active efforts, best interests of the Indian child, child custody proceeding, extended family member, Indian child, Indian child’s tribe, Indian custodian, parent, reservation, secretary, tribal court and more.

Section 3 grants an Indian tribe exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within a reservation in Kansas. The state court, absent of good cause, shall transfer out-of-home proceedings of an Indian child to a tribal court. Indian custodians and Indian tribes may intervene in state court proceedings related to placement or termination of parental rights. If such custodians or tribes intervene, the custodian or tribe may associate with local counsel and the counsel shall not be required to pay a fee. If a child is a member or eligible for membership in multiple tribes, then the tribes shall enter into an agreement about which tribe shall be determined as the primary tribe. If an agreement is not reached, the state shall determine the primary tribe based on the child’s contacts.

Section 4 requires the secretary for children and families to send notice to the Indian child’s parents, Indian custodians and the Indian child’s tribe or tribes by registered mail. If

location of such persons cannot be determined, the notice shall be given to the Secretary of the U.S. Department of the Interior. Proceedings cannot be held within 10 days of the delivery of such notice and Indian custodians, or Indian tribes may request and be granted up to 20 additional days to prepare for such proceedings. Parents or Indian custodians determined indigent by the court has the right to counsel and fees for such counsel are requested of the Secretary of the U.S. Department of the Interior. Parties to proceedings may examine reports and documents filed with the court that the court bases decisions upon.

Parties seeking to place the Indian child in an out-of-home placement shall report to the court on active efforts to provide services and programs designed to prevent the breakup of the Indian family or unite the parent or custodian with the Indian child. Before the court orders placement of the child, the court shall determine whether active efforts have been made.

The court shall order out-of-home placement based upon clear and convincing evidence that continued custody is likely to result in serious emotional or physical damage to the child. The court shall not order termination of parental rights without evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage.

Section 5 requires that notice of involuntary proceedings concerning an Indian child shall contain certain information, including names, addresses, any tribal orders related to the child, and a copy of the motion for out-of-home placement. This notice shall be filed with the state court within 3 days of the notice being issued.

Section 6 states that when any parent or Indian custodian voluntarily consents to out-of-home placement or relinquishment of parental rights, that consent is valid if executed in front of a court with jurisdiction over the matter. When the secretary provides voluntary services, the secretary shall send notice of such services to the parent and Indian custodian, and if those persons are not located, the Secretary of the U.S. Department of the Interior. If a parent voluntarily relinquishes parental rights, the secretary for children and families must submit certain information to the court, such as the birth date of the Indian child, the age of the Indian child, that the parent fully understood the explanation of the terms of the relinquishment and any promises made to the parent as a condition of the consent. Parents and Indian custodians may withdraw voluntarily consent to out-of-home placement or termination of parental rights and the child shall be returned to the requesting parent or Indian custodian. Adoptions may be vacated if acquired through fraud of duress.

Section 7 allows a parent or Indian custodian to petition to the court to invalidate any order improperly obtained pursuant to the Kansas Indian child welfare act.

Section 8 sets the preference of placements and adoptions for Indian children. These orders of priority begin with the Indian family, Indian custodians, members of the child's Indian tribe and then non-Indian placements and facilities. If the child's tribe establishes a different order of preference, the court shall follow that order of preference. The section also allows for good cause exemptions to deviate from these orders of preference.

Section 9 requires a child be returned to the child's parent or Indian custodian if a decree of adoption is vacated. Additionally, if any changes in placement occur, such placement shall be in accordance with this Kansas Indian child welfare act.

Section 10 allows that when an Indian person has been adopted that, at the age of 18, the child shall be informed of any information necessary to protect any rights flowing from the person's tribal relationship. Section 11 allows the secretary to enter into agreements regarding the implementation of the Kansas Indian child welfare act. Section 12 requires the court to decline jurisdiction if an Indian child is improperly removed. Section 13 requires the court to apply the law with the highest standard of protection to the child's rights when choosing between state and federal law.

Section 14 states that the Kansas Indian child welfare act shall not be construed to conflict or inhibit the emergency removal of an Indian child who lives on a reservation but is currently located off the reservation if the removal would prevent imminent danger to the child. Then, once the removal or placement is no longer necessary, the court shall transfer the child and such proceedings to the child's tribe.

Section 15 provides for no retroactivity of the act before 1978. Section 16 requires that any final decree or order of adoption or placement, and any additional information, after 1985 shall be provided to the Secretary of the U.S. Department of the Interior. Section 17 authorizes the secretary to promulgate rules and regulations for the implementation of the Kansas Indian child welfare act, in consultation with the Indian tribes. The secretary shall also include information related to the department's implementation of the act to the federal government's child and family service review process and any program improvement plans.

These sections would be effective upon publication in the statute book.