

HB 4148 -2 STAFF MEASURE SUMMARY

House Committee On Judiciary

Prepared By: Addie Smith, Counsel

Meeting Dates: 2/10, 2/12

WHAT THE MEASURE DOES:

Aligns Oregon dependency proceedings with the requirements of the Indian Child Welfare act by integrating those requirements into Chapter 419B of the juvenile code and providing provisions that promote Indian children's continued connection to culture, family, and tribe. Creates a process for transfer to tribal jurisdiction when ordered in dependency proceedings. Declares the best interest of the Indian child. Establishes standards for tribal-state dependency agreements. Describes state actions and jurisdiction in an emergency situation. Describes the role of an Indian child's tribe in a dependency proceeding and how it may participate. Mandates the process for determining whether a child is an Indian child and the provisions of the bill apply in dependency proceedings, when and how notice is to be sent to parents and tribes in dependency proceedings, the requirements for a qualified expert witness, the efforts the Department of Human services must provide to maintain family integrity or reunify families after removal of an Indian child. Establishes placement preferences for Indian children who have been placed in substitute care, guardianships, or adoptive homes.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-2 Replaces measure. Makes findings and establishes policy. Incorporates a series of technical corrections to better match federal law. Cuts unnecessary definitions. Describes the type and role of tribal-state agreements in dependency cases. Renames paternity with parentage to match Oregon domestic relations and dependency statutory language. Modifies jurisdictional provisions to conform with federal law. Differentiates processes when state court lacks jurisdiction versus transfers jurisdiction. Provides for mediation and enforceable cultural agreements in child welfare guardianships and adoptions involving an Indian child. Clarifies what may not be considered good cause to deviate from placement preferences. Requires certain provisions apply at adjudicatory hearings involving Indian children. Makes evidentiary standards in dependency proceedings involving Indian children consistent with federal requirements and state law.

BACKGROUND:

The Indian Child Welfare Act (ICWA) is a federal law created “to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture.” 25 U.S.C. § 1902 (1978). Nonetheless, DHS reports that parents and tribes in Oregon often express significant concerns about compliance with this federal law and that in Oregon in 2018, American Indian and Alaska Native (AI/AN) children were overrepresented in the foster care system—although AI/AN children makeup 1.6% of the child population they are 4.8% of the children in foster care in Oregon.

In response to reports of noncompliance and the disproportionate placement of AI/AN children in foster care, and at the request the Oregon tribes, the Department of Human Services (DHS) Tribal Affairs Unit formed an ICWA compliance committee in 2018. That committee has been broken into three subcommittees: 1) staff training; 2) case evaluation and review; and 3) state ICWA legislation. In preparation for the 2020 legislative short session, DHS, in partnership with the legislature, transitioned the state ICWA legislation workgroup to the interim House

HB 4148 -2 STAFF MEASURE SUMMARY

Committee on the Judiciary.

That interim judiciary work group brought together key state agencies, tribal partners and other relevant stakeholders (including national experts) in a series of 10 meetings. At those meetings the workgroup reviewed federal laws, regulations and guidelines related to Indian child welfare as well as corresponding Oregon laws, rules, and policies; assessed laws passed by sister states to promote ICWA compliance; tracked relevant litigation and case law; and discussed key data and relevant best practices. The state goal of the work group was to draft a comprehensive state law designed to imbed the national child welfare standards of ICWA into Oregon statute in a manner that honors tribal sovereignty, promotes the safety of AI/AN children, preserves tribal families, and supports compliance with ICWA in courtrooms and DHS offices throughout the state.

The result of this work group was House Bill 4148 which modifies Oregon's dependency code, Chapter 419B, to conform with the federal Indian Child Welfare Act and requires the Department of Human Services to provide biennial reports about AI/AN children in the child welfare system.