

HB 4148 A STAFF MEASURE SUMMARY

Carrier: Sen. Hansell, Sen. Roblan

Senate Committee On Judiciary

Action Date: 02/24/20
Action: Do pass the A-Eng bill.
Vote: 4-0-0-3
Yeas: 4 - Dembrow, Gelser, Manning Jr, Prozanski
Abs: 3 - Linthicum, Olsen, Thatcher
Fiscal: Has minimal fiscal impact
Revenue: No revenue impact
Prepared By: Addie Smith, Counsel
Meeting Dates: 2/24

WHAT THE MEASURE DOES:

Aligns Oregon dependency proceedings with the requirements of the Indian Child Welfare Act (ICWA). Creates provisions that promote Indian children's continued connection to culture, family, and tribe. Makes findings and establishes policy. Mandates the process for determining whether a child is an Indian child and specifies processes for Indian children in dependency proceedings. Declares standard for/of the best interest of the Indian child. Establishes standards for tribal-state dependency agreements. Recognizes and defines jurisdiction in dependency cases involving Indian children. Creates a process for transfer to tribal jurisdiction when ordered in dependency proceedings. Describes state actions and jurisdiction in an emergency child welfare situation involving Indian children. Describes the role of an Indian child's tribe in a dependency proceeding and how the tribe may participate. Determines notice requirements, qualified expert witness requirements, and 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. Integrates these and the other requirements of ICWA into Chapter 419B of the juvenile code. Provides for mediation and enforceable cultural agreements in child welfare guardianships and adoptions involving an Indian child. Requires the Department of Human Services to provide biennial reports about Indian children in Oregon's child welfare system.

ISSUES DISCUSSED:

- History of the Indian Child Welfare Act (ICWA)
- Disproportionate placement of Indian children in Oregon foster care
- Need for uniform application of ICWA in Oregon
- Safety and well-being of Indian children in Oregon

EFFECT OF AMENDMENT:

No amendment.

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). In Oregon in 2018, American Indian and Alaska Native (AI/AN) children were over-represented in the Oregon foster care system: although AI/AN children makeup 1.6 percent of the child population, they are 4.8 percent of the children in foster care in Oregon. The Oregon Department of Human Services (DHS) reports that parents and tribes in Oregon often express significant concerns about compliance with the federal law and its impact on the child

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welfare population 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, DHS' Tribal Affairs Unit formed an ICWA compliance committee in 2018. That committee was broken into three subcommittees: 1) staff training; 2) case evaluation and review; and 3) state ICWA legislation. In preparation for the 2020 legislative session, DHS, in partnership with the Legislative Assembly, transitioned the state ICWA legislation work group to a work group hosted by the interim House Committee on the Judiciary.

The Oregon ICWA interim Judiciary work group brought together key state agencies, tribal partners, and other relevant stakeholders (including national experts) in a series of meetings. At those meetings, the work group: reviewed federal laws, regulations and guidelines related to Indian child welfare as well as corresponding Oregon laws, rules, and polices; 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 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.

House Bill 4148-A is the result of the work group efforts. HB 4148-A modifies Oregon's dependency code, Chapter 419B, to conform with the federal Indian Child Welfare Act and promote Indian children's continued connection to culture, family, and tribe. It also requires the Department of Human Services to provide biennial reports about Indian children in the child welfare system.