

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 19-0957.01 Shelby Ross x4510

HOUSE BILL 19-1232

HOUSE SPONSORSHIP

Gonzales-Gutierrez and Catlin,

SENATE SPONSORSHIP

Coram and Rodriguez,

House Committees

State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE ALIGNMENT OF COMPLIANCE WITH THE FEDERAL**
102 **"INDIAN CHILD WELFARE ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

In 2016, the bureau of Indian affairs in the United States department of the interior published updated guidelines for implementing the federal "Indian Child Welfare Act". The bill updates the current statute to align the compliance requirements with federal law.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** The general assembly
3 finds that the bureau of Indian affairs in the United States department of
4 the interior published updated regulations regarding the implementation
5 of the federal "Indian Child Welfare Act" (ICWA) in 2016, codified at 25
6 CFR 23. The general assembly therefore declares that it is a matter of
7 statewide importance to align Colorado's statute with the updated ICWA
8 regulations to ensure continuing compliance with federal law.

9 **SECTION 2.** In Colorado Revised Statutes, **amend** 19-1-126 as
10 follows:

11 **19-1-126. Compliance with the federal "Indian Child Welfare**
12 **Act".** (1) ~~Commencing thirty days after May 30, 2002,~~ In each case
13 CHILD-CUSTODY PROCEEDING filed pursuant to this ~~title~~ TITLE 19 to which
14 the terms of the federal "Indian Child Welfare Act", 25 U.S.C. sec. 1901,
15 et seq., apply: ~~including but not limited to certain juvenile delinquency~~
16 ~~proceedings, dependency or neglect proceedings, termination of parental~~
17 ~~rights proceedings, and pre-adoptive and adoption proceedings, the~~
18 ~~petitioning or filing party shall:~~

19 (a) (I) ~~Make continuing~~ THE COURT SHALL MAKE inquiries to
20 determine whether the child who is the subject of the proceeding is an
21 Indian child, and, if so, shall determine the identity of the Indian child's
22 tribe. IN DETERMINING THE INDIAN CHILD'S TRIBE:

23 (A) THE COURT SHALL ASK THE PETITIONING AND FILING PARTY IN
24 AN EMERGENCY OR VOLUNTARY OR INVOLUNTARY CHILD-CUSTODY
25 PROCEEDING WHETHER THE PETITIONING OR FILING PARTY KNOWS OR HAS
26 REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD. THE INQUIRY IS TO
27 BE MADE AT THE COMMENCEMENT OF THE PROCEEDING, AND ALL

1 RESPONSES MUST BE ON THE RECORD. THE COURT SHALL INSTRUCT THE
2 PETITIONING AND FILING PARTY TO INFORM THE COURT IF EITHER PARTY
3 SUBSEQUENTLY RECEIVES INFORMATION THAT PROVIDES REASON TO
4 KNOW THE CHILD IS AN INDIAN CHILD.

5 (B) THE RESPONDENT SHALL DISCLOSE ANY INFORMATION
6 INDICATING THAT THE CHILD IS AN INDIAN CHILD OR PROVIDE AN
7 IDENTIFICATION CARD INDICATING MEMBERSHIP IN A TRIBE TO THE
8 PETITIONING AND FILING PARTIES AND THE COURT IN A TIMELY MANNER,
9 WITHIN SEVEN DAYS AFTER THE COMMENCEMENT OF THE PROCEEDINGS,
10 OR WITHIN SEVEN DAYS AFTER OBTAINING SAID INFORMATION.

11 (II) THE COURT, UPON CONDUCTING THE INQUIRY DESCRIBED IN
12 SUBSECTION (1)(a) OF THIS SECTION, HAS REASON TO KNOW THAT A CHILD
13 IS AN INDIAN CHILD IF:

14 (A) ANY PARTICIPANT IN THE CHILD-CUSTODY PROCEEDING,
15 OFFICER OF THE COURT INVOLVED IN THE CHILD-CUSTODY PROCEEDING,
16 INDIAN TRIBE, INDIAN ORGANIZATION, OR AGENCY INFORMS THE COURT
17 THAT THE CHILD IS AN INDIAN CHILD;

18 (B) ANY PARTICIPANT IN THE CHILD-CUSTODY PROCEEDING,
19 OFFICER OF THE COURT INVOLVED IN THE CHILD-CUSTODY PROCEEDING,
20 INDIAN TRIBE, INDIAN ORGANIZATION, OR AGENCY INFORMS THE COURT
21 THAT IT HAS DISCOVERED INFORMATION INDICATING THAT THE CHILD IS AN
22 INDIAN CHILD;

23 (C) THE CHILD WHO IS THE SUBJECT OF THE CHILD-CUSTODY
24 PROCEEDING GIVES THE COURT REASON TO KNOW HE OR SHE IS AN INDIAN
25 CHILD;

26 (D) THE COURT IS INFORMED THAT THE DOMICILE OR RESIDENCE
27 OF THE CHILD, THE CHILD'S PARENT, OR THE CHILD'S INDIAN CUSTODIAN IS

1 ON A RESERVATION OR IN AN ALASKA NATIVE VILLAGE;

2 (E) THE COURT IS INFORMED THAT THE CHILD IS OR HAS BEEN A
3 WARD OF A TRIBAL COURT, AS DEFINED IN 25 U.S.C. SEC. 1903; OR

4 (F) THE COURT IS INFORMED THAT THE CHILD OR THE CHILD'S
5 PARENT POSSESSES AN IDENTIFICATION CARD INDICATING MEMBERSHIP IN
6 AN INDIAN TRIBE.

7 (b) If the petitioning or filing party knows or has reason to believe
8 KNOW, AS DEFINED IN SUBSECTION (1)(a)(II) OF THIS SECTION, that the
9 child who is the subject of the proceeding is an Indian child, THE
10 PETITIONING OR FILING PARTY SHALL send notice by registered OR
11 CERTIFIED mail, return receipt requested, to the parent or Indian custodian
12 of ~~such~~ THE child AND to the tribal agent of the Indian child's tribe as
13 designated in ~~title 25 of the code of federal regulations, part 23~~ 25 CFR
14 23, or, if ~~such agent has not been designated, to the highest-elected or~~
15 ~~highest-appointed official of the Indian child's tribe, to the highest-elected~~
16 ~~or highest-appointed tribal judge of the Indian child's tribe, and to the~~
17 ~~social service department of the Indian child's tribe; and~~ THERE IS NO
18 DESIGNATED TRIBAL AGENT, THE PETITIONING OR FILING PARTY SHALL
19 CONTACT THE TRIBE TO BE DIRECTED TO THE APPROPRIATE OFFICE OR
20 INDIVIDUAL.

21 (c) ~~Disclose~~ THE PETITIONING OR FILING PARTY SHALL DISCLOSE
22 in the complaint, petition, or other commencing pleading filed with the
23 court that the child who is the subject of the proceeding is an Indian child
24 and the identity of the Indian child's tribe or what efforts the petitioning
25 or filing party has made in determining whether the child is an Indian
26 child. If the child who is the subject of the proceeding is determined to be
27 an Indian child, the petitioning or filing party shall further identify what

1 reasonable efforts have been made to send notice to the persons identified
2 in ~~paragraph (b) of this subsection (1)~~ SUBSECTION (1)(b) OF THIS
3 SECTION. The postal receipts indicating that notice was properly sent by
4 ~~such~~ THE petitioning or filing party to the parent or Indian custodian of
5 the Indian child and to the Indian child's tribe ~~shall~~ MUST be attached to
6 the complaint, petition, or other commencing pleading filed with the
7 court; except that, if notification has not been perfected at the time the
8 initial complaint, petition, or other commencing pleading is filed with the
9 court or if the postal receipts have not been received back from the post
10 office, the petitioning or filing party shall ~~identify such circumstances to~~
11 ~~the court and shall thereafter~~ file the postal receipts with the court. ~~within~~
12 ~~ten days after the filing of the complaint, petition, or other commencing~~
13 ~~pleading~~ ANY RESPONSES SENT BY THE TRIBAL AGENTS TO THE
14 PETITIONING OR FILING PARTY, THE DEPARTMENT OF HUMAN SERVICES, OR
15 THE COURT MUST BE DISTRIBUTED TO THE PARTIES AND DEPOSITED WITH
16 THE COURT.

17 (2) ~~In any of the cases identified in subsection (1) of this section~~
18 ~~in which the initial complaint, petition, or other commencing pleading~~
19 ~~does not disclose whether the child who is the subject of the proceeding~~
20 ~~is an Indian child, the court shall inquire of the parties at the first hearing~~
21 ~~whether the child is an Indian child and, if so, whether the parties have~~
22 ~~complied with the procedural requirements set forth in the federal "Indian~~
23 ~~Child Welfare Act", 25 U.S.C. sec. 1901, et seq. IF THERE IS REASON TO~~
24 ~~KNOW THE CHILD IS AN INDIAN CHILD BUT THE COURT DOES NOT HAVE~~
25 ~~SUFFICIENT EVIDENCE TO DETERMINE THAT THE CHILD IS OR IS NOT AN~~
26 ~~INDIAN CHILD, THE COURT SHALL:~~

27 (a) CONFIRM, BY WAY OF A REPORT, DECLARATION, OR TESTIMONY

1 INCLUDED IN THE RECORD, THAT THE PETITIONING OR FILING PARTY USED
2 DUE DILIGENCE TO IDENTIFY AND WORK WITH ALL OF THE TRIBES OF
3 WHICH THERE IS REASON TO KNOW THE CHILD MAY BE A MEMBER, OR
4 ELIGIBLE FOR MEMBERSHIP, TO VERIFY WHETHER THE CHILD IS IN FACT A
5 MEMBER, OR A BIOLOGICAL PARENT IS A MEMBER AND THE CHILD IS
6 ELIGIBLE FOR MEMBERSHIP; AND

7 (b) TREAT THE CHILD AS AN INDIAN CHILD, UNLESS AND UNTIL IT
8 IS DETERMINED ON THE RECORD THAT THE CHILD DOES NOT MEET THE
9 DEFINITION OF AN INDIAN CHILD.

10 ~~(3) The state department of human services and the county~~
11 ~~departments of human or social services are encouraged to work~~
12 ~~cooperatively in the sharing of information that any of such agencies~~
13 ~~obtains or receives concerning any federally recognized tribal entities~~
14 ~~existing outside the state of Colorado, including but not limited to~~
15 ~~information about the appropriate person from a tribal entity to contact~~
16 ~~with the notice prescribed by this section~~ IF THE COURT RECEIVES
17 INFORMATION THAT THE CHILD MAY HAVE INDIAN HERITAGE BUT DOES
18 NOT HAVE SUFFICIENT INFORMATION TO DETERMINE THAT THERE IS
19 REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD PURSUANT TO
20 SUBSECTION (1)(a)(II) OF THIS SECTION, THE COURT SHALL DIRECT THE
21 PETITIONING AND FILING PARTY TO EXERCISE DUE DILIGENCE IN
22 GATHERING ADDITIONAL INFORMATION THAT WOULD ASSIST THE COURT
23 IN DETERMINING WHETHER THERE IS REASON TO KNOW THAT THE CHILD IS
24 AN INDIAN CHILD. THE COURT SHALL DIRECT THE PETITIONING AND FILING
25 PARTY TO MAKE A RECORD OF THE EFFORT TAKEN TO DETERMINE
26 WHETHER OR NOT THERE IS REASON TO KNOW THAT THE CHILD IS AN
27 INDIAN CHILD.

1 ~~(4) (a) In any of the cases identified in subsection (1) of this~~
2 ~~section involving an Indian child, in determining whether to transfer such~~
3 ~~a case to a tribal court, the court is encouraged to consider the following~~
4 ~~guidelines:~~

5 ~~(I) The court may find that good cause exists to deny a transfer of~~
6 ~~the proceeding to the tribal court if the Indian child's tribe does not have~~
7 ~~a tribal court; or~~

8 ~~(II) The court may find that good cause exists to deny a transfer~~
9 ~~of the proceeding to the tribal court if:~~

10 ~~(A) Either of the Indian child's parents objects to such a transfer;~~
11 ~~or~~

12 ~~(B) The proceeding was at an advanced stage when the petition to~~
13 ~~transfer the proceeding to the tribal court was received from the Indian~~
14 ~~child's tribe and the petitioning party did not file the petition to transfer~~
15 ~~to the tribal court promptly after receiving the notice of hearing.~~

16 ~~(b) The burden of proof under this subsection (4) shall be on the~~
17 ~~party opposing a transfer of the case~~ IF THE COURT FINDS THAT THE CHILD
18 IS AN INDIAN CHILD, THE COURT SHALL ENSURE COMPLIANCE WITH THE
19 REQUIREMENTS OF THE FEDERAL "INDIAN CHILD WELFARE ACT", 25
20 U.S.C. SEC. 1901, ET SEQ.

21 **SECTION 3. Safety clause.** The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, and safety.