

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

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 19-0957.01 Shelby Ross x4510

HOUSE BILL 19-1232

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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.

SENATE
Amended 2nd Reading
April 12, 2019

HOUSE
3rd Reading Unamended
March 26, 2019

HOUSE
2nd Reading Unamended
March 25, 2019

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 ~~FILED PURSUANT TO THIS TITLE 19 THAT CONSTITUTES A CHILD CUSTODY~~
14 ~~PROCEEDING, AS DEFINED IN THE FEDERAL "INDIAN CHILD WELFARE ACT",~~
15 ~~25 U.S.C. SEC. 1901, ET SEQ., AND THEREFORE TO WHICH THE TERMS OF~~
16 ~~THE FEDERAL "INDIAN CHILD WELFARE ACT", 25 U.S.C. SEC. 1901, ET~~
17 ~~SEQ., APPLY, THE COURT AND EACH PARTY TO THE PROCEEDING SHALL~~
18 ~~COMPLY WITH THE FEDERAL IMPLEMENTING REGULATIONS, AND ANY~~
19 ~~MODIFICATIONS THEREOF, OF THE FEDERAL "INDIAN CHILD WELFARE~~
20 ~~ACT", 25 U.S.C. SEC. 1901, ET SEQ., LOCATED IN 25 CFR 23, WHICH~~
21 ~~OUTLINE THE MINIMUM FEDERAL STANDARDS GOVERNING THE~~
22 ~~IMPLEMENTATION OF THE "INDIAN CHILD WELFARE ACT" TO ENSURE THE~~
23 ~~STATUTE IS APPLIED IN COLORADO CONSISTENT WITH THE ACT'S EXPRESS~~
24 ~~LANGUAGE, CONGRESS'S INTENT IN ENACTING THE STATUTE, AND TO~~
25 ~~PROMOTE THE STABILITY AND SECURITY OF INDIAN CHILDREN, TRIBES,~~
26 ~~AND FAMILIES.~~ In each case CHILD-CUSTODY PROCEEDING filed pursuant
27 to this ~~title~~ TITLE 19 to which the terms of the federal "Indian Child

1 Welfare Act", 25 U.S.C. sec. 1901, et seq., apply: ~~including but not~~
2 ~~limited to certain juvenile delinquency proceedings, dependency or~~
3 ~~neglect proceedings, termination of parental rights proceedings, and~~
4 ~~pre-adoptive and adoption proceedings, the petitioning or filing party~~
5 ~~shall:~~

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

10 (A) THE COURT SHALL ASK EACH PARTICIPANT IN AN EMERGENCY
11 OR VOLUNTARY OR INVOLUNTARY CHILD-CUSTODY PROCEEDING WHETHER
12 THE PARTICIPANT KNOWS OR HAS REASON TO KNOW THAT THE CHILD IS AN
13 INDIAN CHILD. THE INQUIRY IS TO BE MADE AT THE COMMENCEMENT OF
14 THE PROCEEDING, AND ALL RESPONSES MUST BE ON THE RECORD. THE
15 COURT SHALL INSTRUCT THE PARTICIPANTS TO INFORM THE COURT IF ANY
16 PARTICIPANT SUBSEQUENTLY RECEIVES INFORMATION THAT PROVIDES
17 REASON TO KNOW THE CHILD IS AN INDIAN CHILD.

18 (B) ANY PARTY TO THE PROCEEDING SHALL DISCLOSE ANY
19 INFORMATION INDICATING THAT THE CHILD IS AN INDIAN CHILD OR
20 PROVIDE AN IDENTIFICATION CARD INDICATING MEMBERSHIP IN A TRIBE TO
21 THE PETITIONING AND FILING PARTIES AND THE COURT IN A TIMELY
22 MANNER. THE COURT SHALL ORDER THE PARTY TO PROVIDE THE
23 INFORMATION NO LATER THAN SEVEN BUSINESS DAYS AFTER THE DATE OF
24 THE HEARING OR PRIOR TO THE NEXT HEARING ON THE MATTER,
25 WHICHEVER OCCURS FIRST. THE INFORMATION SHOULD BE FILED WITH THE
26 COURT AND PROVIDED TO THE COUNTY DEPARTMENT OF HUMAN OR
27 SOCIAL SERVICES AND EACH PARTY NO LATER THAN SEVEN BUSINESS DAYS

1 AFTER THE DATE OF THE HEARING.

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

5 (A) ANY PARTICIPANT IN THE CHILD-CUSTODY PROCEEDING,
6 OFFICER OF THE COURT INVOLVED IN THE CHILD-CUSTODY PROCEEDING,
7 INDIAN TRIBE, INDIAN ORGANIZATION, OR AGENCY INFORMS THE COURT
8 THAT THE CHILD IS AN INDIAN CHILD;

9 (B) ANY PARTICIPANT IN THE CHILD-CUSTODY PROCEEDING,
10 OFFICER OF THE COURT INVOLVED IN THE CHILD-CUSTODY PROCEEDING,
11 INDIAN TRIBE, INDIAN ORGANIZATION, OR AGENCY INFORMS THE COURT
12 THAT IT HAS DISCOVERED INFORMATION INDICATING THAT THE CHILD IS AN
13 INDIAN CHILD;

14 (C) THE CHILD WHO IS THE SUBJECT OF THE CHILD-CUSTODY
15 PROCEEDING GIVES THE COURT REASON TO KNOW HE OR SHE IS AN INDIAN
16 CHILD;

17 (D) THE COURT IS INFORMED THAT THE DOMICILE OR RESIDENCE
18 OF THE CHILD, THE CHILD'S PARENT, OR THE CHILD'S INDIAN CUSTODIAN IS
19 ON A RESERVATION OR IN AN ALASKA NATIVE VILLAGE;

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

22 (F) THE COURT IS INFORMED THAT THE CHILD OR THE CHILD'S
23 PARENT POSSESSES AN IDENTIFICATION CARD INDICATING MEMBERSHIP IN
24 AN INDIAN TRIBE.

25 (b) If the petitioning or filing party COURT knows or has reason to
26 ~~believe~~ KNOW, AS DEFINED IN SUBSECTION (1)(a)(II) OF THIS SECTION, that
27 the child who is the subject of the proceeding is an Indian child, THE

1 PETITIONING OR FILING PARTY SHALL send notice by registered OR
2 CERTIFIED mail, return receipt requested, to the parent or Indian custodian
3 PARENT OR PARENTS, THE INDIAN CUSTODIAN OR INDIAN CUSTODIANS of
4 ~~such~~ THE child AND to the tribal agent of the Indian child's tribe as
5 designated in ~~title 25 of the code of federal regulations, part 23~~ 25 CFR
6 23, or, if ~~such agent has not been designated, to the highest-elected or~~
7 ~~highest-appointed official of the Indian child's tribe, to the highest-elected~~
8 ~~or highest-appointed tribal judge of the Indian child's tribe, and to the~~
9 ~~social service department of the Indian child's tribe; and~~ THERE IS NO
10 DESIGNATED TRIBAL AGENT, THE PETITIONING OR FILING PARTY SHALL
11 CONTACT THE TRIBE TO BE DIRECTED TO THE APPROPRIATE OFFICE OR
12 INDIVIDUAL. IN PROVIDING NOTICE, THE COURT AND EACH PARTY SHALL
13 COMPLY WITH 25 CFR 23.111.

14 (c) ~~Disclose~~ THE PETITIONING OR FILING PARTY SHALL DISCLOSE
15 in the complaint, petition, or other commencing pleading filed with the
16 court that the child who is the subject of the proceeding is an Indian child
17 and the identity of the Indian child's tribe or what efforts the petitioning
18 or filing party has made in determining whether the child is an Indian
19 child. If the child who is the subject of the proceeding is determined to be
20 an Indian child, the petitioning or filing party shall further identify what
21 reasonable efforts have been made to send notice to the persons identified
22 in ~~paragraph (b) of this subsection (1)~~ SUBSECTION (1)(b) OF THIS
23 SECTION. The postal receipts indicating that notice was properly sent by
24 ~~such~~ THE petitioning or filing party to the parent or Indian custodian of
25 the Indian child and to the Indian child's tribe ~~shall~~ MUST be attached to
26 the complaint, petition, or other commencing pleading filed with the
27 court; except that, if notification has not been perfected at the time the

1 initial complaint, petition, or other commencing pleading is filed with the
2 court or if the postal receipts have not been received back from the post
3 office, the petitioning or filing party shall ~~identify such circumstances to~~
4 ~~the court and shall thereafter~~ file the postal receipts with the court. ~~within~~
5 ~~ten days after the filing of the complaint, petition, or other commencing~~
6 ~~pleading~~ ANY RESPONSES SENT BY THE TRIBAL AGENTS TO THE
7 PETITIONING OR FILING PARTY, THE COUNTY DEPARTMENT OF HUMAN OR
8 SOCIAL SERVICES, OR THE COURT MUST BE DISTRIBUTED TO THE PARTIES
9 AND DEPOSITED WITH THE COURT.

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

20 (a) CONFIRM, BY WAY OF A REPORT, DECLARATION, OR TESTIMONY
21 INCLUDED IN THE RECORD, THAT THE PETITIONING OR FILING PARTY USED
22 DUE DILIGENCE TO IDENTIFY AND WORK WITH ALL OF THE TRIBES OF
23 WHICH THERE IS REASON TO KNOW THE CHILD MAY BE A MEMBER, OR
24 ELIGIBLE FOR MEMBERSHIP, TO VERIFY WHETHER THE CHILD IS IN FACT A
25 MEMBER, OR A BIOLOGICAL PARENT IS A MEMBER AND THE CHILD IS
26 ELIGIBLE FOR MEMBERSHIP; AND

27 (b) TREAT THE CHILD AS AN INDIAN CHILD, UNLESS AND UNTIL IT

1 IS DETERMINED ON THE RECORD THAT THE CHILD DOES NOT MEET THE
2 DEFINITION OF AN INDIAN CHILD.

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

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

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

1 ~~(H) The court may find that good cause exists to deny a transfer~~
2 ~~of the proceeding to the tribal court if:~~

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

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

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

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