

CHAPTER 217

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 02-1064

BY REPRESENTATIVE(S) Williams S., Alexander, Cloer, Borodkin, Boyd, Coleman, Groff, Larson, Mace, Madden, Ragsdale, Romanoff, and Vigil;
also SENATOR(S) Isgar, Entz, Tate, and Tupa.

AN ACT**CONCERNING STATUTORY CHANGES TO ENHANCE CONSISTENT COMPLIANCE WITH THE FEDERAL "INDIAN CHILD WELFARE ACT" STATEWIDE.**

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds that:

(a) The states, in exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, historically failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and cultures;

(b) In response to these circumstances, the United States congress passed the federal "Indian Child Welfare Act", 25 U.S.C. sec. 1901, et seq., in 1978, 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 for the placement of such children in foster or adoptive homes that would reflect the unique values of Indian culture and by providing for assistance to Indian tribes in the operation of child and family service programs;

(c) A critical element of the "Indian Child Welfare Act" includes the provision of notice to an Indian child's tribe when a state court proceeding is commenced that could result in the placement of the Indian child out of his or her home so that the child's tribe may be given the opportunity to transfer the case to a tribal court or otherwise participate in the state court proceeding;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(d) In order to achieve these goals it is crucial to determine, consistently and faithfully, whether children who are the subject of such types of state court proceedings are Indian children and to insure that, if so, appropriate and timely notice is provided;

(e) The state of Colorado has previously recognized that Indian tribes have a compelling interest in promoting and maintaining their integrity and culture by entering into "Indian Child Welfare Act" agreements with the Southern Ute Indian tribe and the Ute Mountain Ute Indian tribe, which agreements, among other things, place stringent notice requirements on the state in proceedings involving Indian children and provide for the delay of proceedings until the required notice has been provided to the tribe;

(f) The state of Colorado is committed to consistent application of and compliance with the provisions of the federal "Indian Child Welfare Act" throughout the state to ensure that proper notice is provided and procedures followed as specified by the act when state court actions brought pursuant to the "Colorado Children's Code", title 19, Colorado Revised Statutes, involve Indian children; and

(g) There is nothing more vital to the continued existence and integrity of Indian tribes than their children.

(2) Accordingly, the general assembly hereby determines and declares that it is appropriate and in the best interests of the Indian families intended to be protected by the terms of the federal "Indian Child Welfare Act", and the Indian children represented thereby, that the "Indian Child Welfare Act" agreements entered into between the state of Colorado and the Southern Ute Indian tribe and the Ute Mountain Ute Indian tribe be reaffirmed and that certain provisions be added to the "Colorado Children's Code" to ensure consistent and reliable compliance with the federal act for the protection of Indian children within the state of Colorado.

SECTION 2. 19-1-103, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

19-1-103. Definitions. As used in this title or in the specified portion of this title, unless the context otherwise requires:

(65.3) "INDIAN CHILD" MEANS AN UNMARRIED PERSON WHO IS YOUNGER THAN EIGHTEEN YEARS OF AGE AND WHO IS EITHER:

(a) A MEMBER OF AN INDIAN TRIBE; OR

(b) ELIGIBLE FOR MEMBERSHIP IN AN INDIAN TRIBE AND WHO IS THE BIOLOGICAL CHILD OF A MEMBER OF AN INDIAN TRIBE.

(65.5) "INDIAN CHILD'S TRIBE" MEANS:

(a) THE INDIAN TRIBE IN WHICH AN INDIAN CHILD IS A MEMBER OR ELIGIBLE FOR MEMBERSHIP; OR

(b) IN THE CASE OF AN INDIAN CHILD WHO IS A MEMBER OF OR ELIGIBLE FOR

MEMBERSHIP IN MORE THAN ONE TRIBE, THE INDIAN TRIBE WITH WHICH THE INDIAN CHILD HAS THE MOST SIGNIFICANT CONTACTS.

(65.7) "INDIAN TRIBE" MEANS AN INDIAN TRIBE, BAND, NATION, OR OTHER ORGANIZED GROUP OR COMMUNITY OF INDIANS RECOGNIZED AS ELIGIBLE FOR THE FEDERAL GOVERNMENTAL SERVICES PROVIDED TO INDIANS BECAUSE OF THEIR STATUS AS INDIANS.

SECTION 3. Part 1 of article 1 of title 19, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

19-1-126. Compliance with the federal "Indian Child Welfare Act".

(1) COMMENCING THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, IN EACH CASE FILED PURSUANT TO THIS TITLE TO WHICH THE TERMS OF THE FEDERAL "INDIAN CHILD WELFARE ACT", 25 U.S.C. SEC. 1901, ET SEQ., APPLY, INCLUDING BUT NOT LIMITED TO CERTAIN JUVENILE DELINQUENCY PROCEEDINGS, DEPENDENCY OR NEGLECT PROCEEDINGS, TERMINATION OF PARENTAL RIGHTS PROCEEDINGS, AND PRE-ADOPTIVE AND ADOPTION PROCEEDINGS, THE PETITIONING OR FILING PARTY SHALL:

(a) MAKE CONTINUING INQUIRIES TO DETERMINE WHETHER THE CHILD WHO IS THE SUBJECT OF THE PROCEEDING IS AN INDIAN CHILD AND, IF SO, SHALL DETERMINE THE IDENTITY OF THE INDIAN CHILD'S TRIBE;

(b) IF THE PETITIONING OR FILING PARTY KNOWS OR HAS REASON TO BELIEVE THAT THE CHILD WHO IS THE SUBJECT OF THE PROCEEDING IS AN INDIAN CHILD, SEND NOTICE BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, TO THE PARENT OR INDIAN CUSTODIAN OF SUCH CHILD, TO THE TRIBAL AGENT OF THE INDIAN CHILD'S TRIBE AS DESIGNATED IN TITLE 25 OF THE CODE OF FEDERAL REGULATIONS, PART 23, OR, IF SUCH AGENT HAS NOT BEEN DESIGNATED, TO THE HIGHEST-ELECTED OR HIGHEST-APPOINTED OFFICIAL OF THE INDIAN CHILD'S TRIBE, TO THE HIGHEST-ELECTED OR HIGHEST-APPOINTED TRIBAL JUDGE OF THE INDIAN CHILD'S TRIBE, AND TO THE SOCIAL SERVICE DEPARTMENT OF THE INDIAN CHILD'S TRIBE; AND

(c) DISCLOSE IN THE COMPLAINT, PETITION, OR OTHER COMMENCING PLEADING FILED WITH THE COURT THAT THE CHILD WHO IS THE SUBJECT OF THE PROCEEDING IS AN INDIAN CHILD AND THE IDENTITY OF THE INDIAN CHILD'S TRIBE OR WHAT EFFORTS THE PETITIONING OR FILING PARTY HAS MADE IN DETERMINING WHETHER THE CHILD IS AN INDIAN CHILD. IF THE CHILD WHO IS THE SUBJECT OF THE PROCEEDING IS DETERMINED TO BE AN INDIAN CHILD, THE PETITIONING OR FILING PARTY SHALL FURTHER IDENTIFY WHAT REASONABLE EFFORTS HAVE BEEN MADE TO SEND NOTICE TO THE PERSONS IDENTIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (1). THE POSTAL RECEIPTS INDICATING THAT NOTICE WAS PROPERLY SENT BY SUCH PETITIONING OR FILING PARTY TO THE PARENT OR INDIAN CUSTODIAN OF THE INDIAN CHILD AND TO THE INDIAN CHILD'S TRIBE SHALL BE ATTACHED TO THE COMPLAINT, PETITION, OR OTHER COMMENCING PLEADING FILED WITH THE COURT; EXCEPT THAT, IF NOTIFICATION HAS NOT BEEN PERFECTED AT THE TIME THE INITIAL COMPLAINT, PETITION, OR OTHER COMMENCING PLEADING IS FILED WITH THE COURT OR IF THE POSTAL RECEIPTS HAVE NOT BEEN RECEIVED BACK FROM THE POST OFFICE, THE PETITIONING OR FILING PARTY SHALL IDENTIFY SUCH CIRCUMSTANCES TO THE COURT AND SHALL THEREAFTER FILE THE POSTAL RECEIPTS WITH THE COURT WITHIN TEN

DAYS AFTER THE FILING OF THE COMPLAINT, PETITION, OR OTHER COMMENCING PLEADING.

(2) IN ANY OF THE CASES IDENTIFIED IN SUBSECTION (1) OF THIS SECTION IN WHICH THE INITIAL COMPLAINT, PETITION, OR OTHER COMMENCING PLEADING DOES NOT DISCLOSE WHETHER THE CHILD WHO IS THE SUBJECT OF THE PROCEEDING IS AN INDIAN CHILD, THE COURT SHALL INQUIRE OF THE PARTIES AT THE FIRST HEARING WHETHER THE CHILD IS AN INDIAN CHILD AND, IF SO, WHETHER THE PARTIES HAVE COMPLIED WITH THE PROCEDURAL REQUIREMENTS SET FORTH IN THE FEDERAL "INDIAN CHILD WELFARE ACT", 25 U.S.C. SEC. 1901, ET SEQ.

(3) THE STATE DEPARTMENT OF HUMAN SERVICES AND THE COUNTY DEPARTMENTS OF SOCIAL SERVICES ARE ENCOURAGED TO WORK COOPERATIVELY IN THE SHARING OF INFORMATION THAT ANY OF SUCH AGENCIES OBTAINS OR RECEIVES CONCERNING ANY FEDERALLY RECOGNIZED TRIBAL ENTITIES EXISTING OUTSIDE THE STATE OF COLORADO, INCLUDING BUT NOT LIMITED TO INFORMATION ABOUT THE APPROPRIATE PERSON FROM ANY SUCH TRIBAL ENTITY TO CONTACT WITH THE NOTICE PRESCRIBED BY THIS SECTION.

(4) (a) IN ANY OF THE CASES IDENTIFIED IN SUBSECTION (1) OF THIS SECTION INVOLVING AN INDIAN CHILD, IN DETERMINING WHETHER TO TRANSFER SUCH A CASE TO A TRIBAL COURT THE COURT IS ENCOURAGED TO CONSIDER THE FOLLOWING GUIDELINES:

(I) THE COURT MAY FIND THAT GOOD CAUSE EXISTS TO DENY A TRANSFER OF THE PROCEEDING TO THE TRIBAL COURT IF THE INDIAN CHILD'S TRIBE DOES NOT HAVE A TRIBAL COURT; OR

(II) THE COURT MAY FIND THAT GOOD CAUSE EXISTS TO DENY A TRANSFER OF THE PROCEEDING TO THE TRIBAL COURT IF:

(A) EITHER OF THE INDIAN CHILD'S PARENTS OBJECTS TO SUCH A TRANSFER; OR

(B) THE PROCEEDING WAS AT AN ADVANCED STAGE WHEN THE PETITION TO TRANSFER THE PROCEEDING TO THE TRIBAL COURT WAS RECEIVED FROM THE INDIAN CHILD'S TRIBE AND THE PETITIONING PARTY DID NOT FILE THE PETITION TO TRANSFER TO THE TRIBAL COURT PROMPTLY AFTER RECEIVING THE NOTICE OF HEARING.

(b) THE BURDEN OF PROOF UNDER THIS SUBSECTION (4) SHALL BE ON THE PARTY OPPOSING A TRANSFER OF THE CASE.

SECTION 4. 19-2-513, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

19-2-513. Petition form and content. (3) (a) PURSUANT TO THE PROVISIONS OF SECTION 19-1-126, IN THOSE DELINQUENCY PROCEEDINGS TO WHICH THE FEDERAL "INDIAN CHILD WELFARE ACT", 25 U.S.C. SEC. 1901, ET SEQ., APPLIES, INCLUDING BUT NOT LIMITED TO STATUS OFFENSES SUCH AS THE ILLEGAL POSSESSION OR CONSUMPTION OF ETHYL ALCOHOL BY AN UNDERAGE PERSON, AS DESCRIBED IN SECTION 18-13-122, C.R.S., PURCHASE OR ATTEMPTED PURCHASE OF CIGARETTES OR TOBACCO PRODUCTS BY A PERSON UNDER EIGHTEEN YEARS OF AGE, AS DESCRIBED IN

SECTION 18-13-121, C.R.S., AND POSSESSION OF HANDGUNS BY JUVENILES, AS DESCRIBED IN SECTION 18-12-108.5, C.R.S., THE PETITION SHALL:

(I) INCLUDE A STATEMENT INDICATING WHAT CONTINUING INQUIRIES THE DISTRICT ATTORNEY OR THE DISTRICT ATTORNEY'S REPRESENTATIVE HAS MADE IN DETERMINING WHETHER THE JUVENILE IS AN INDIAN CHILD;

(II) IDENTIFY WHETHER THE JUVENILE IS AN INDIAN CHILD; AND

(III) INCLUDE THE IDENTITY OF THE INDIAN CHILD'S TRIBE, IF THE CHILD IS IDENTIFIED AS AN INDIAN CHILD.

(b) IF NOTICES WERE SENT TO THE PARENT OR INDIAN CUSTODIAN OF THE CHILD AND TO THE INDIAN CHILD'S TRIBE, PURSUANT TO SECTION 19-1-126, THE POSTAL RECEIPTS SHALL BE ATTACHED TO THE PETITION AND FILED WITH THE COURT OR FILED WITHIN TEN DAYS AFTER THE FILING OF THE PETITION, AS SPECIFIED IN SECTION 19-1-126 (1) (c).

SECTION 5. 19-3-212 (1) and (2), Colorado Revised Statutes, are amended to read:

19-3-212. Notice of rights and remedies for families. (1) The state department shall prepare, with the assistance of the attorney general, on a standardized WRITTEN form, a detailed informational notice of rights and remedies for families subject to the provisions of this article.

(2) The notice prepared pursuant to subsection (1) of this section shall be supplied to all social service and law enforcement agencies in the state and shall be delivered to all parents and families from whom children are removed under court order or by law enforcement personnel, along with a copy of the court order directing removal of the child or children from the home. In addition to the notification on the court order, the informational notice shall contain a statement as to the cause of the removal of the child or children. The notice shall also contain disclosure of the availability of the conflict resolution process to persons who are the subject of any child abuse or neglect report and to the parents, INDIAN CUSTODIANS, guardian, or legal custodian of a child who is the subject of any child abuse or neglect report. THE STANDARDIZED WRITTEN NOTICE FORM PREPARED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL ALSO INCLUDE A NOTIFICATION OF RIGHTS OF THE PARENTS, INDIAN CUSTODIANS, GUARDIANS, OR LEGAL CUSTODIANS OF INDIAN CHILDREN UNDER THE FEDERAL "INDIAN CHILD WELFARE ACT", 25 U.S.C. SEC. 1901, ET SEQ.

SECTION 6. 19-3-502, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

19-3-502. Petition form and content - limitations on claims in dependency or neglect actions. (2.7) (a) PURSUANT TO THE PROVISIONS OF SECTION 19-1-126, THE PETITION SHALL:

(I) INCLUDE A STATEMENT INDICATING WHAT CONTINUING INQUIRIES THE COUNTY DEPARTMENT OF SOCIAL SERVICES HAS MADE IN DETERMINING WHETHER THE CHILD WHO IS THE SUBJECT OF THE PROCEEDING IS AN INDIAN CHILD;

(II) IDENTIFY WHETHER THE CHILD IS AN INDIAN CHILD; AND

(III) INCLUDE THE IDENTITY OF THE INDIAN CHILD'S TRIBE, IF THE CHILD IS IDENTIFIED AS AN INDIAN CHILD.

(b) IF NOTICES WERE SENT TO THE PARENT OR INDIAN CUSTODIAN OF THE CHILD AND TO THE INDIAN CHILD'S TRIBE, PURSUANT TO SECTION 19-1-126, THE POSTAL RECEIPTS SHALL BE ATTACHED TO THE PETITION AND FILED WITH THE COURT OR FILED WITHIN TEN DAYS AFTER THE FILING OF THE PETITION, AS SPECIFIED IN SECTION 19-1-126 (1) (c).

SECTION 7. 19-3-602, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

19-3-602. Motion for termination - separate hearing - right to counsel - no jury trial. (1.5) (a) PURSUANT TO THE PROVISIONS OF SECTION 19-1-126, THE MOTION FOR TERMINATION SHALL:

(I) INCLUDE A STATEMENT INDICATING WHAT CONTINUING INQUIRIES THE COUNTY DEPARTMENT OF SOCIAL SERVICES HAS MADE IN DETERMINING WHETHER THE CHILD WHO IS THE SUBJECT OF THE TERMINATION PROCEEDING IS AN INDIAN CHILD;

(II) IDENTIFY WHETHER THE CHILD IS AN INDIAN CHILD; AND

(III) INCLUDE THE IDENTITY OF THE INDIAN CHILD'S TRIBE, IF THE CHILD IS IDENTIFIED AS AN INDIAN CHILD.

(b) IF NOTICES WERE SENT TO THE PARENT OR INDIAN CUSTODIAN OF THE CHILD AND TO THE INDIAN CHILD'S TRIBE, PURSUANT TO SECTION 19-1-126, THE POSTAL RECEIPTS, OR COPIES THEREOF, SHALL BE ATTACHED TO THE MOTION FOR TERMINATION AND FILED WITH THE COURT OR FILED WITHIN TEN DAYS AFTER THE FILING OF THE MOTION FOR TERMINATION, AS SPECIFIED IN SECTION 19-1-126 (1) (c).

SECTION 8. 19-5-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

19-5-103. Relinquishment procedure - petition - hearings. (1.5) (a) PURSUANT TO THE PROVISIONS OF SECTION 19-1-126, THE PETITION FOR RELINQUISHMENT SHALL:

(I) INCLUDE A STATEMENT INDICATING WHETHER THE CHILD IS AN INDIAN CHILD; AND

(II) INCLUDE THE IDENTITY OF THE INDIAN CHILD'S TRIBE, IF THE CHILD IS IDENTIFIED AS AN INDIAN CHILD.

(b) IF NOTICES WERE SENT TO THE PARENT OR INDIAN CUSTODIAN OF THE CHILD AND TO THE INDIAN CHILD'S TRIBE, PURSUANT TO SECTION 19-1-126, THE POSTAL RECEIPTS SHALL BE ATTACHED TO THE PETITION AND FILED WITH THE COURT OR FILED WITHIN TEN DAYS AFTER THE FILING OF THE PETITION, AS SPECIFIED IN SECTION 19-1-126 (1) (c).

SECTION 9. 19-5-208, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

19-5-208. Petition for adoption. (2.5) (a) PURSUANT TO THE PROVISIONS OF SECTION 19-1-126, THE PETITION FOR ADOPTION SHALL:

(I) INCLUDE A STATEMENT INDICATING WHAT CONTINUING INQUIRIES THE COUNTY DEPARTMENT OF SOCIAL SERVICES OR CHILD PLACEMENT AGENCY HAS MADE IN DETERMINING WHETHER THE CHILD WHO IS THE SUBJECT OF THE PROCEEDING IS AN INDIAN CHILD;

(II) IDENTIFY WHETHER THE CHILD IS AN INDIAN CHILD; AND

(III) INCLUDE THE IDENTITY OF THE INDIAN CHILD'S TRIBE, IF THE CHILD IS IDENTIFIED AS AN INDIAN CHILD.

(b) IF NOTICES WERE SENT TO THE PARENT OR INDIAN CUSTODIAN OF THE CHILD AND TO THE INDIAN CHILD'S TRIBE, PURSUANT TO SECTION 19-1-126, THE POSTAL RECEIPTS, OR COPIES THEREOF, SHALL BE ATTACHED TO THE PETITION FOR ADOPTION AND FILED WITH THE COURT OR FILED WITHIN TEN DAYS AFTER THE FILING OF THE PETITION FOR ADOPTION, AS SPECIFIED IN SECTION 19-1-126 (1) (c).

SECTION 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 30, 2002