



North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Jayme Davis

District 9A
601 John Street
Rolette, ND 58366-7209

jdavis@ndlegis.gov

COMMITTEES:
Human Services
Political Subdivisions

March 22, 2023

Boozhoo, Hihanni Waste', Good morning, Chairwoman Lee, Vice Chair Cleary and Senate Human Services Committee members. For the record, I am Representative Jayme Davis, I work for the people of District 9A in Rolette County which includes the International Peace Gardens, the Turtle Mountain Reservation, and south past the town of Rolette which is where I reside.

I come before you this morning to introduce House Bill 1536 which will adopt a state Indian Child Welfare Act and amend the North Dakota Century Code that currently relates to Indian child welfare.

For my testimony I'm going to start with some background information and then explain the markup 3000 version of the bill I handed out. I will then round out my testimony by answering any questions you may have.

Background: The Indian Child Welfare Act (aka ICWA) was created in 1978.

Why was ICWA created? The Indian Child Welfare Act was created in response to evidence of a high number of Indian children that were being removed from their families and being placed with non-Indian families.

Little story: in the 1960s a gentleman by the name of Bertram Hirsch was working for the Association on American Indian Affairs (AAIA). He was sent to the Spirit Lake Nation right here in North Dakota to assist in a case. This is when he recognized the alarming number of American Indian children that were being taken from their families and permanently placed in homes with white parents. Child welfare workers were forcibly removing children from family members and placing them in white homes – sometimes out of state. One grandmother was even jailed for refusing to hand over her grandchild.

Around 1969 Mr. Hirsch was deeply engaged in a nationwide data collection project for AAIA that had him contacting every foster care or adoption agency and institution he could find. He found that somewhere between 25 and 35 percent of all American Indian children had been placed in adoptive homes, foster homes or institutions. Around 90 percent of those children were being raised by non-Indians. Many would never see their biological families again.

Almost 10 years later in 1978, after conducting an audit of Mr. Hirsch's findings – twice. Congress gathered hundred of hours of testimony on the government's egregious treatment of American Indian Communities.

Part of the final report stated that, "the removal of Indian children from their natural homes and tribal settings has been and continues to be a national crisis." "That these removals were a wound for Indian families and tribes that would be torn raw with each new generation."

On October 24, 1978 in the 11th hour before Congress would come to a close – the Indian Child Welfare Act also known as ICWA was passed.

Here we are over 40 years later, and some states still don't fully understand ICWA or how we as the original people of this land - that we are more than a race, we are a political entity and as such have a government to government – to government relationship. Meaning Tribal, State, and Federal.

One judge described ICWA as the most ignored federal law in the history of this country. Which is partly why we are here today with Bill 1536. The Supreme Court currently has a case called *Brackeen v. Haaland* that questions ICWA. The ruling is said to come down sometime in June.

Knowing this many states have codified their own Indian Child Welfare Act and there are many looking to do it as we speak. Just last week Wyoming was the newest State to sign their Indian Child Welfare Act into law. A bill that was very similar to this bill 1536. I'm told Montana is on deck to do the same. Minnesota has just revamped to make their Indian Child Welfare act stronger by incorporating the recommendations of the Native Nations they share geography with and child welfare experts.

With that, the next part of my testimony today includes a request for the Senate Human Services Committee to amend HB 1536 back to the 3000 version – which is the version I've handed out.

This version includes additional edits from the Department of Health and Human Services and the ND Court System.

I have taken the liberty to go line by line – section by section – to show which part of the language in the bill is from the Federal ICWA Law and what is already in the North Dakota Century Code and finally what our Tribes recommend.

Now, I'd like to go through the markings with you quickly.

****Will Go through the markup****

I hope this helps you to identify what is already being practiced either through federal law or our own North Dakota law. The remainder is our tribal recommendations. As you will see we aren't asking for the moon. They are pretty common sense to protect our children the best we can during difficult and uncertain times and to also provide a path home should it be ever become an option.

I do want to say one last thing. This bill was created in collaboration with the five federally recognized tribes and their child welfare departments – some 30+ people, the department of health and human services, state court and passed through legislative council a couple of times.

I also want to acknowledge that as newly elected representative I didn't give the same detailed information to the House Human Services Committee. As you can see the 3000 version is a lot and I learned that if you aren't well versed it can become overwhelming. So, I failed in providing the markup to the House Human Services and believe if they were able to see in black and white just how much is already being practiced today here in North Dakota due to federal and state law – and see that the rest are recommendation from our tribes and experts in the field – the recommendation out of committee would have been different.

So that's why I ask you to amend it back to the 3000 version and ask for a DO PASS AS AMENDED recommendation out of committee.

With that I stand for questions.

Miigwech, Philámayayapi, Thank you