

2023 HOUSE HUMAN SERVICES

HB 1536

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

HB 1536
1/23/2023

Relating to adopting a state Indian child welfare act, and relating to Indian child welfare.

Chairman Weisz called the meeting to order at 10:27 AM.

Chairman Robin Weisz, Vice Chairman Matthew Ruby, Reps. Karen A. Anderson, Mike Beltz, Clayton Fegley, Kathy Frelich, Dawson Holle, Carrie McLeod, Todd Porter, Brandon Prichard, Karen M. Rohr, Jayme Davis, and Gretchen Dobervich present. Rep. Dwight Kiefert not present.

Discussion Topics:

- Culture of Indian tribes and families
- Tribe child welfare departments
- Tribal political entities
- Current Indian child welfare law
- Codification of act
- Pending ruling at the United States Supreme Court
- Community consolidation process
- Treatment of Native American citizens
- Rehabilitation of Native American individuals

Rep. Davis introduced HB 1536 with supportive testimony (#15297).

Alisha Lacount, Turtle Mountain Band of Chippewa's In House Council, spoke in support.

Scott Davis, representative of the Turtle Mountain Band of Chippewa, and former Executive Director of the ND Indian Affairs Commission, supportive testimony (#15491).

Lorraine Davis, founder, and CEO of NATIVE, Inc., supportive testimony (#15234).

Todd Ewell, Deputy Director of the North Dakota Commission on the Legal Counsel for Indigents, supportive testimony (#15497).

Carel Two Eagles, North Dakota citizen, spoke in support.

Rebecca Gray Bull, Indian Child Welfare Director for the Standing Rock and Souix Tribe, supportive testimony (#15108).

Cathy Ferderer, Juvenile Court Coordinator for the State Court Administrator's Office, supportive testimony (#14837).

Cory Pederson, Director of the Children and Family Services Section with the Department of Health and Human Services, offered testimony in support of bill and proposed an amendment (#15507).

Nathan Davis, Executive Director of Human Affairs in North Dakota, spoke in support.

Sharnell Seaboy, foster parent in ND, spoke in support.

Additional written testimony:

Carenlee Barkdull, Professor from the University of North Dakota, supportive testimony (#15016).

Harmony Bercier, Prevention Services Program Developer at the Native American Training Institute, supportive testimony (#15181).

Chairman Weisz adjourned the meeting at 11:20 AM.

Phillip Jacobs, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

HB 1536
2/13/2023

Relating to adopting a state Indian child welfare act and relating to Indian child welfare.

Chairman Weisz called the meeting to order at 4:37 PM.

Chairman Robin Weisz, Vice Chairman Matthew Ruby, Reps. Karen A. Anderson, Mike Beltz, Clayton Fegley, Kathy Frelich, Dawson Holle, Dwight Kiefert, Carrie McLeod, Todd Porter, Brandon Prichard, Karen M. Rohr, Jayme Davis, and Gretchen Dobervich. All present.

Discussion Topics:

- Committee work
- Proposed amendment.

Representative Davis explained the amendments to HB 1536. Different language changes like (Pg. 4 line 19 remove “children and youth”) (Pg. 7 line 6 change “criminal” to “delinquent”) (#15507)

Chairman Weisz adjourned the meeting at 4:50 PM.

Phillip Jacobs, Committee Clerk By: Leah Kuball

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

HB 1536
2/15/2023

Relating to adopting a state Indian child welfare act, and relating to Indian child welfare.

Chairman Weisz called the meeting to order at 5:14 PM.

Chairman Robin Weisz, Vice Chairman Matthew Ruby, Reps. Karen A. Anderson, Mike Beltz, Clayton Fegley, Kathy Frelich, Dawson Holle, Dwight Kiefert, Carrie McLeod, Todd Porter, Brandon Prichard, Karen M. Rohr, Jayme Davis, and Gretchen Dobervich. All present.

Discussion Topics:

- Committee action
- Amendment (23.0481.03004)

Representative Davis explained the amendments to HB 1536.

Cory Pederson, Director of Child Welfare Services with the Department of Health and Human Services, referred to Alisha for questioning.

Alisha Lacount, Director for United Indian Tribes Child Support, answered questions from the committee.

Cory Pederson, answered questions from the committee.

Heather Trainor, Court Improvement program coordinator for the state of North Dakota, answered questions from the committee.

Cory Pederson, answered additional questions from the committee.

Representative Prichard moved to turn bill into a study to make foster care systems better for Native American children and children on the reservations.

Seconded by Representative Kiefert.

Cory Pederson, Director of Child Welfare Services with the Department of Health and Human Services, answered questions from the committee.

Roll Call Vote:

Representatives	Vote
Representative Robin Weisz	N
Representative Matthew Ruby	N
Representative Karen A. Anderson	Y
Representative Mike Beltz	N

Representative Jayme Davis	N
Representative Gretchen Dobervich	N
Representative Clayton Fegley	N
Representative Kathy Frelich	N
Representative Dawson Holle	N
Representative Dwight Kiefert	Y
Representative Carrie McLeod	Y
Representative Todd Porter	N
Representative Brandon Prichard	Y
Representative Karen M. Rohr	Y

Motion fails 5-9-0.

Representative Porter moved to adopt amendment to HB 1536. (Subsection 19, affirmative act of through and timely- and to maintain and reunite and Indian child Etc.)

Seconded by Vice Chairman Ruby.

No action taken.

Alishia Lacount answered questions from the committee.

Representative Porter moved to adopt amendment to HB 1536. (23.0481.03004)

Seconded by Vice Chairman Ruby.

Voice Vote: Motion carries

Representative Porter moved a DO PASS as amended.

Representative Kiefert seconded motion.

Roll call vote:

Representatives	Vote
Representative Robin Weisz	Y
Representative Matthew Ruby	Y
Representative Karen A. Anderson	Y
Representative Mike Beltz	Y
Representative Jayme Davis	Y
Representative Gretchen Dobervich	Y
Representative Clayton Fegley	Y
Representative Kathy Frelich	Y
Representative Dawson Holle	Y
Representative Dwight Kiefert	Y
Representative Carrie McLeod	Y
Representative Todd Porter	Y
Representative Brandon Prichard	Y
Representative Karen M. Rohr	Y

House Human Services Committee

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Page 3

Motion carries: 14-0-0

Bill carrier: Representative Dobervich

Chairman Weisz adjourned the meeting at 6:09 PM.

Phillip Jacobs, Committee Clerk By: Leah Kuball

February 15, 2023

44
2-15-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1536

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 27-20.3-19 of the North Dakota Century Code, relating to Indian child welfare; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 27-20.3-19 of the North Dakota Century Code is created and enacted as follows:

Foster care or preadoptive placements - Criteria - Preferences.

An Indian child accepted for foster care or preadoptive placement must be placed in the least restrictive setting that most approximates a family and which meets the child's special needs, if any. The child must be placed within reasonable proximity to the child's home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference must be given, in the absence of good cause to the contrary, to a placement with:

- a. A member of the Indian child's extended family;
- b. A foster home licensed, approved, or specified by the Indian child's tribe;
- c. An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- d. An institution for children approved by an Indian tribe operated by an Indian organization which has a program suitable to meet the Indian child's needs.

SECTION 2. LEGISLATIVE MANAGEMENT STUDY. During the 2023-24 interim, the legislative management shall consider studying the implications of codifying the Indian Child Welfare Act of 1978 [25 U.S.C. 1901 et seq.]. The study must include a review of the Indian Child Welfare Act of 1978 [25 U.S.C. 1901 et seq.], section 27-20.3-19, related case law, and input from stakeholders. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1536: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1536 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 27-20.3-19 of the North Dakota Century Code, relating to Indian child welfare; and to provide for a legislative management study.

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Re-number accordingly

2023 SENATE HUMAN SERVICES

HB 1536

2023 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

HB 1536
3/22/2023

Relating to Indian child welfare; and to provide for a legislative management study.

9:02 AM **Madam Chair Lee** called the hearing to order. **Senators Lee, Cleary, Clemens, K. Roers, Hogan, Weston** were present.

Discussion Topics:

- Indian Child Welfare Act
- Indian children removed from families
- Indian children raised by non-Indian families
- Data collection
- Amendment

9:05 AM **Representative Davis** introduced HB 1536 testimony in favor #26233, 26330

9:28 AM **Donavon Foughty, Judge, Ramsey County Court**, verbally testified in favor via phone.

9:39 AM **Scott Davis, Tatanka Consulting group representing the Turtle Mountain Band of Chippewa**, in favor #26220

9:46 AM **Cory Pedersen, Children and Family Service, Department of Health and Human Services**, verbally testified in favor.

9:49 AM **Alysia LaCounte, General Counsel, Turtle Mountain Band of Chippewa Indians**, testified online in favor. #26116

9:54 AM **Nathan Davis, Executive Director, North Dakota Indian Affairs**, verbally testified in favor.

9:59 AM **Todd Ewell, Deputy Director, North Dakota Commission on Legal Counsel for Indigents**, testified in favor. #26210

10:01 AM **Representative Finley-Deville, District 4 A**, testimony in favor #26334

10:03 AM **Vince Gillette, Tribal Liaison, Three Rivers Human Services Zone, Fort Yates Office**, testified in favor. #26148, 26149, 26150

10:10 AM **Sharnell Seaboy, Field Organizer, North Dakota Native Vote**, testified in favor.
#26281

Additional Testimony:

Seth O'Neill, Attorney, CAWS North Dakota in favor #26007

Harmony Bercier, Grant Manager, Prevention Services Program Developer, North Dakota Indian Child Welfare Act Implementation Partnership – University of North Dakota in favor #26144

Jessi Leneagh, Indian Child Welfare Act Preservationist Program Coordinator, Native American Training Institute in favor #26165

Jill Doernbach – ICWA Family Preservationist, The Native American Training Institute in favor #26301

10:12 AM **Madam Chair Lee** closed the hearing.

Patricia Lahr, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

HB 1536
3/22/2023

Relating to Indian child welfare; and to provide for a legislative management study.

10:46 AM **Madam Chair Lee** called the meeting to order. **Senators Lee, Cleary, Clemens, K. Roers, Hogan, Weston** are present.

Discussion Topics:

- Amendment
- Committee action

Senator Lee calls for discussion

Senator K. Roers moved to **adopt Amendment** LC 23.0481.03000 and the study resolution LC 23.0481.04000.

Senator Weston seconded the motion.

Roll call vote.

Senators	Vote
Senator Judy Lee	Y
Senator Sean Cleary	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Kristin Roers	Y
Senator Kent Weston	Y

Motion passed 6-0-0.

Senator K. Roers moved **DO PASS** as **AMENDED**.

Senator Weston seconded the motion.

Roll call vote.

Senators	Vote
Senator Judy Lee	Y
Senator Sean Cleary	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Kristin Roers	Y
Senator Kent Weston	Y

Motion passed 6-0-0.

Senator Hogan will carry HB 1536.

10:57 AM **Madam Chair Lee** closed the meeting.

Patricia Lahr, Committee Clerk

Committee reconsidered actions on March 22, 2023 at 4:11 PM.

2023 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

HB 1536
3/22/2023

Relating to Indian child welfare; and to provide for a legislative management study.

4:11 PM **Madam Chair Lee** called the meeting to order. **Senators Lee, Cleary, Clemens, K. Roers, Hogan, Weston** were present.

Discussion Topics

- Amendment
- Study

Senator Lee calls for discussion

4:12 PM **Cory Pedersen, Children and Family Services Director, North Dakota Department of Health and Human Services**, proposed amendment. #26391

4:23 PM **Representative Davis** verbally provided information.

Senator Hogan moved to Reconsider actions.

Senator Weston seconded the Reconsider motion.

Roll call vote.

Senators	Vote
Senator Judy Lee	Y
Senator Sean Cleary	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Kristin Roers	Y
Senator Kent Weston	Y

Motion passed 6-0-0.

4:31 PM **Madam Chair Lee** closed the meeting.

Patricia Lahr, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

HB 1536
3/27/2023

Relating to Indian child welfare; and to provide for a legislative management study.

9:49 AM **Madam Chair Lee** called the meeting to order. **Senators Lee, Cleary, Clemens, K. Roers, Hogan, Weston** were present.

Discussion Topics:

- Amendment
- Committee action

9:56 AM **Corey Pedersen, Director Children and Family Services, North Dakota Health and Human Services**, provided information on previously submitted amendment # 26391.

Senator Hogan moved to further adopt amendment **#26391** and add a study resolution.
LC 23.0481.04001

Senator Weston seconded the motion.

Roll call vote.

Senators	Vote
Senator Judy Lee	Y
Senator Sean Cleary	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Kristin Roers	Y
Senator Kent Weston	Y

Motion passed 6-0-0.

Senator K. Roers DO PASS as AMENDED.

Senator Weston seconded the motion.

Roll call vote.

Senators	Vote
Senator Judy Lee	Y
Senator Sean Cleary	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Kristin Roers	Y
Senator Kent Weston	Y

Motion passed 6-0-0.

Senator Hogan will carry HB 1536.

10:06 AM **Madam Chair Lee** closed the meeting.

Patricia Lahr, Committee Clerk

March 27, 2023

Act
3-28-23

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1536

Page 1, line 1, replace "a new subsection to section 27-20.3-19" with "sections 27-20.3-19.1, 27-20.3-19.2, 27-20.3-19.3, 27-20.3-19.4, and 27-20.3-19.5"

Page 1, line 2, after the first "to" insert "adopting a state"

Page 1, line 2, after "welfare" insert "act"

Page 1, line 2, after the semicolon insert "to amend and reenact section 27-20.3-19 of the North Dakota Century Code, relating to Indian child welfare;"

Page 1, replace lines 5 through 19 with:

"SECTION 1. AMENDMENT. Section 27-20.3-19 of the North Dakota Century Code is amended and reenacted as follows:

27-20.3-19. Indian child welfare - Active efforts and procedures.

1. As used in this section and sections 27-20.3-19.1 through 27-20.3-19.5:

a. "Act" means this section and sections 27-20.3-19.2 through 27-20.3-19.5.

b. "Active efforts" means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with the Indian child's family. ~~Active efforts required of the federal Indian Child Welfare Act of 1978 [25 U.S.C. 1901 through 1963] apply or may apply, including during the verification process.~~ If an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent or parents a parent or Indian custodian ~~through~~ with the steps of a case plan ~~and with~~ including accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts are to be tailored to the facts and circumstances of the case. The term includes:

- (1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal, with ongoing timely assessment to determine when the threat is resolved and placement of the Indian child can be returned to the custodian.
- (2) Identifying appropriate services and helping ~~the parents a parent or Indian custodian~~ a parent or Indian custodian to overcome barriers, including actively assisting ~~the parents a parent or Indian custodian~~ a parent or Indian custodian in obtaining such services.
- (3) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to

the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues.

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- (4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's ~~parents~~parent or Indian custodian.
- (5) Offering and employing available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the Indian child's tribe.
- (6) Taking steps to keep siblings together, if possible.
- (7) Supporting regular visits with ~~parents~~a parent or Indian ~~eustodians~~custodian in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the Indian child.
- (8) Identifying community resources, including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's ~~parents~~parent or Indian custodian or, as appropriate, the Indian child's family, in utilizing and accessing those resources.
- (9) Monitoring progress and participation in services.
- (10) Considering alternative ways to address the needs of the Indian child's ~~parents~~parent or Indian custodian and where appropriate, the family, if the optimum services do not exist or are not available.
- (11) Providing post-reunification services and monitoring.

b-c. "Adoptive placement" means the permanent placement of an Indian child for adoption.

d. "Extended family member" means a relationship defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, means an individual who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

e-e. "Foster care or non-foster care placement" means the removal of an Indian child from the home of his or her parent or Indian custodian for temporary placement in a foster home, qualified residential treatment program, residential care center for Indian children and youth, or certified shelter care facility, in the home of a relative other than a parent or Indian custodian, or in the home of a guardian, from which placement the parent or Indian custodian cannot have the Indian child returned upon demand. The term does not include an adoptive placement, a preadoptive placement, or emergency change in placement under section 27-20.3-06 or holding an Indian child in custody.

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- f. "Indian" means an individual who is a member of an Indian tribe, or who is a native and a member of a regional corporation as defined under 43 U.S.C. 1606.
 - d-g. "Indian child" means any unmarried individual who is under the age of eighteen and is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.
 - e-h. "Indian child custody proceeding" means a proceeding brought by the state involving:
 - (1) Foster care or non-foster care placement;
 - (2) A preadoptive placement;
 - (3) An adoptive placement; or
 - (4) A termination of parental rights under section 27-20.3-20 for an Indian child.
 - i. "Indian child's tribe" means the Indian tribe in which an Indian child is a member or eligible for membership or, 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 more significant contacts.
 - f-j. "Indian custodian" means any Indian individual who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of the Indian child.
 - g-k. "Indian tribe" means an Indian tribe, band, nation, or other organized Indian group or community of Indians recognized as eligible for services provided to Indians by the United States secretary of the interior because of their status as Indians, including any Alaska native village as defined in 43 U.S.C. 1602(c).
 - h-l. "Parent" means anya biological parent ~~or parents~~ of an Indian child or anyan Indian individual who has lawfully adopted an Indian child, including adoptions under tribal law or custom. The term does not include the unwed father if paternity has not been acknowledged or established.
 - i-m. "Preadoptive placement" means the temporary placement of an Indian child in a foster home, home of a relative other than a parent or Indian custodian, or home of a guardian after a termination of parental rights but before or in lieu of an adoptive placement, but does not include an emergency change in placement under section 27-20.3-06.
 - n. "Termination of parental rights" means any action resulting in the termination of the parent-child relationship. It does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime or a placement upon award of custody to one of the Indian child's parents in a divorce proceeding.
2. Before removal of an Indian child from the custody of a parent or Indian custodian for purposes of involuntary foster care placement or the

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termination of parental rights over an Indian child, the court shall find that active efforts have been made to provide remedial services and rehabilitative services designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. The court may not order the removal unless evidence of active efforts shows there has been a vigorous and concerted level of casework beyond the level that would constitute reasonable efforts under section 27-20.3-26. Reasonable efforts may not be construed to be active efforts. Active efforts must be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts must utilize the available resources of the Indian child's extended family, tribe, tribal and other relevant social service agencies, and individual Indian caregivers.

3. The court may order the removal of the Indian child for involuntary foster care placement only if the court determines, by clear and convincing evidence, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. Evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the Indian child will result in serious emotional or physical damage to the particular Indian child who is the subject of the proceeding. Poverty, isolation, custodian age, crowded or inadequate housing, substance use, or nonconforming social behavior does not by itself constitute clear and convincing evidence of imminent serious emotional or physical damage to the Indian child. As soon as the threat has been removed and the Indian child is no longer at risk, the state should terminate the removal, by returning the Indian child to the parent while offering a solution to mitigate the situation that gave rise to the need for emergency removal and placement.
4. The court may only order the termination of parental rights over the Indian child only if the court determines, by evidence beyond a reasonable doubt that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.
5. In considering whether to involuntarily place an Indian child in foster care or to terminate the parental rights of the parent of an Indian child, the court shall require that a qualified expert witness must be qualified to testify regarding whether the Indian child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe. An individual may be designated by the Indian child's tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's tribe. If the parties stipulate in writing and the court is satisfied the stipulation is made knowingly, intelligently, and voluntarily, the court may accept a declaration or affidavit from a qualified expert witness in lieu of testimony. The court or any party may request the assistance of the Indian child's tribe or the bureau of Indian affairs office serving the Indian child's tribe in locating individuals qualified to serve as expert witnesses. The social worker regularly assigned to the Indian child may not serve as a qualified expert witness in child-custody proceedings concerning the Indian child. The

qualified expert witness should be someone familiar with the particular Indian child and have contact with the ~~parents~~parent or Indian custodian to observe interaction between the ~~parents~~parent or Indian custodian, the Indian child, and extended family members. The child welfare agency and courts should facilitate access to the family and records to facilitate accurate testimony.

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6. An emergency removal or placement of an Indian child under state law must terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the Indian child.
7. To facilitate the intent of the act, the agency, in cooperation with the Indian child's tribe of affiliation, unless a parent objects, shall take steps to enroll the Indian child in the tribe with the goal of finalizing enrollment before termination.

SECTION 2. Section 27-20.3-19.1 of the North Dakota Century Code is created and enacted as follows:

27-20.3-19.1. Indian child welfare - Jurisdiction over custody proceedings.

1. The act includes requirements that apply if an Indian child is the subject of:
 - a. A child-custody proceeding, including:
 - (1) An involuntary proceeding; and
 - (2) A voluntary proceeding that could prohibit the parent or Indian custodian from regaining custody of the Indian child upon demand.
 - b. An emergency proceeding other than:
 - (1) A tribal court proceeding; or
 - (2) A proceeding regarding a delinquent act.
 - c. An award of custody of the Indian child to one of the parents, including an award in a divorce proceeding; or
 - d. A voluntary placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a state agency, chosen for the Indian child and that does not operate to prohibit the Indian child's parent or Indian custodian from regaining custody of the Indian child upon demand.
2. If a proceeding under subsection 1 concerns an Indian child, the act applies to that proceeding. In determining whether the act applies to a proceeding, the state court may not consider factors such as the participation of a parent or the Indian child in tribal cultural, social, religious, or political activities; the relationship between the Indian child and the Indian child's parent; whether the parent ever had custody of the Indian child; or the Indian child's blood quantum.

3. If the act applies at the commencement of a proceeding, the act does not cease to apply solely because the Indian child reaches age eighteen during the pendency of the proceeding.
4. In an Indian child custody proceeding under this chapter involving an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court assigned to exercise jurisdiction under this chapter, upon the petition of the Indian child's parent, Indian custodian, or tribe, shall transfer the proceeding to the jurisdiction of the tribe unless either of the following applies:
- a. A parent of the Indian child objects to the transfer.
 - b. An Indian tribe has exclusive jurisdiction over an Indian child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe, except if that jurisdiction is otherwise vested in the state by federal law. If an Indian child is a ward of a tribal court, the Indian tribe retains exclusive jurisdiction regardless of the residence or domicile of the Indian child.
5. In an Indian child custody proceeding under this chapter involving an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court assigned to exercise jurisdiction under this chapter, upon the petition of the Indian child's parent, Indian custodian, or tribe, shall transfer the proceeding to the jurisdiction of the tribe unless any of the following apply:
- a. A parent of the Indian child objects to the transfer.
 - b. The Indian child's tribe does not have a tribal court, or the tribal court of the Indian child's tribe declines jurisdiction.
 - c. The court determines good cause exists to deny the transfer. In determining whether good cause exists to deny the transfer, the court may not consider any perceived inadequacy of the tribal social services department or the tribal court of the Indian child's tribe. The court may determine good cause exists to deny the transfer only if the person opposing the transfer shows by clear and convincing evidence that the evidence or testimony necessary to decide the case cannot be presented in tribal court without undue hardship to the parties or the witnesses and that the tribal court is unable to mitigate the hardship by making arrangements to receive the evidence or testimony by use of telephone or live audiovisual means, by hearing the evidence or testimony at a location that is convenient to the parties and witnesses, or by use of other means permissible under the tribal court's rules of evidence.
6. An Indian child's tribe may intervene at any point in an Indian child custody proceeding.
7. The state shall give full faith and credit to the public acts, records, and judicial proceedings of an Indian tribe which are applicable to an Indian child custody proceeding to the same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other governmental entity.

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SECTION 3. Section 27-20.3-19.2 of the North Dakota Century Code is created and enacted as follows:

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27-20.3-19.2. Indian child welfare - Court proceedings.

1. In a proceeding involving the foster care or non-foster care placement of or termination of parental rights to an Indian child whom the court knows or has reason to know may be an Indian child, the party seeking the foster care or non-foster care placement or termination of parental rights, for the first hearing of the proceeding, shall notify the Indian child's parent, Indian custodian, and tribe, by registered mail, return receipt requested, of the pending proceeding and of the parties' right to intervene in the proceeding and shall file the return receipt with the court. Notice of subsequent hearings in a proceeding must be in writing and may be given by mail, personal delivery, facsimile transmission, or electronic mail. If the identity or location of the Indian child's parent, Indian custodian, or tribe cannot be determined, that notice shall be given to the United States secretary of the interior in like manner. The first hearing in the proceeding may not be held until at least ten days after receipt of the notice by the parent, Indian custodian, and tribe or at least fifteen days after receipt of the notice by the United States secretary of the interior. On request of the parent, Indian custodian, or tribe, the court shall grant a continuance of up to twenty additional days to enable the requester to prepare for that hearing.
2. Each party to a child custody proceeding of an Indian child has the right to examine all reports or other documents filed with the court upon which a decision with respect to the out-of-home care placement, termination of parental rights, or return of custody may be based.

SECTION 4. Section 27-20.3-19.3 of the North Dakota Century Code is created and enacted as follows:

27-20.3-19.3. Indian child welfare - Voluntary proceedings - Consent - Withdrawal.

1. A voluntary consent by a parent or Indian custodian to a foster care or non-foster care placement of an Indian child is not valid unless the consent or delegation is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent or delegation were fully explained in detail to and were fully understood by the parent or Indian custodian. The judge also shall certify the parent or Indian custodian fully understood the explanation in English or that the explanation was interpreted into a language the parent or Indian custodian understood. Any consent or delegation of powers given under this subsection before or within ten days after the birth of the Indian child is not valid. A parent or Indian custodian who has executed a consent or delegation of powers under this subsection may withdraw the consent or delegation for any reason at any time, and the Indian child must be returned to the parent or Indian custodian. A parent or Indian custodian who has executed a consent or delegation of powers under this subsection also may move to invalidate the out-of-home care placement.

2. A voluntary consent by a parent to a termination of parental rights under subdivision d of section 27-20.3-20 is not valid unless the consent is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent were fully explained in detail to and were fully understood by the parent. The judge also shall certify the parent fully understood the explanation in English or that the explanation was interpreted into a language that the parent understood. Consent given under this subsection before or within ten days after the birth of the Indian child is not valid. A parent who has executed a consent under this subsection may withdraw the consent for any reason at any time before the entry of a final order terminating parental rights, and the Indian child must be returned to the Indian child's parent.

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SECTION 5. Section 27-20.3-19.4 of the North Dakota Century Code is created and enacted as follows:

27-20.3-19.4. Indian child welfare - Placements preferences.

1. Subject to subsections 3 and 4, in placing an Indian child for adoption or in delegating powers, as described in a lawful executed power of attorney regarding an Indian child, preference must be given, in the absence of good cause, as described in subsection 6, to the contrary, to a placement with or delegation to one of the following, in the order of preference listed:
 - a. An extended family member of the Indian child;
 - b. Another member of the Indian child's tribe;
 - c. Another Indian family with whom the Indian child has a relationship or an Indian family from a tribe that is culturally similar to or linguistically connected to the Indian child's tribe; or
 - d. The tribe's statutory adopted placement preferences.

2. An Indian child who is accepted for a foster care or non-foster care placement or a preadoptive placement must be placed in the least restrictive setting that most approximates a family that meets the Indian child's special needs, if any, and which is within reasonable proximity to the Indian child's home, taking into account those special needs. Subject to subsections 4 and 6, in placing an Indian child in a foster care or non-foster care placement or a preadoptive placement, preference must be given, in the absence of good cause, as described in subsection 6, to the contrary, to a placement in one of the following, in the order of preference listed:
 - a. The home of an extended family member of the Indian child;
 - b. A foster home licensed, approved, or specified by the Indian child's tribe;
 - c. An Indian foster home licensed or approved by the department; or
 - d. A qualified residential treatment facility or residential care center for children and youth approved by an Indian tribe or operated by an

Indian organization that has a program suitable to meet the needs of the Indian child.

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3. An Indian child who is the subject of an emergency removal or placement under a child custody determination under section 27-20.3-06 must be placed in compliance with foster care or non-foster care placement or preadoptive placement preferences, unless the person responsible for determining the placement finds good cause, as described in subsection 6, for departing from the order of placement preference under subsection 2 or finds that emergency conditions necessitate departing from that order. When the reason for departing from that order is resolved, the Indian child must be placed in compliance with the order of placement preference under subsection 2.
4. In placing an Indian child under subsections 1 and 2 regarding an Indian child under subsection 1, if the Indian child's tribe has established, by resolution, an order of preference that is different from the order specified in subsection 1 or 2, the order of preference established by that tribe must be followed, in the absence of good cause, as described in subsection 6, to the contrary, so long as the placement under subsection 1 is appropriate for the Indian child's special needs, if any, and the placement under subsection 2 is the least restrictive setting appropriate for the Indian child's needs as specified in subsection 2.
5. The standards to be applied in meeting the placement preference requirements of this subsection must be the prevailing social and cultural standards of the Indian community in which the Indian child's parent, Indian custodian, or extended family members reside or with which the Indian child's parent, Indian custodian, or extended family members maintain social and cultural ties.
6.
 - a. If a party asserts that good cause not to follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child-custody proceeding and the court.
 - b. The party seeking departure from the placement preferences bears the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences.
 - c. A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and must be based on one or more of the following considerations:
 - (1) The request of the Indian child's parent, if they attest that they have reviewed the placement options, if any, that comply with the order of preference.
 - (2) The request of the Indian child, if the Indian child is of sufficient age and capacity to understand the decision being made.
 - (3) The presence of a sibling attachment that can be maintained only through a particular placement.
 - (4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be

unavailable in the community where families who meet the placement preferences live.

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- (5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent, Indian custodian, or extended family resides or with which the Indian child's parent, Indian custodian, or extended family members maintain social and cultural ties.
- d. A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.
- e. A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a nonpreferred placement that was made in violation of the act.
- f. The burden of establishing good cause to depart from the order of placement preference is on the party requesting that departure.
7. The department or a child welfare agency shall maintain a record of each adoptive placement, foster care or non-foster care placement, preadoptive placement, and delegation of powers, made of an Indian child, evidencing the efforts made to comply with the placement preference requirements specified in this section, and shall make that record available at any time on the request of the United States secretary of the interior or the Indian child's tribe.

SECTION 6. Section 27-20.3-19.5 of the North Dakota Century Code is created and enacted as follows:

27-20.3-19.5. Adoptee information.

1. The state court entering a final adoption decree or order in any voluntary or involuntary Indian child adoptive placement must furnish a copy of the decree or order within thirty days to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849 C Street NW, Mail Stop 3645 MIB, Washington, DC 20240, along with the following information, in an envelope marked "Confidential":
 - a. The birth name and birth date of the Indian child, and tribal affiliation and name of the Indian child after adoption;
 - b. The names and addresses of the biological parents;
 - c. The names and addresses of the adoptive parents;
 - d. The name and contact information for any agency having files or information relating to the adoption;
 - e. Any affidavit signed by the biological parent or parents requesting the parent's identity remain confidential; and

f. Any information relating to tribal membership or eligibility for tribal membership of the adopted Indian child.

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2. The court shall give the birth parent of the Indian child the opportunity to file an affidavit indicating that the birth parent wishes the United States secretary of the interior to maintain the confidentiality of the birth parent's identity. If the birth parent files that affidavit, the court shall include the affidavit with the information provided to the United States secretary of the interior under subsection 1, and that secretary shall maintain the confidentiality of the birth parent's identity."

Page 1, line 20, after "**STUDY**" insert "**- INDIAN CHILD WELFARE**"

Page 1, line 21, remove "implications of codifying the Indian Child"

Page 1, line 22, replace "Welfare Act of 1978 [25 U.S.C. 1901 et seq.]" with "implementation of sections 27-20.3-19 through 27-20.3-19.5"

Page 1, line 22, remove "the Indian"

Page 1, line 23, replace "Child Welfare Act of 1978 [25 U.S.C. 1901 et seq.], section 27-20.3-19," with "federal statutes related to Indian child welfare,"

Page 1, line 23, replace "related" with "relevant"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1536, as engrossed: Human Services Committee (Sen. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1536 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 1, replace "a new subsection to section 27-20.3-19" with "sections 27-20.3-19.1, 27-20.3-19.2, 27-20.3-19.3, 27-20.3-19.4, and 27-20.3-19.5"

Page 1, line 2, after the first "to" insert "adopting a state"

Page 1, line 2, after "welfare" insert "act"

Page 1, line 2, after the semicolon insert "to amend and reenact section 27-20.3-19 of the North Dakota Century Code, relating to Indian child welfare;"

Page 1, replace lines 5 through 19 with:

"SECTION 1. AMENDMENT. Section 27-20.3-19 of the North Dakota Century Code is amended and reenacted as follows:

27-20.3-19. Indian child welfare - Active efforts and procedures.

1. As used in this section and sections 27-20.3-19.1 through 27-20.3-19.5:
 - a. "Act" means this section and sections 27-20.3-19.2 through 27-20.3-19.5.
 - b. "Active efforts" means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with the Indian child's family. Active efforts required of the federal Indian Child Welfare Act of 1978 [25 U.S.C. 1901 through 1963] apply or may apply, including during the verification process. If an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent or parents a parent or Indian custodian through with the steps of a case plan and with including accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts are to be tailored to the facts and circumstances of the case. The term includes:
 - (1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal, with ongoing timely assessment to determine when the threat is resolved and placement of the Indian child can be returned to the custodian.
 - (2) Identifying appropriate services and helping the parents a parent or Indian custodian to overcome barriers, including actively assisting the parents a parent or Indian custodian in obtaining such services.
 - (3) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues.

- (4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's ~~parents~~parent or Indian custodian.
 - (5) Offering and employing available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the Indian child's tribe.
 - (6) Taking steps to keep siblings together, if possible.
 - (7) Supporting regular visits with ~~parents~~a parent or Indian ~~custodians~~custodian in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the Indian child.
 - (8) Identifying community resources, including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's ~~parents~~parent or Indian custodian or, as appropriate, the Indian child's family, in utilizing and accessing those resources.
 - (9) Monitoring progress and participation in services.
 - (10) Considering alternative ways to address the needs of the Indian child's ~~parents~~parent or Indian custodian and where appropriate, the family, if the optimum services do not exist or are not available.
 - (11) Providing post-reunification services and monitoring.
- b-c. "Adoptive placement" means the permanent placement of an Indian child for adoption.
- d. "Extended family member" means a relationship defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, means an individual who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.
- e-e. "Foster care or non-foster care placement" means the removal of an Indian child from the home of his or her parent or Indian custodian for temporary placement in a foster home, qualified residential treatment program, residential care center for Indian children and youth, or certified shelter care facility, in the home of a relative other than a parent or Indian custodian, or in the home of a guardian, from which placement the parent or Indian custodian cannot have the Indian child returned upon demand. The term does not include an adoptive placement, a preadoptive placement, or emergency change in placement under section 27-20.3-06 or holding an Indian child in custody.
- f. "Indian" means an individual who is a member of an Indian tribe, or who is a native and a member of a regional corporation as defined under 43 U.S.C. 1606.

- d-g. "Indian child" means any unmarried individual who is under the age of eighteen and is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.
- e-h. "Indian child custody proceeding" means a proceeding brought by the state involving:
- (1) Foster care or non-foster care placement;
 - (2) A preadoptive placement;
 - (3) An adoptive placement; or
 - (4) A termination of parental rights under section 27-20.3-20 for an Indian child.
- i. "Indian child's tribe" means the Indian tribe in which an Indian child is a member or eligible for membership or, 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 more significant contacts.
- f-j. "Indian custodian" means any Indian individual who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of the Indian child.
- g-k. "Indian tribe" means an Indian tribe, band, nation, or other organized Indian group or community of Indians recognized as eligible for services provided to Indians by the United States secretary of the interior because of their status as Indians, including any Alaska native village as defined in 43 U.S.C. 1602(c).
- h-l. "Parent" means ~~any~~ any biological parent ~~or parents~~ of an Indian child or any Indian individual who has lawfully adopted an Indian child, including adoptions under tribal law or custom. The term does not include the unwed father if paternity has not been acknowledged or established.
- i-m. "Preadoptive placement" means the temporary placement of an Indian child in a foster home, home of a relative other than a parent or Indian custodian, or home of a guardian after a termination of parental rights but before or in lieu of an adoptive placement, but does not include an emergency change in placement under section 27-20.3-06.
- n. "Termination of parental rights" means any action resulting in the termination of the parent-child relationship. It does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime or a placement upon award of custody to one of the Indian child's parents in a divorce proceeding.
2. Before removal of an Indian child from the custody of a parent or Indian custodian for purposes of involuntary foster care placement or the termination of parental rights over an Indian child, the court shall find that active efforts have been made to provide remedial services and rehabilitative services designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. The court may not order the removal unless evidence of active efforts shows there has been a vigorous and concerted level of casework beyond the level that

would constitute reasonable efforts under section 27-20.3-26.

Reasonable efforts may not be construed to be active efforts. Active efforts must be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts must utilize the available resources of the Indian child's extended family, tribe, tribal and other relevant social service agencies, and individual Indian caregivers.

3. The court may order the removal of the Indian child for involuntary foster care placement only if the court determines, by clear and convincing evidence, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. Evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the Indian child will result in serious emotional or physical damage to the particular Indian child who is the subject of the proceeding. Poverty, isolation, custodian age, crowded or inadequate housing, substance use, or nonconforming social behavior does not by itself constitute clear and convincing evidence of imminent serious emotional or physical damage to the Indian child. As soon as the threat has been removed and the Indian child is no longer at risk, the state should terminate the removal, by returning the Indian child to the parent while offering a solution to mitigate the situation that gave rise to the need for emergency removal and placement.
4. The court may only order the termination of parental rights over the Indian child only if the court determines, by evidence beyond a reasonable doubt that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.
5. In considering whether to involuntarily place an Indian child in foster care or to terminate the parental rights of the parent of an Indian child, the court shall require that a qualified expert witness must be qualified to testify regarding whether the Indian child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe. An individual may be designated by the Indian child's tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's tribe. If the parties stipulate in writing and the court is satisfied the stipulation is made knowingly, intelligently, and voluntarily, the court may accept a declaration or affidavit from a qualified expert witness in lieu of testimony. The court or any party may request the assistance of the Indian child's tribe or the bureau of Indian affairs office serving the Indian child's tribe in locating individuals qualified to serve as expert witnesses. The social worker regularly assigned to the Indian child may not serve as a qualified expert witness in child-custody proceedings concerning the Indian child. The qualified expert witness should be someone familiar with the particular Indian child and have contact with the parentsparent or Indian custodian to observe interaction between the parentsparent or Indian custodian, the Indian child, and extended family members. The child welfare agency and courts should facilitate access to the family and records to facilitate accurate testimony.
6. An emergency removal or placement of an Indian child under state law must terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the Indian child.

7. To facilitate the intent of the act, the agency, in cooperation with the Indian child's tribe of affiliation, unless a parent objects, shall take steps to enroll the Indian child in the tribe with the goal of finalizing enrollment before termination.

SECTION 2. Section 27-20.3-19.1 of the North Dakota Century Code is created and enacted as follows:

27-20.3-19.1. Indian child welfare - Jurisdiction over custody proceedings.

1. The act includes requirements that apply if an Indian child is the subject of:
 - a. A child-custody proceeding, including:
 - (1) An involuntary proceeding; and
 - (2) A voluntary proceeding that could prohibit the parent or Indian custodian from regaining custody of the Indian child upon demand.
 - b. An emergency proceeding other than:
 - (1) A tribal court proceeding; or
 - (2) A proceeding regarding a delinquent act.
 - c. An award of custody of the Indian child to one of the parents, including an award in a divorce proceeding; or
 - d. A voluntary placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a state agency, chosen for the Indian child and that does not operate to prohibit the Indian child's parent or Indian custodian from regaining custody of the Indian child upon demand.
2. If a proceeding under subsection 1 concerns an Indian child, the act applies to that proceeding. In determining whether the act applies to a proceeding, the state court may not consider factors such as the participation of a parent or the Indian child in tribal cultural, social, religious, or political activities; the relationship between the Indian child and the Indian child's parent; whether the parent ever had custody of the Indian child; or the Indian child's blood quantum.
3. If the act applies at the commencement of a proceeding, the act does not cease to apply solely because the Indian child reaches age eighteen during the pendency of the proceeding.
4. In an Indian child custody proceeding under this chapter involving an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court assigned to exercise jurisdiction under this chapter, upon the petition of the Indian child's parent, Indian custodian, or tribe, shall transfer the proceeding to the jurisdiction of the tribe unless either of the following applies:
 - a. A parent of the Indian child objects to the transfer.
 - b. An Indian tribe has exclusive jurisdiction over an Indian child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe, except if that jurisdiction is

otherwise vested in the state by federal law. If an Indian child is a ward of a tribal court, the Indian tribe retains exclusive jurisdiction regardless of the residence or domicile of the Indian child.

5. In an Indian child custody proceeding under this chapter involving an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court assigned to exercise jurisdiction under this chapter, upon the petition of the Indian child's parent, Indian custodian, or tribe, shall transfer the proceeding to the jurisdiction of the tribe unless any of the following apply:
 - a. A parent of the Indian child objects to the transfer.
 - b. The Indian child's tribe does not have a tribal court, or the tribal court of the Indian child's tribe declines jurisdiction.
 - c. The court determines good cause exists to deny the transfer. In determining whether good cause exists to deny the transfer, the court may not consider any perceived inadequacy of the tribal social services department or the tribal court of the Indian child's tribe. The court may determine good cause exists to deny the transfer only if the person opposing the transfer shows by clear and convincing evidence that the evidence or testimony necessary to decide the case cannot be presented in tribal court without undue hardship to the parties or the witnesses and that the tribal court is unable to mitigate the hardship by making arrangements to receive the evidence or testimony by use of telephone or live audiovisual means, by hearing the evidence or testimony at a location that is convenient to the parties and witnesses, or by use of other means permissible under the tribal court's rules of evidence.
6. An Indian child's tribe may intervene at any point in an Indian child custody proceeding.
7. The state shall give full faith and credit to the public acts, records, and judicial proceedings of an Indian tribe which are applicable to an Indian child custody proceeding to the same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other governmental entity.

SECTION 3. Section 27-20.3-19.2 of the North Dakota Century Code is created and enacted as follows:

27-20.3-19.2. Indian child welfare - Court proceedings.

1. In a proceeding involving the foster care or non-foster care placement of or termination of parental rights to an Indian child whom the court knows or has reason to know may be an Indian child, the party seeking the foster care or non-foster care placement or termination of parental rights, for the first hearing of the proceeding, shall notify the Indian child's parent, Indian custodian, and tribe, by registered mail, return receipt requested, of the pending proceeding and of the parties' right to intervene in the proceeding and shall file the return receipt with the court. Notice of subsequent hearings in a proceeding must be in writing and may be given by mail, personal delivery, facsimile transmission, or electronic mail. If the identity or location of the Indian child's parent, Indian custodian, or tribe cannot be determined, that notice shall be given to the United States secretary of the interior in like manner. The first hearing in the proceeding may not be held until at least ten days after receipt of the notice by the parent, Indian custodian, and tribe or at least fifteen days after receipt of the notice by the United States secretary of

the interior. On request of the parent, Indian custodian, or tribe, the court shall grant a continuance of up to twenty additional days to enable the requester to prepare for that hearing.

2. Each party to a child custody proceeding of an Indian child has the right to examine all reports or other documents filed with the court upon which a decision with respect to the out-of-home care placement, termination of parental rights, or return of custody may be based.

SECTION 4. Section 27-20.3-19.3 of the North Dakota Century Code is created and enacted as follows:

27-20.3-19.3. Indian child welfare - Voluntary proceedings - Consent - Withdrawal.

1. A voluntary consent by a parent or Indian custodian to a foster care or non-foster care placement of an Indian child is not valid unless the consent or delegation is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent or delegation were fully explained in detail to and were fully understood by the parent or Indian custodian. The judge also shall certify the parent or Indian custodian fully understood the explanation in English or that the explanation was interpreted into a language the parent or Indian custodian understood. Any consent or delegation of powers given under this subsection before or within ten days after the birth of the Indian child is not valid. A parent or Indian custodian who has executed a consent or delegation of powers under this subsection may withdraw the consent or delegation for any reason at any time, and the Indian child must be returned to the parent or Indian custodian. A parent or Indian custodian who has executed a consent or delegation of powers under this subsection also may move to invalidate the out-of-home care placement.
2. A voluntary consent by a parent to a termination of parental rights under subdivision d of section 27-20.3-20 is not valid unless the consent is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent were fully explained in detail to and were fully understood by the parent. The judge also shall certify the parent fully understood the explanation in English or that the explanation was interpreted into a language that the parent understood. Consent given under this subsection before or within ten days after the birth of the Indian child is not valid. A parent who has executed a consent under this subsection may withdraw the consent for any reason at any time before the entry of a final order terminating parental rights, and the Indian child must be returned to the Indian child's parent.

SECTION 5. Section 27-20.3-19.4 of the North Dakota Century Code is created and enacted as follows:

27-20.3-19.4. Indian child welfare - Placements preferences.

1. Subject to subsections 3 and 4, in placing an Indian child for adoption or in delegating powers, as described in a lawful executed power of attorney regarding an Indian child, preference must be given, in the absence of good cause, as described in subsection 6, to the contrary, to a placement with or delegation to one of the following, in the order of preference listed:
 - a. An extended family member of the Indian child;

- b. Another member of the Indian child's tribe;
 - c. Another Indian family with whom the Indian child has a relationship or an Indian family from a tribe that is culturally similar to or linguistically connected to the Indian child's tribe; or
 - d. The tribe's statutory adopted placement preferences.
2. An Indian child who is accepted for a foster care or non-foster care placement or a preadoptive placement must be placed in the least restrictive setting that most approximates a family that meets the Indian child's special needs, if any, and which is within reasonable proximity to the Indian child's home, taking into account those special needs. Subject to subsections 4 and 6, in placing an Indian child in a foster care or non-foster care placement or a preadoptive placement, preference must be given, in the absence of good cause, as described in subsection 6, to the contrary, to a placement in one of the following, in the order of preference listed:
 - a. The home of an extended family member of the Indian child;
 - b. A foster home licensed, approved, or specified by the Indian child's tribe;
 - c. An Indian foster home licensed or approved by the department; or
 - d. A qualified residential treatment facility or residential care center for children and youth approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the needs of the Indian child.
3. An Indian child who is the subject of an emergency removal or placement under a child custody determination under section 27-20.3-06 must be placed in compliance with foster care or non-foster care placement or preadoptive placement preferences, unless the person responsible for determining the placement finds good cause, as described in subsection 6, for departing from the order of placement preference under subsection 2 or finds that emergency conditions necessitate departing from that order. When the reason for departing from that order is resolved, the Indian child must be placed in compliance with the order of placement preference under subsection 2.
4. In placing an Indian child under subsections 1 and 2 regarding an Indian child under subsection 1, if the Indian child's tribe has established, by resolution, an order of preference that is different from the order specified in subsection 1 or 2, the order of preference established by that tribe must be followed, in the absence of good cause, as described in subsection 6, to the contrary, so long as the placement under subsection 1 is appropriate for the Indian child's special needs, if any, and the placement under subsection 2 is the least restrictive setting appropriate for the Indian child's needs as specified in subsection 2.
5. The standards to be applied in meeting the placement preference requirements of this subsection must be the prevailing social and cultural standards of the Indian community in which the Indian child's parent, Indian custodian, or extended family members reside or with which the Indian child's parent, Indian custodian, or extended family members maintain social and cultural ties.
6.
 - a. If a party asserts that good cause not to follow the placement preferences exists, the reasons for that belief or assertion must be

- stated orally on the record or provided in writing to the parties to the child-custody proceeding and the court.
- b. The party seeking departure from the placement preferences bears the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences.
 - c. A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and must be based on one or more of the following considerations:
 - (1) The request of the Indian child's parent, if they attest that they have reviewed the placement options, if any, that comply with the order of preference.
 - (2) The request of the Indian child, if the Indian child is of sufficient age and capacity to understand the decision being made.
 - (3) The presence of a sibling attachment that can be maintained only through a particular placement.
 - (4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.
 - (5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent, Indian custodian, or extended family resides or with which the Indian child's parent, Indian custodian, or extended family members maintain social and cultural ties.
 - d. A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.
 - e. A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a nonpreferred placement that was made in violation of the act.
 - f. The burden of establishing good cause to depart from the order of placement preference is on the party requesting that departure.
7. The department or a child welfare agency shall maintain a record of each adoptive placement, foster care or non-foster care placement, preadoptive placement, and delegation of powers, made of an Indian child, evidencing the efforts made to comply with the placement preference requirements specified in this section, and shall make that record available at any time on the request of the United States secretary of the interior or the Indian child's tribe.

SECTION 6. Section 27-20.3-19.5 of the North Dakota Century Code is created and enacted as follows:

27-20.3-19.5. Adoptee information.

1. The state court entering a final adoption decree or order in any voluntary or involuntary Indian child adoptive placement must furnish a copy of the decree or order within thirty days to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849 C Street NW, Mail Stop 3645 MIB, Washington, DC 20240, along with the following information, in an envelope marked "Confidential":
 - a. The birth name and birth date of the Indian child, and tribal affiliation and name of the Indian child after adoption;
 - b. The names and addresses of the biological parents;
 - c. The names and addresses of the adoptive parents;
 - d. The name and contact information for any agency having files or information relating to the adoption;
 - e. Any affidavit signed by the biological parent or parents requesting the parent's identity remain confidential; and
 - f. Any information relating to tribal membership or eligibility for tribal membership of the adopted Indian child.
2. The court shall give the birth parent of the Indian child the opportunity to file an affidavit indicating that the birth parent wishes the United States secretary of the interior to maintain the confidentiality of the birth parent's identity. If the birth parent files that affidavit, the court shall include the affidavit with the information provided to the United States secretary of the interior under subsection 1, and that secretary shall maintain the confidentiality of the birth parent's identity."

Page 1, line 20, after "**STUDY**" insert "**- INDIAN CHILD WELFARE**"

Page 1, line 21, remove "implications of codifying the Indian Child"

Page 1, line 22, replace "Welfare Act of 1978 [25 U.S.C. 1901 et seq.]" with "implementation of sections 27-20.3-19 through 27-20.3-19.5"

Page 1, line 22, remove "the Indian"

Page 1, line 23, replace "Child Welfare Act of 1978 [25 U.S.C. 1901 et seq.], section 27-20.3-19," with "federal statutes related to Indian child welfare,"

Page 1, line 23, replace "related" with "relevant"

Renumber accordingly

2023 CONFERENCE COMMITTEE

HB 1536

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Pioneer Room, State Capitol

HB 1536
4/19/2023
Conference Committee

Relating to adopting a state Indian child welfare act and to provide for a legislative management study.
--

Chairman Fegley called the meeting to order at 11:30 AM.

Chairman Clayton Fegley, Reps. Carrie McLeod, Jayme Davis, Madam Chair Judy Lee, Sens. Kent Weston, and Kathy Hogan.

Discussion Topics:

- Amendments
- Easier reference

Chairman Fegley called for a discussion on HB 1536.

Rep. Davis proposed an amendment to HB 1536, and moved that the Senate recede from its amendments and amend as follows. Amendment intends to combine both the language of amendments from the Senate and the language from the House amendments and the original bill.

Seconded by Sen. Hogan.

Motion carries 6-0-0.

Carried by Sen. Hogan in the Senate.

Carried Rep. Fegley in the House.

Chairman Fegley adjourned the meeting at 11:34 AM.

Phillip Jacobs, Committee Clerk

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1536

That the Senate recede from its amendments as printed on pages 1432-1441 of the House Journal and pages 1184-1193 of the Senate Journal and that Engrossed House Bill No. 1536 be amended as follows:

Page 1, line 1, replace "a new subsection to section 27-20.3-19" with "chapter 27-19.1"

Page 1, line 2, after the semicolon insert "to amend and reenact section 27-20.3-18 of the North Dakota Century Code, relating to reasonable efforts to prevent removal; to repeal section 27-20.3-19 of the North Dakota Century Code, relating to Indian child welfare;"

Page 1, replace lines 5 through 19 with:

"SECTION 1. Chapter 27-19.1 of the North Dakota Century Code is created and enacted as follows:

27-19.1-01. Indian child welfare - Active efforts and procedures.

1. As used in this chapter, unless context requires otherwise:
 - a. "Active efforts" means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with the Indian child's family. If an agency is involved in the child custody proceeding, active efforts must involve assisting the parent or a parent or Indian custodian with the steps of a case plan and including accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts are to be tailored to the facts and circumstances of the case. The term includes:
 - (1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal, with ongoing timely assessment to determine when the threat is resolved and placement of the Indian child can be returned to the custodian.
 - (2) Identifying appropriate services and helping a parent or Indian custodian to overcome barriers, including actively assisting a parent or Indian custodian in obtaining such services.
 - (3) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues.
 - (4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and

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consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parent or Indian custodian.

- (5) Offering and employing available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the Indian child's tribe.
 - (6) Taking steps to keep siblings together, if possible.
 - (7) Supporting regular visits with a parent or Indian custodian in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the Indian child.
 - (8) Identifying community resources, including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parent or Indian custodian or, as appropriate, the Indian child's family, in utilizing and accessing those resources.
 - (9) Monitoring progress and participation in services.
 - (10) Considering alternative ways to address the needs of the Indian child's parent or Indian custodian and where appropriate, the family, if the optimum services do not exist or are not available.
 - (11) Providing post-reunification services and monitoring.
- b. "Adoptive placement" means the permanent placement of an Indian child for adoption.
 - c. "Extended family member" means a relationship defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, means an individual who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.
 - d. "Foster care or nonfoster care placement" means the removal of an Indian child from the home of his or her parent or Indian custodian for temporary placement in a foster home, qualified residential treatment program, residential care center for Indian children and youth, or certified shelter care facility, in the home of a relative other than a parent or Indian custodian, or in the home of a guardian, from which placement the parent or Indian custodian cannot have the Indian child returned upon demand. The term does not include an adoptive placement, a preadoptive placement, and emergency change in placement under section 27-20.3-06 or holding an Indian child in custody.
 - e. "Indian" means an individual who is a member of an Indian tribe, or who is a native and a member of a regional corporation as defined under 43 U.S.C. 1606.

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- f. "Indian child" means any unmarried individual who is under the age of eighteen and is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.
 - g. "Indian child custody proceeding" means a proceeding brought by the state involving:
 - (1) Foster care or nonfoster care placement;
 - (2) A preadoptive placement;
 - (3) An adoptive placement; or
 - (4) A termination of parental rights under section 27-20.3-20 for an Indian child.
 - h. "Indian child's tribe" means the Indian tribe in which an Indian child is a member or eligible for membership or, 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 more significant contacts.
 - i. "Indian custodian" means any Indian individual who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of the Indian child.
 - j. "Indian tribe" means an Indian tribe, band, nation, or other organized Indian group or community of Indians recognized as eligible for services provided to Indians by the United States secretary of the interior because of their status as Indians, including any Alaska native village as defined in 43 U.S.C. 1602(c).
 - k. "Parent" means a biological parent or parents of an Indian child or an Indian individual who has lawfully adopted an Indian child, including adoptions under tribal law or custom. The term does not include the unwed father if paternity has not been acknowledged or established.
 - l. "Preadoptive placement" means the temporary placement of an Indian child in a foster home, home of a relative other than a parent or Indian custodian, or home of a guardian after a termination of parental rights but before or in lieu of an adoptive placement, but does not include an emergency change in placement under section 27-20.3-06.
 - m. "Termination of parental rights" means any action resulting in the termination of the parent-child relationship. It does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime or a placement upon award of custody to one of the Indian child's parents in a divorce proceeding.
2. Before removal of an Indian child from the custody of a parent or Indian custodian for purposes of involuntary foster care placement or the termination of parental rights over an Indian child, the court shall find that active efforts have been made to provide remedial services and rehabilitative services designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. The court may not order

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the removal unless evidence of active efforts shows there has been a vigorous and concerted level of casework beyond the level that would constitute reasonable efforts under section 27-20.3-26. Reasonable efforts may not be construed to be active efforts. Active efforts must be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts must utilize the available resources of the Indian child's extended family, tribe, tribal and other relevant social service agencies, and individual Indian caregivers.

3. The court may order the removal of the Indian child for involuntary foster care placement only if the court determines, by clear and convincing evidence, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. Evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the Indian child will result in serious emotional or physical damage to the particular Indian child who is the subject of the proceeding. Poverty, isolation, custodian age, crowded or inadequate housing, substance use, or nonconforming social behavior does not by itself constitute clear and convincing evidence of imminent serious emotional or physical damage to the Indian child. As soon as the threat has been removed and the Indian child is no longer at risk, the state should terminate the removal, by returning the Indian child to the parent or Indian custodian while offering a solution to mitigate the situation that gave rise to the need for emergency removal and placement.
4. The court may order the termination of parental rights over the Indian child only if the court determines, by evidence beyond a reasonable doubt that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.
5. In considering whether to involuntarily place an Indian child in foster care or to terminate the parental rights of the parent of an Indian child, the court shall require that a qualified expert witness must be qualified to testify regarding whether the Indian child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe. An individual may be designated by the Indian child's tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's tribe. If the parties stipulate in writing and the court is satisfied the stipulation is made knowingly, intelligently, and voluntarily, the court may accept a declaration or affidavit from a qualified expert witness in lieu of testimony. The court or any party may request the assistance of the Indian child's tribe or the bureau of Indian affairs office serving the Indian child's tribe in locating individuals qualified to serve as expert witnesses. The social worker regularly assigned to the Indian child may not serve as a qualified expert witness in child custody proceedings concerning the Indian child. The qualified expert witness should be someone familiar with the particular Indian child and have contact with the parent or Indian custodian to observe interaction between the parent or Indian custodian, Indian child, and extended family members. The child welfare agency and courts should facilitate access to the family and records to facilitate accurate testimony.

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6. An emergency removal or placement of an Indian child under state law must terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the Indian child.
7. To facilitate the intent of this chapter, the agency, in cooperation with the Indian child's tribe of affiliation, unless a parent objects, shall take steps to enroll the Indian child in the tribe with the goal of finalizing enrollment before termination.

27-19.1-02. Indian child welfare - Jurisdiction over custody proceedings.

1. This chapter includes requirements that apply if an Indian child is the subject of:
 - a. A child custody proceeding, including:
 - (1) An involuntary proceeding; and
 - (2) A voluntary proceeding that could prohibit the parent or Indian custodian from regaining custody of the Indian child upon demand;
 - b. An emergency proceeding other than:
 - (1) A tribal court proceeding; or
 - (2) A proceeding regarding a delinquent act;
 - c. An award of custody of the Indian child to one of the parents, including an award in a divorce proceeding; or
 - d. A voluntary placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a state agency, chosen for the Indian child and that does not operate to prohibit the Indian child's parent or Indian custodian from regaining custody of the Indian child upon demand.
2. If a proceeding under subsection 1 concerns an Indian child, this chapter applies to that proceeding. In determining whether this chapter applies to a proceeding, the state court may not consider factors such as the participation of a parent or the Indian child in tribal cultural, social, religious, or political activities; the relationship between the Indian child and the Indian child's parent; whether the parent ever had custody of the Indian child; or the Indian child's blood quantum.
3. If this chapter applies at the commencement of a proceeding, this chapter does not cease to apply solely because the Indian child reaches age eighteen during the pendency of the proceeding.
4. In an Indian child custody proceeding under this chapter involving an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court assigned to exercise jurisdiction under this chapter, upon the petition of the Indian child's parent, Indian custodian, or tribe, shall transfer the proceeding to the jurisdiction of the tribe unless either of the following applies:

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- a. A parent of the Indian child objects to the transfer.
 - b. An Indian tribe has exclusive jurisdiction over an Indian child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe, except if that jurisdiction is otherwise vested in the state by federal law. If an Indian child is a ward of a tribal court, the Indian tribe retains exclusive jurisdiction regardless of the residence or domicile of the Indian child.
5. In an Indian child custody proceeding under this chapter involving an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court assigned to exercise jurisdiction under this chapter, upon the petition of the Indian child's parent, Indian custodian, or tribe, shall transfer the proceeding to the jurisdiction of the tribe unless any of the following apply:
- a. A parent of the Indian child objects to the transfer.
 - b. The Indian child's tribe does not have a tribal court, or the tribal court of the Indian child's tribe declines jurisdiction.
 - c. The court determines good cause exists to deny the transfer. In determining whether good cause exists to deny the transfer, the court may not consider any perceived inadequacy of the tribal social services department or the tribal court of the Indian child's tribe. The court may determine good cause exists to deny the transfer only if the person opposing the transfer shows by clear and convincing evidence the evidence or testimony necessary to decide the case cannot be presented in tribal court without undue hardship to the parties or the witnesses and that the tribal court is unable to mitigate the hardship by making arrangements to receive the evidence or testimony by use of telephone or live audiovisual means, by hearing the evidence or testimony at a location that is convenient to the parties and witnesses, or by use of other means permissible under the tribal court's rules of evidence.
6. An Indian child's tribe may intervene at any point in an Indian child custody proceeding.
7. The state shall give full faith and credit to the public acts, records, and judicial proceedings of an Indian tribe which are applicable to an Indian child custody proceeding to the same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other governmental entity.

27-19.1-03. Indian child welfare - Court proceedings.

- 1. In a proceeding involving the foster care or nonfoster care placement of or termination of parental rights to an Indian child whom the court knows or has reason to know may be an Indian child, the party seeking the foster care or nonfoster care placement or termination of parental rights, for the first hearing of the proceeding, shall notify the Indian child's parent, Indian custodian, and tribe, by registered mail, return receipt requested, of the pending proceeding and of the parties' right to intervene in the proceeding and shall file the return receipt with the court. Notice of subsequent hearings in a proceeding must be in writing and may be given by mail,

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personal delivery, facsimile transmission, or electronic mail. If the identity or location of the Indian child's parent, Indian custodian, or tribe cannot be determined, that notice shall be given to the United States secretary of the interior in like manner. The first hearing in the proceeding may not be held until at least ten days after receipt of the notice by the parent, Indian custodian, and tribe or until at least fifteen days after receipt of the notice by the United States secretary of the interior. On request of the parent, Indian custodian, or tribe, the court shall grant a continuance of up to twenty additional days to enable the requester to prepare for that hearing.

2. Each party to a child custody proceeding of an Indian child has the right to examine all reports or other documents filed with the court upon which a decision with respect to the out-of-home care placement, termination of parental rights, or return of custody may be based.

27-19.1-04. Indian child welfare - Voluntary proceedings - Consent - Withdrawal.

1. A voluntary consent by a parent or Indian custodian to a foster care or nonfoster care placement of an Indian child is not valid unless the consent or delegation is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent or delegation were fully explained in detail to and were fully understood by the parent or Indian custodian. The judge also shall certify the parent or Indian custodian fully understood the explanation in English or that the explanation was interpreted into a language the parent or Indian custodian understood. Any consent or delegation of powers given under this subsection before or within ten days after the birth of the Indian child is not valid. A parent or Indian custodian who has executed a consent or delegation of powers under this subsection may withdraw the consent or delegation for any reason at any time, and the Indian child must be returned to the parent or Indian custodian. A parent or Indian custodian who has executed a consent or delegation of powers under this subsection also may move to invalidate the out-of-home care placement.
2. A voluntary consent by a parent to a termination of parental rights under subdivision d of subsection 1 of section 27-20.3-20 is not valid unless the consent is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent were fully explained in detail to and were fully understood by the parent. The judge also shall certify the parent fully understood the explanation in English or that the explanation was interpreted into a language that the parent understood. Consent given under this subsection before or within ten days after the birth of the Indian child is not valid. A parent who has executed a consent under this subsection may withdraw the consent for any reason at any time before the entry of a final order terminating parental rights, and the Indian child must be returned to the Indian child's parent.

27-19.1-05. Indian child welfare - Placements preferences.

1. Subject to subsections 3 and 4, in placing an Indian child for adoption or in delegating powers, as described in a lawful executed power of attorney

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regarding an Indian child, preference must be given, in the absence of good cause, as described in subsection 6, to the contrary, to a placement with or delegation to one of the following, in the order of preference listed:

- a. An extended family member of the Indian child;
 - b. Another member of the Indian child's tribe;
 - c. Another Indian family with whom the Indian child has a relationship or an Indian family from a tribe that is culturally similar to or linguistically connected to the Indian child's tribe; or
 - d. The tribe's statutory adopted placement preferences.
2. An Indian child who is accepted for a foster care or nonfoster care placement or a preadoptive placement must be placed in the least restrictive setting that most approximates a family that meets the Indian child's special needs, if any, and which is within reasonable proximity to the Indian child's home, taking into account those special needs. Subject to subsections 4 and 6, in placing an Indian child in a foster care or nonfoster care placement or a preadoptive placement, preference must be given, in the absence of good cause, as described in subsection 6, to the contrary, to a placement in one of the following, in the order of preference listed:
- a. The home of an extended family member of the Indian child;
 - b. A foster home licensed, approved, or specified by the Indian child's tribe;
 - c. An Indian foster home licensed or approved by the department; or
 - d. A qualified residential treatment facility or residential care center for children and youth approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the needs of the Indian child.
3. An Indian child who is the subject of an emergency removal or placement under a child custody determination under section 27-20.3-06 must be placed in compliance with foster care or nonfoster care placement or preadoptive placement preferences, unless the person responsible for determining the placement finds good cause, as described in subsection 6, for departing from the order of placement preference under subsection 2 or finds that emergency conditions necessitate departing from that order. When the reason for departing from that order is resolved, the Indian child must be placed in compliance with the order of placement preference under subsection 2.
4. In placing an Indian child under subsections 1 and 2 regarding an Indian child under subsection 1, if the Indian child's tribe has established, by resolution, an order of preference that is different from the order specified in subsection 1 or 2, the order of preference established by that tribe must be followed, in the absence of good cause, as described in subsection 6, to the contrary, so long as the placement under subsection 1 is appropriate for the Indian child's special needs, if any, and the placement under subsection 2 is the least restrictive setting appropriate for the Indian child's needs as specified in subsection 2.

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5. The standards to be applied in meeting the placement preference requirements of this subsection must be the prevailing social and cultural standards of the Indian community in which the Indian child's parent, Indian custodian, or extended family members reside or with which the Indian child's parent, Indian custodian, or extended family members maintain social and cultural ties.

6.
 - a. If a party asserts that good cause not to follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child custody proceeding and the court.

 - b. The party seeking departure from the placement preferences bears the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences.

 - c. A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and must be based on one or more of the following considerations:
 - (1) The request of the Indian child's parent, if they attest that they have reviewed the placement options, if any, that comply with the order of preference.

 - (2) The request of the Indian child, if the Indian child is of sufficient age and capacity to understand the decision being made.

 - (3) The presence of a sibling attachment that can be maintained only through a particular placement.

 - (4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.

 - (5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent, Indian custodian, or extended family resides or with which the Indian child's parent, Indian custodian, or extended family members maintain social and cultural ties.

 - d. A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.

 - e. A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a nonpreferred placement that was made in violation of this chapter.

 - f. The burden of establishing good cause to depart from the order of placement preference is on the party requesting that departure.

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- 7. The department or a child welfare agency shall maintain a record of each adoptive placement, foster care or nonfoster care placement, preadoptive placement, and delegation of powers, made of an Indian child, evidencing the efforts made to comply with the placement preference requirements specified in this section, and shall make that record available at any time on the request of the United States secretary of the interior or the Indian child's tribe.

27-19.1-06. Adoptee information.

- 1. The state court entering a final adoption decree or order in any voluntary or involuntary Indian child adoptive placement must furnish a copy of the decree or order within thirty days to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849 C Street NW, Mail Stop 3645 MIB, Washington, DC 20240, along with the following information, in an envelope marked "Confidential":
 - a. The birth name and birth date of the Indian child, and tribal affiliation and name of the Indian child after adoption;
 - b. The names and addresses of the biological parents;
 - c. The names and addresses of the adoptive parents;
 - d. The name and contact information for any agency having files or information relating to the adoption;
 - e. Any affidavit signed by the biological parent or parents requesting the parent's identity remain confidential; and
 - f. Any information relating to tribal membership or eligibility for tribal membership of the adopted Indian child.
- 2. The court shall give the birth parent of an Indian child the opportunity to file an affidavit indicating that the birth parent wishes the United States secretary of the interior to maintain the confidentiality of the birth parent's identity. If the birth parent files that affidavit, the court shall include the affidavit with the information provided to the United States secretary of the interior under subsection 1, and that secretary shall maintain the confidentiality of the birth parent's identity.

SECTION 2. AMENDMENT. Section 27-20.3-18 of the North Dakota Century Code is amended and reenacted as follows:

27-20.3-18. Reasonable efforts to prevent removal or to reunify - When required.

- 1. As used in this section, "reasonable efforts" means the exercise of due diligence, by the agency granted authority over the child under this chapter, to use appropriate and available services to meet the needs of the child and the child's family in order to prevent removal of the child from the child's family or, after removal, to use appropriate and available services to eliminate the need for removal, to reunite the child and the child's family, and to maintain family connections. In determining reasonable efforts to be made with respect to a child under this section, and in making reasonable efforts, the child's health and safety must be the paramount concern.

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2. Except as provided in subsection 4, reasonable efforts must be made to preserve families, reunify families, and maintain family connections:
 - a. Before the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home;
 - b. To make it possible for a child to return safely to the child's home;
 - c. Whether and, if applicable, to place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that such a joint placement would be contrary to the safety or well-being of any of the siblings; and
 - d. In the case of siblings removed from the home of the siblings who are not jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless it is contrary to the safety or well-being of any of the siblings.
3. If the court or the child's custodian determined that continuation of reasonable efforts, as described in subsection 2, is inconsistent with the permanency plan for the child, reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete steps that are necessary to finalize the permanent placement of the child.
4. Reasonable efforts of the type described in subsection 2 are not required if:
 - a. A court of competent jurisdiction has determined a parent has subjected a child to aggravated circumstances; or
 - b. The parental rights of the parent, with respect to another child of the parent, have been involuntarily terminated.
5. Efforts to place a child for adoption, with a fit and willing relative or other appropriate individual as a legal guardian, or in another planned permanent living arrangement, may be made concurrently with reasonable efforts of the type described in subsection 2.
6. Removal of a child from the child's home for placement in foster care must be based on judicial findings stated in the court's order, and determined on a case-by-case basis in a manner that complies with the requirements of titles IV-B and IV-E of the federal Social Security Act [42 U.S.C. 620 et seq. and 42 U.S.C. 6701 et seq.], as amended, and federal regulations adopted under this federal Act, provided that this subsection may not provide a basis for overturning an otherwise valid court order.
7. For the purpose of section ~~27-20.3-19~~27-19.1-01, reasonable efforts were made under this section to meet the child's needs before a foster care placement for a child remaining in care for continued foster care purposes.

SECTION 3. REPEAL. Section 27-20.3-19 of the North Dakota Century Code is repealed."

Page 1, line 20, after "STUDY" insert "- INDIAN CHILD WELFARE"

Page 1, line 21, remove "implications of codifying the Indian Child"

Page 1, line 22, replace "Welfare Act of 1978 [25 U.S.C. 1901 et seq.]" with "implementation of chapter 27-19.1"

29
4-20-23

Page 1, line 22, remove "the Indian"

Page 1, line 23, replace "Child Welfare Act of 1978 [25 U.S.C. 1901 et seq.], section 27-20.3-19" with "federal statutes related to Indian child welfare"

Page 1, line 23, replace "related" with "relevant"

Renumber accordingly

REPORT OF CONFERENCE COMMITTEE

HB 1536, as engrossed: Your conference committee (Sens. Lee, Weston, Hogan and Reps. Fegley, McLeod, Davis) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1432-1441, adopt amendments as follows, and place HB 1536 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1432-1441 of the House Journal and pages 1184-1193 of the Senate Journal and that Engrossed House Bill No. 1536 be amended as follows:

Page 1, line 1, replace "a new subsection to section 27-20.3-19" with "chapter 27-19.1"

Page 1, line 2, after the semicolon insert "to amend and reenact section 27-20.3-18 of the North Dakota Century Code, relating to reasonable efforts to prevent removal; to repeal section 27-20.3-19 of the North Dakota Century Code, relating to Indian child welfare;"

Page 1, replace lines 5 through 19 with:

"SECTION 1. Chapter 27-19.1 of the North Dakota Century Code is created and enacted as follows:

27-19.1-01. Indian child welfare - Active efforts and procedures.

1. As used in this chapter, unless context requires otherwise:
 - a. "Active efforts" means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with the Indian child's family. If an agency is involved in the child custody proceeding, active efforts must involve assisting the parent or a parent or Indian custodian with the steps of a case plan and including accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts are to be tailored to the facts and circumstances of the case. The term includes:
 - (1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal, with ongoing timely assessment to determine when the threat is resolved and placement of the Indian child can be returned to the custodian.
 - (2) Identifying appropriate services and helping a parent or Indian custodian to overcome barriers, including actively assisting a parent or Indian custodian in obtaining such services.
 - (3) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues.
 - (4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family

- structure and support for the Indian child and the Indian child's parent or Indian custodian.
- (5) Offering and employing available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the Indian child's tribe.
 - (6) Taking steps to keep siblings together, if possible.
 - (7) Supporting regular visits with a parent or Indian custodian in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the Indian child.
 - (8) Identifying community resources, including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parent or Indian custodian or, as appropriate, the Indian child's family, in utilizing and accessing those resources.
 - (9) Monitoring progress and participation in services.
 - (10) Considering alternative ways to address the needs of the Indian child's parent or Indian custodian and where appropriate, the family, if the optimum services do not exist or are not available.
 - (11) Providing post-reunification services and monitoring.
- b. "Adoptive placement" means the permanent placement of an Indian child for adoption.
 - c. "Extended family member" means a relationship defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, means an individual who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.
 - d. "Foster care or nonfoster care placement" means the removal of an Indian child from the home of his or her parent or Indian custodian for temporary placement in a foster home, qualified residential treatment program, residential care center for Indian children and youth, or certified shelter care facility, in the home of a relative other than a parent or Indian custodian, or in the home of a guardian, from which placement the parent or Indian custodian cannot have the Indian child returned upon demand. The term does not include an adoptive placement, a preadoptive placement, and emergency change in placement under section 27-20.3-06 or holding an Indian child in custody.
 - e. "Indian" means an individual who is a member of an Indian tribe, or who is a native and a member of a regional corporation as defined under 43 U.S.C. 1606.
 - f. "Indian child" means any unmarried individual who is under the age of eighteen and is either a member of an Indian tribe or is eligible for

- membership in an Indian tribe and is the biological child of a member of an Indian tribe.
- g. "Indian child custody proceeding" means a proceeding brought by the state involving:
- (1) Foster care or nonfoster care placement;
 - (2) A preadoptive placement;
 - (3) An adoptive placement; or
 - (4) A termination of parental rights under section 27-20.3-20 for an Indian child.
- h. "Indian child's tribe" means the Indian tribe in which an Indian child is a member or eligible for membership or, 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 more significant contacts.
- i. "Indian custodian" means any Indian individual who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of the Indian child.
- j. "Indian tribe" means an Indian tribe, band, nation, or other organized Indian group or community of Indians recognized as eligible for services provided to Indians by the United States secretary of the interior because of their status as Indians, including any Alaska native village as defined in 43 U.S.C. 1602(c).
- k. "Parent" means a biological parent or parents of an Indian child or an Indian individual who has lawfully adopted an Indian child, including adoptions under tribal law or custom. The term does not include the unwed father if paternity has not been acknowledged or established.
- l. "Preadoptive placement" means the temporary placement of an Indian child in a foster home, home of a relative other than a parent or Indian custodian, or home of a guardian after a termination of parental rights but before or in lieu of an adoptive placement, but does not include an emergency change in placement under section 27-20.3-06.
- m. "Termination of parental rights" means any action resulting in the termination of the parent-child relationship. It does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime or a placement upon award of custody to one of the Indian child's parents in a divorce proceeding.
2. Before removal of an Indian child from the custody of a parent or Indian custodian for purposes of involuntary foster care placement or the termination of parental rights over an Indian child, the court shall find that active efforts have been made to provide remedial services and rehabilitative services designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. The court may not order the removal unless evidence of active efforts shows there has been a vigorous and concerted level of casework beyond the level that would constitute reasonable efforts under section 27-20.3-26.

Reasonable efforts may not be construed to be active efforts. Active efforts must be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts must utilize the available resources of the Indian child's extended family, tribe, tribal and other relevant social service agencies, and individual Indian caregivers.

3. The court may order the removal of the Indian child for involuntary foster care placement only if the court determines, by clear and convincing evidence, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. Evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the Indian child will result in serious emotional or physical damage to the particular Indian child who is the subject of the proceeding. Poverty, isolation, custodian age, crowded or inadequate housing, substance use, or nonconforming social behavior does not by itself constitute clear and convincing evidence of imminent serious emotional or physical damage to the Indian child. As soon as the threat has been removed and the Indian child is no longer at risk, the state should terminate the removal, by returning the Indian child to the parent or Indian custodian while offering a solution to mitigate the situation that gave rise to the need for emergency removal and placement.
4. The court may order the termination of parental rights over the Indian child only if the court determines, by evidence beyond a reasonable doubt that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.
5. In considering whether to involuntarily place an Indian child in foster care or to terminate the parental rights of the parent of an Indian child, the court shall require that a qualified expert witness must be qualified to testify regarding whether the Indian child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe. An individual may be designated by the Indian child's tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's tribe. If the parties stipulate in writing and the court is satisfied the stipulation is made knowingly, intelligently, and voluntarily, the court may accept a declaration or affidavit from a qualified expert witness in lieu of testimony. The court or any party may request the assistance of the Indian child's tribe or the bureau of Indian affairs office serving the Indian child's tribe in locating individuals qualified to serve as expert witnesses. The social worker regularly assigned to the Indian child may not serve as a qualified expert witness in child custody proceedings concerning the Indian child. The qualified expert witness should be someone familiar with the particular Indian child and have contact with the parent or Indian custodian to observe interaction between the parent or Indian custodian, Indian child, and extended family members. The child welfare agency and courts should facilitate access to the family and records to facilitate accurate testimony.
6. An emergency removal or placement of an Indian child under state law must terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the Indian child.

7. To facilitate the intent of this chapter, the agency, in cooperation with the Indian child's tribe of affiliation, unless a parent objects, shall take steps to enroll the Indian child in the tribe with the goal of finalizing enrollment before termination.

27-19.1-02. Indian child welfare - Jurisdiction over custody proceedings.

1. This chapter includes requirements that apply if an Indian child is the subject of:
 - a. A child custody proceeding, including:
 - (1) An involuntary proceeding; and
 - (2) A voluntary proceeding that could prohibit the parent or Indian custodian from regaining custody of the Indian child upon demand;
 - b. An emergency proceeding other than:
 - (1) A tribal court proceeding; or
 - (2) A proceeding regarding a delinquent act;
 - c. An award of custody of the Indian child to one of the parents, including an award in a divorce proceeding; or
 - d. A voluntary placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a state agency, chosen for the Indian child and that does not operate to prohibit the Indian child's parent or Indian custodian from regaining custody of the Indian child upon demand.
2. If a proceeding under subsection 1 concerns an Indian child, this chapter applies to that proceeding. In determining whether this chapter applies to a proceeding, the state court may not consider factors such as the participation of a parent or the Indian child in tribal cultural, social, religious, or political activities; the relationship between the Indian child and the Indian child's parent; whether the parent ever had custody of the Indian child; or the Indian child's blood quantum.
3. If this chapter applies at the commencement of a proceeding, this chapter does not cease to apply solely because the Indian child reaches age eighteen during the pendency of the proceeding.
4. In an Indian child custody proceeding under this chapter involving an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court assigned to exercise jurisdiction under this chapter, upon the petition of the Indian child's parent, Indian custodian, or tribe, shall transfer the proceeding to the jurisdiction of the tribe unless either of the following applies:
 - a. A parent of the Indian child objects to the transfer.
 - b. An Indian tribe has exclusive jurisdiction over an Indian child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe, except if that jurisdiction is otherwise vested in the state by federal law. If an Indian child is a

ward of a tribal court, the Indian tribe retains exclusive jurisdiction regardless of the residence or domicile of the Indian child.

5. In an Indian child custody proceeding under this chapter involving an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court assigned to exercise jurisdiction under this chapter, upon the petition of the Indian child's parent, Indian custodian, or tribe, shall transfer the proceeding to the jurisdiction of the tribe unless any of the following apply:
 - a. A parent of the Indian child objects to the transfer.
 - b. The Indian child's tribe does not have a tribal court, or the tribal court of the Indian child's tribe declines jurisdiction.
 - c. The court determines good cause exists to deny the transfer. In determining whether good cause exists to deny the transfer, the court may not consider any perceived inadequacy of the tribal social services department or the tribal court of the Indian child's tribe. The court may determine good cause exists to deny the transfer only if the person opposing the transfer shows by clear and convincing evidence the evidence or testimony necessary to decide the case cannot be presented in tribal court without undue hardship to the parties or the witnesses and that the tribal court is unable to mitigate the hardship by making arrangements to receive the evidence or testimony by use of telephone or live audiovisual means, by hearing the evidence or testimony at a location that is convenient to the parties and witnesses, or by use of other means permissible under the tribal court's rules of evidence.
6. An Indian child's tribe may intervene at any point in an Indian child custody proceeding.
7. The state shall give full faith and credit to the public acts, records, and judicial proceedings of an Indian tribe which are applicable to an Indian child custody proceeding to the same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other governmental entity.

27-19.1-03. Indian child welfare - Court proceedings.

1. In a proceeding involving the foster care or nonfoster care placement of or termination of parental rights to an Indian child whom the court knows or has reason to know may be an Indian child, the party seeking the foster care or nonfoster care placement or termination of parental rights, for the first hearing of the proceeding, shall notify the Indian child's parent, Indian custodian, and tribe, by registered mail, return receipt requested, of the pending proceeding and of the parties' right to intervene in the proceeding and shall file the return receipt with the court. Notice of subsequent hearings in a proceeding must be in writing and may be given by mail, personal delivery, facsimile transmission, or electronic mail. If the identity or location of the Indian child's parent, Indian custodian, or tribe cannot be determined, that notice shall be given to the United States secretary of the interior in like manner. The first hearing in the proceeding may not be held until at least ten days after receipt of the notice by the parent, Indian custodian, and tribe or until at least fifteen days after receipt of the notice by the United States secretary of the interior. On request of the parent, Indian custodian, or tribe, the

court shall grant a continuance of up to twenty additional days to enable the requester to prepare for that hearing.

2. Each party to a child custody proceeding of an Indian child has the right to examine all reports or other documents filed with the court upon which a decision with respect to the out-of-home care placement, termination of parental rights, or return of custody may be based.

27-19.1-04. Indian child welfare - Voluntary proceedings - Consent - Withdrawal.

1. A voluntary consent by a parent or Indian custodian to a foster care or nonfoster care placement of an Indian child is not valid unless the consent or delegation is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent or delegation were fully explained in detail to and were fully understood by the parent or Indian custodian. The judge also shall certify the parent or Indian custodian fully understood the explanation in English or that the explanation was interpreted into a language the parent or Indian custodian understood. Any consent or delegation of powers given under this subsection before or within ten days after the birth of the Indian child is not valid. A parent or Indian custodian who has executed a consent or delegation of powers under this subsection may withdraw the consent or delegation for any reason at any time, and the Indian child must be returned to the parent or Indian custodian. A parent or Indian custodian who has executed a consent or delegation of powers under this subsection also may move to invalidate the out-of-home care placement.
2. A voluntary consent by a parent to a termination of parental rights under subdivision d of subsection 1 of section 27-20.3-20 is not valid unless the consent is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent were fully explained in detail to and were fully understood by the parent. The judge also shall certify the parent fully understood the explanation in English or that the explanation was interpreted into a language that the parent understood. Consent given under this subsection before or within ten days after the birth of the Indian child is not valid. A parent who has executed a consent under this subsection may withdraw the consent for any reason at any time before the entry of a final order terminating parental rights, and the Indian child must be returned to the Indian child's parent.

27-19.1-05. Indian child welfare - Placements preferences.

1. Subject to subsections 3 and 4, in placing an Indian child for adoption or in delegating powers, as described in a lawful executed power of attorney regarding an Indian child, preference must be given, in the absence of good cause, as described in subsection 6, to the contrary, to a placement with or delegation to one of the following, in the order of preference listed:
 - a. An extended family member of the Indian child;
 - b. Another member of the Indian child's tribe;
 - c. Another Indian family with whom the Indian child has a relationship or an Indian family from a tribe that is culturally similar to or linguistically connected to the Indian child's tribe; or

- b. The party seeking departure from the placement preferences bears the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences.
- c. A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and must be based on one or more of the following considerations:
 - (1) The request of the Indian child's parent, if they attest that they have reviewed the placement options, if any, that comply with the order of preference.
 - (2) The request of the Indian child, if the Indian child is of sufficient age and capacity to understand the decision being made.
 - (3) The presence of a sibling attachment that can be maintained only through a particular placement.
 - (4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.
 - (5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent, Indian custodian, or extended family resides or with which the Indian child's parent, Indian custodian, or extended family members maintain social and cultural ties.
- d. A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.
- e. A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a nonpreferred placement that was made in violation of this chapter.
- f. The burden of establishing good cause to depart from the order of placement preference is on the party requesting that departure.
- 7. The department or a child welfare agency shall maintain a record of each adoptive placement, foster care or nonfoster care placement, preadoptive placement, and delegation of powers, made of an Indian child, evidencing the efforts made to comply with the placement preference requirements specified in this section, and shall make that record available at any time on the request of the United States secretary of the interior or the Indian child's tribe.

27-19.1-06. Adoptee information.

- 1. The state court entering a final adoption decree or order in any voluntary or involuntary Indian child adoptive placement must furnish a copy of the decree or order within thirty days to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849 C Street NW, Mail Stop 3645 MIB.

Washington, DC 20240, along with the following information, in an envelope marked "Confidential":

- a. The birth name and birth date of the Indian child, and tribal affiliation and name of the Indian child after adoption;
 - b. The names and addresses of the biological parents;
 - c. The names and addresses of the adoptive parents;
 - d. The name and contact information for any agency having files or information relating to the adoption;
 - e. Any affidavit signed by the biological parent or parents requesting the parent's identity remain confidential; and
 - f. Any information relating to tribal membership or eligibility for tribal membership of the adopted Indian child.
2. The court shall give the birth parent of an Indian child the opportunity to file an affidavit indicating that the birth parent wishes the United States secretary of the interior to maintain the confidentiality of the birth parent's identity. If the birth parent files that affidavit, the court shall include the affidavit with the information provided to the United States secretary of the interior under subsection 1, and that secretary shall maintain the confidentiality of the birth parent's identity.

SECTION 2. AMENDMENT. Section 27-20.3-18 of the North Dakota Century Code is amended and reenacted as follows:

27-20.3-18. Reasonable efforts to prevent removal or to reunify - When required.

1. As used in this section, "reasonable efforts" means the exercise of due diligence, by the agency granted authority over the child under this chapter, to use appropriate and available services to meet the needs of the child and the child's family in order to prevent removal of the child from the child's family or, after removal, to use appropriate and available services to eliminate the need for removal, to reunite the child and the child's family, and to maintain family connections. In determining reasonable efforts to be made with respect to a child under this section, and in making reasonable efforts, the child's health and safety must be the paramount concern.
2. Except as provided in subsection 4, reasonable efforts must be made to preserve families, reunify families, and maintain family connections:
 - a. Before the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home;
 - b. To make it possible for a child to return safely to the child's home;
 - c. Whether and, if applicable, to place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that such a joint placement would be contrary to the safety or well-being of any of the siblings; and
 - d. In the case of siblings removed from the home of the siblings who are not jointly placed, to provide for frequent visitation or other

ongoing interaction between the siblings, unless it is contrary to the safety or well-being of any of the siblings.

3. If the court or the child's custodian determined that continuation of reasonable efforts, as described in subsection 2, is inconsistent with the permanency plan for the child, reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete steps that are necessary to finalize the permanent placement of the child.
4. Reasonable efforts of the type described in subsection 2 are not required if:
 - a. A court of competent jurisdiction has determined a parent has subjected a child to aggravated circumstances; or
 - b. The parental rights of the parent, with respect to another child of the parent, have been involuntarily terminated.
5. Efforts to place a child for adoption, with a fit and willing relative or other appropriate individual as a legal guardian, or in another planned permanent living arrangement, may be made concurrently with reasonable efforts of the type described in subsection 2.
6. Removal of a child from the child's home for placement in foster care must be based on judicial findings stated in the court's order, and determined on a case-by-case basis in a manner that complies with the requirements of titles IV-B and IV-E of the federal Social Security Act [42 U.S.C. 620 et seq. and 42 U.S.C. 6701 et seq.], as amended, and federal regulations adopted under this federal Act, provided that this subsection may not provide a basis for overturning an otherwise valid court order.
7. For the purpose of section ~~27-20.3-19~~27-19.1-01, reasonable efforts were made under this section to meet the child's needs before a foster care placement for a child remaining in care for continued foster care purposes.

SECTION 3. REPEAL. Section 27-20.3-19 of the North Dakota Century Code is repealed."

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Page 1, line 23, replace "related" with "relevant"

Renumber accordingly

Engrossed HB 1536 was placed on the Seventh order of business on the calendar.

TESTIMONY

HB 1536

**House Bill No. 1536
Human Service Committee**

**Testimony Presented by
Cathy Ferderer, Juvenile Court Coordinator
January 23, 2023**

For the record, my name is Cathy Ferderer, and I am the Juvenile Court Coordinator for the State Court Administrator's Office. I am appearing today on House Bill 1536 to offer testimony in support.

HB 1536 amends Chapter 27-20.3 of the North Dakota Century Code to include Federal Indian Children Welfare Act language. The Court supports the bill in concept but has concerns that some of the language is inconsistent with the current juvenile court and adoption statutes. We have not had an opportunity to thoroughly review the bill so we are not prepared to offer amendments today. Alternatively, we are happy to collaborate with other stakeholders to iron out terminology or process issues that may have inadvertently included or been created when language is copied from another jurisdiction.

I will stand for any questions.

**Honorable Chairperson Karen Weisz
House Human Services Committee Hearing
January 23, 2023, 10:15 AM, Pioneer Room
House Bill No. 153**

I write in strong support of HB 1536, which would enact a state Indian Child Welfare Act into North Dakota Century Code. My name is Carenlee Barkdull (PhD, LMSW), and I am a Professor of Social Work in my 18th year at the University of North Dakota. Over the course of my career, I have had the honor to work with Tribal communities on projects to build child welfare capacity and to improve outcomes for Native children and families both on and off reservation communities.

Over the past six years, I have been the co-Principal Investigator of a federal grant-- one of three awarded nationally --to strengthen implementation of the federal Indian Child Welfare Act (ICWA). It builds on the work of former UND faculty member Dr. Melanie Sage and her contract with the North Dakota Supreme Court to audit state compliance with the federal law. Data from this project supported plans for court improvements related to training and support of personnel and identified other areas for cross-system partnerships to improve ICWA implementation and child welfare outcomes for Native children and families.

Through collaborative work that has included Tribal ICWA offices, North Dakota's Children and Family Services Division, the state's Tribal Court Improvement Project, human service zone leaders and child welfare workers, and the Children and Family Services Training Center, the ICWA Partnership Project has improved understanding and implementation of ICWA standards. Further, an outcome of this project, the ICWA Family Preservationist (IFP) Program, an innovation recently piloted in Grand Forks and Burleigh counties, shows great promise for substantially reducing the disproportionate number of Native children in the foster care system. With support from North Dakota's Children and Family Services Division through a contract with the Native American Training Institute (NATI), the IFP program holds promise as a national model.

Adoption of a state ICWA statute would safeguard much of the positive progress already attained by the partnership of North Dakota human services workers and officials, court administrators, and Tribal partners to improve child welfare outcomes for Native children in our state. ICWA is considered the "gold standard" of child welfare practice as it engages with families and their support systems to divert children from the foster care system or to reduce their time in care wherever possible. This is a research based "best practice" to improve life outcomes for children in the child welfare system. and support the well-being of children in relation to foster care and adoptive services.

I urge the committee's support of this legislation to uphold and expand the positive work of state employees and the state's investments in partnership with North Dakota's Tribes. Other Upper Plains states that have enacted ICWA provisions into state law include Minnesota and Wisconsin. Additional Midwestern states that have done so include Iowa, Nebraska and Oklahoma.

Thank your time and attention, and I welcome any questions or clarifications regarding this testimony.

**Carenlee Barkdull, PhD, LMSW (701-777-3770; carenlee.barkdull@und.edu)
Professor, Department of Social Work, University of North Dakota**

House Bill. 1536
Human Service Committee
Testimony Presented by
Rebecca Grey Bull, ICWA Director
Standing Rock Sioux Tribe
January 23, 2023

Good morning, Mr. Chairperson, and members of the Committee: Thank you for the opportunity to testify before you today.

My name is Rebecca Grey Bull, I am the Indian Child Welfare Director for the Standing Rock Sioux Tribe. I come before you today in my personal and professional capacity in support of House Bill 1536.

I have been the ICWA representative for the Standing Rock Sioux Tribe since 2016, since that time, I have worked earnestly and energetically with and alongside my North Dakota state and tribal counterparts to build a healthy rapport and harmoniously work toward accurately implementing ICWA and addressing the disproportionality of Native American children in foster care. ICWA provides a workable and flexible framework to ensure and support tribal jurisdiction and tribal involvement in matters regarding our children. Which, at ICWA's inception in 1978, Congress deemed to be the most vital resource toward the continued existence and integrity of tribes. House Bill 1536, amongst many other milestones, including the ICWA Family Preservationist program, is the culmination of seven years of intentional and targeted efforts at decreasing the disproportionality of Native American children in foster care and improving outcomes for Native American families. House Bill 1536 will ensure and solidify North Dakota's commitment toward demonstrating that when ICWA is implemented accurately and when tribes and states work together, legitimate, and impactful changes occur. As stated by one of my cohorts, Ms. Bercier, ICWA has been deemed the golden standard for child welfare nationwide and North Dakota has recently been hailed as a trailblazer in ICWA implementation and creating positive change, partly because of the North Dakota's ICWA Implementation Partnership Grant, but also because of the strengthened relationships, as a result, and the commitments of each and every one of us to follow Chief Sittings Bull's advice of putting our minds together and seeing what we can build for our children. I humbly ask you all to put your minds with ours and join us in supporting House Bill 1536.

I extend my thank you and the thank you of the Standing Rock Sioux Tribe community to this committee and to the entire Sixty-Eighth legislative assembly for your support of ICWA and your commitment to prioritizing the improvement of child welfare outcomes for Native American youth in North Dakota.

I will stand for questions.

Rebecca Grey Bull
ICWA Director
Standing Rock Sioux Tribe

**House Bill No. 1536
Human Service Committee**

**Testimony Presented by
Harmony Bercier, enrolled Member, Turtle Mountain Band of Chippewa Indians
January 23, 2023**

For the record, my name is Harmony Bercier, I am the former Grant Manager for the North Dakota Indian Child Welfare Act (ICWA) Implementation Partnership Grant and the current Prevention Services Program Developer at the Native American Training Institute. I am writing to provide testimony in support of House Bill 1536.

For the last 7 years many state and tribal partners have collaboratively worked very hard to improve the accurate implementation of the Indian Child Welfare Act to reduce the disproportionate number of Indian children in foster care. Through strengthened partnerships and improved collaboration there have been meaningful decreases in disproportionality. Much of this can be attributed to the great strides ND has made in building meaningful partnerships that create a network of people who are committed to creating better outcomes for Indian children and families. Much has been done by way of training, tribal empowerment, and state, court, and tribal collaboration and support. Additionally, a grant developed, now state funded, ICWA Family Preservation Program, a program that supports the real time accurate implementation of ICWA, a true test of ICWA, has demonstrated that when ICWA is implemented accurately, it does exactly what it is intended to do: keep Indian children safe with their family. North Dakota is identified nationally as a leader in this arena. Encouraged by the Federal grant program manager, the process has begun to submit for another multi-million-dollar grant to reinforce and share with other state and tribal partners, the pathways and progress that has been made here in North Dakota. ICWA is hailed as the gold standard in child welfare. The Indian Child Welfare Act began here in this state, and it is imperative that the state further affirms its leadership and commitment to the Spirit and Letter of the Indian Child Welfare Act by instituting the law into North Dakota Century Code.

Please do not hesitate to reach out with any questions.

Harmony Bercier – 701.213.9550; harmony.bercier@nativeinstitute.org



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January 22, 2023

Chairman Weisz and Members of the Committee,

For the record, my name is Lorraine Davis, Founder and CEO of a community-based organization called NATIVE, Inc. serving Native Americans and other marginalized populations in the Bismarck and Fargo metropolitan areas of North Dakota. I am also a council member of the Governor appointed ND Behavioral Health Planning Council. I am here today to support HB1536. It would be important for the juvenile court statutes and the Indian Child Welfare Act (ICWA) to be in alignment. It is imperative to support ICWA at the state level. As a provider of juvenile delinquency prevention services and the lead organization in ND for providing culturally responsive behavioral health prevention programs for Native American adults and youth and family programs through our Great Plains Indians Youth and Family Engagement Center, I'd like to ensure this committee that we would be able to assist in supporting the implementation of this bill.

NATIVE, Inc. takes a strength-based approach to foster the healthy development of youth, adults, and families through culturally responsive services, tribal connections, and cultural identity development for Native Americans living in urban areas of ND.

I stand for any questions. If you have any questions later, please feel free to contact me.

Thank you for your time.

House of Human Services Committee
January 23, 2023 @ 10:15 am

RE: House Bill 1536

Relating to the adopting of a state Indian Child Welfare Act and Amend and Reenact Section 27-20.3-19

Boozhoo, Hihanni Waste', Good morning, Chairman Weisz and Human Services Committee. For the record, I am Representative Jayme Davis, I represent District 9A in Rolette County. 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 give a quick summary of the bill and its sections and then to round out my testimony I will answer any questions that I am able to.

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. At that time approximately 75-80% of Indian families living on reservations lost at least one child to the foster care system. In response to that overwhelming evidence and destruction of Indian culture Congress passed the Indian child welfare act in 1978.

It was enacted to provide guidance to the States regarding the handling and ways to protect the best interests of the Indian children and to promote the stability and security of Indian tribes and families. The act established the minimum standards for the removal of Indian children and provides guidelines for the placement of Indian children in foster or adoptive homes which reflect the unique values of Indian culture. The act recognizes the authority of both tribal and state courts to make decisions regarding the welfare, care, custody, and control of Indian children.

Ever since its inception North Dakota has been working with the Indian Child Welfare Act however this bill will take back local control and no longer wait for the federal government to make these decisions for our North Dakota families.

With that I will move into a quick summary of each of the section in the bill. There are experts here that can go into more detail should you need further insight.

Section 1: Active Efforts and Procedures – as you can see, in this section we've corrected and added definitions that are in line North Dakota procedural practices.

Section 2: Jurisdiction over custody proceedings – this section provides child-custody proceedings, emergency proceedings, award of custody, and voluntary placement.

Section 3: Court Proceedings – this section involves foster care or non-foster care placement of or termination of parental rights to an Indian child

Section 4: Voluntary proceedings, consent, withdrawal – this section involves the voluntary consent by a parent or Indian custodian to a foster care or non-foster care placement of an Indian child

Section 5: Placement preferences – this section involves the placement of an Indian child for adoption or in delegating powers, as described in a lawful executed power of attorney regarding an Indian child.

Section 6: Adoptee information – this section involves entering a final adoption decree or order in any voluntary or involuntary Indian child adoptive placement

This 14-page bill was created in collaboration with the five federally recognized tribes and their child welfare departments (30+ people), department of health and human services, state court and passed through legislative council a number of times. With all that collaboration over this much language there are a still a few amendments that may be requested by those here to testify in support of the bill. I believe these are simply technical in nature and nothing that would be sweeping.

With that I stand for questions.

Miigwech, Philámayayapi, Thank you

House Bill 1536

Human Services Committee, Rep. Robin Weisz Chairman

Monday, January 23, 2023

Testimony presented by Scott J Davis

Good morning, Chairman Weisz and members of the Committee. My name is Scott Davis, I am the former Executive Director of the ND Indian Affairs Commission. I post I held for 12 years. Today I represent the Turtle Mt. Band of Chippewa here in North Dakota.

The last 10+ years a lot work has been done between the North Dakota Tribes a number of State Agencies. This would include the State Court Systems, The ND Supreme Courts, District Courts and Tribal Courts. Also, various Tribal and State and County agencies have played key roles during that time in making sure the American Indian Child Welfare Act (ICWA) is followed when a court decision is made regarding a Native American Child.

Basically, what this Bill does is secure in State Law the already established legal processes being done in our State Court Systems.

Like many of you in this Committee, I am always against Federal Government overreach when it comes to our State Rights and especially when it comes to the long withstanding relations between our State and Tribes.

The State of North Dakota and the 5 Tribal Nations have done a lot of work in establishing a good system of shared communications, polices and committees that already address ICWA in our State. We do not need the Federal Government to establish another One Size Fits All law that does not fit our State nor our Tribal Nations.

It is important that we continue to build upon an already established process and support HB 1536.

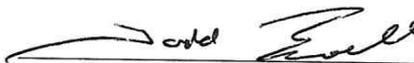
Mr. Chairman, this concludes my testimony and I'd be happy to answer any questions.

HB 1536
House Human Services Committee
January 23, 2023
Testimony of Todd N. Ewell, Deputy Director, NDCLCI

Good Morning Chairman Weisz, members of the Committee, my name is Todd Ewell and I am the Deputy Director of the North Dakota Commission on Legal Counsel for Indigents (hereinafter "the Commission").

I rise today to in support of HB 1536. The Commission is responsible for providing legal counsel for parents and children in these court proceedings. Our agency understands and appreciates the need for this legislation to address the needs of Native American children. On behalf of the Commission, I request a Do Pass recommendation for HB 1536.

Respectfully submitted:



Todd N. Ewell, Deputy Director

N.D. Comm. on Legal Counsel for Indigents

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1536

Page 3, line 15, after "or" insert "certified"

Page 4, line 18, remove ", qualified residential treatment program, residential care center for"

Page 4, line 19, remove "children and youth"

Page 6, line 28, after the underscored semicolon insert "and"

Page 6, line 30, replace "; and" with an underscored period

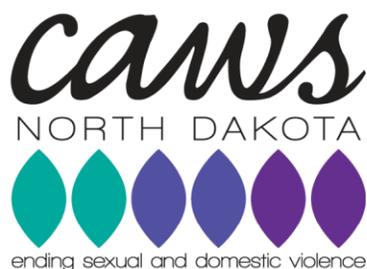
Page 7, remove lines 1 through 3

Page 7, line 6, replace "criminal" with "delinquent"

Page 7, line 6, remove "that is not a status offense"

Page 10, remove lines 19 through 27

Renumber accordingly



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House Bill No. 1473
Senate Human Services Committee
Testimony Presented by Seth O'Neill, JD, MSW
Email: soneill@cawsnorthdakota.org
March 20, 2023

Chairwoman Larson and members of the Committee, my name is Seth O'Neill and I am representing CAWS North Dakota in support of HB 1473. Our organizations work with children and families across North Dakota. We support HB 1473 because we believe it would support and protect Native American families in our state.

This bill would incorporate the placement preferences from the Indian Child Welfare Act into the North Dakota Century Code. The Indian Child Welfare Act is a landmark piece of legislation to protect Native families in the child welfare system. The placement preferences ensure that a Native American child is placed with a member of their family or a member of the child's tribe before being placed in other settings. In 2022, Native American children made up 48% of children in foster care.¹ This is true despite Native American children being only 9% of children in North Dakota. These placement preferences ensure that children who are removed from their parents are placed in culturally appropriate settings for foster care and adoption.

This bill would also provide for a study regarding incorporating other sections of the Indian Child Welfare Act into the North Dakota Century Code which is important.

Due to these reasons, I ask that you recommend a "Do-Pass" on HB 1473. I appreciate your time and I am happy to answer any questions you may have. Thank you.

¹ See [Testimony of Cory Pederson](#).

Testimony for HB 1536
March 22, 2023

Alysia LaCounte
General Counsel
Turtle Mountain Band of Chippewa Indians

On behalf of the Turtle Mountain Band of Chippewa Indians we respectfully request passage of the HB 1536.

The Turtle Mountain Band of Chippewa Indians is the largest Tribe by population in the State with a whooping membership of about 32,700. Only about half our membership live on or near the reservation in North Central North Dakota. In our governmental capacity we support the various government entities of the state in sharing resources. We have constructed a state-of-the-art firehall in the City of Dunseith, financially contributed to the construction of a new water tower in the City of St. John, and supported the school districts on and surrounding the reservation with the purchase of chrome books to support distance learning and snow days, along with many other projects.

We ask for passage for three reasons: 1.) To acknowledge our children are our most important resource for our Tribe; 2.) To honor the government-to-government relationship we share with the State of North Dakota; and 3.) To protect the Turtle Mountain Band of Chippewa Indians sovereignty and cultural autonomy.

To begin, with many of our members having been dispersed due to relocation policy, allotment policy, and generally looking for gainful employment from the Turtle Mountain Band of Chippewa's reservation, we have about half of our Tribe living in the general population of the U.S. When our members fall into tough times or experience addiction living outside the reservation, our children suffer. We ask for passage so that the placement preferences of Tribal members foster or extended for our children will preserve our culture, ties to the Tribe, and sovereignty, when they enter the court system.

Moreover, the Tribe and the State of North Dakota continue to enjoy government-to-government relationships in numerous ways. We coordinate with the Tribal State Relations committee, gaming compacting, tax compacting, administration of various health initiatives, and more. This government-to-government relationship is the cornerstone upon which we ask for this legislation.

Finally, Turtle Mountain Band of Chippewa Indians continued existence depends upon our children. If our children lack access to our community, culture, values, food, and language our autonomy will diminish. With placement with Tribal families and extended relatives we can preserve our government and ways of life.

Alysia LaCounte
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United Tribes of North Dakota
Resolution # 22-12-01

TITLE: Advancing Legislation for an Expanded North Dakota Indian Child Welfare Act

WHEREAS, United Tribes of North Dakota (“United Tribes”) is the inter-tribal association of the five federally recognized Tribes co-located in North Dakota, each of which has a government-to-government relationship with the United States government established by Treaty, including the Sisseton Wahpeton Sioux Tribe, the Spirit Lake Tribe, the Standing Rock Sioux Tribe, the Three Affiliated Tribes, and the Turtle Mountain Band of Chippewa Indians, with a Board of Directors composed of the Chairman and one council member from each member Tribe; and

WHEREAS, United Tribes exists to assist in furthering the common goals of the North Dakota Indian Tribes and Nations; and

WHEREAS, The United States of America adopted 25 U.S.C. Section 1901 et seq, the Indian Child Welfare Act (ICWA), in 1978 which preserves Tribes’ rights to maintain cultural identity with their children in removal, placement and termination of parental rights proceedings pending before state courts; and

WHEREAS, ICWA;’s constitutionality has been challenged by private parties and review by the United States Supreme Court is presently pending. Overturning ICWA would undermine tribal sovereignty and the government to government relationships of Tribes with the United States and the various states; and

WHEREAS, United Tribes is in support of advancing a North Dakota State law which maintains the intent, purpose and goals of ICWA; and;

WHEREAS, In furtherance of this goal the United Tribes does support the attached legislation or legislation supporting the intent of the attached law;

NOW THEREFORE BE IT RESOLVED, That the Board hereby conveys its support for advancing and adopting North Dakota State law which maintains the intent, purpose and goals of ICWA.

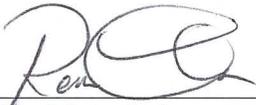
CERTIFICATION

The foregoing resolution was duly passed at a meeting of the United Tribes of North Dakota Board of Directors at which quorum was present, held on the 2 day of December , 2022, at the campus of United Tribes Technical College, with a vote of 8 in favor, 0 opposed, 0 abstaining, and 2 not present.



Delbert Hopkins
Chairman, Sisseton-Wahpeton Oyate
Chairman, Board of Directors
United Tribes of North Dakota

ATTEST:



ReNa Little-Lohnes
Councilwoman, Spirit Lake Tribe
Secretary, Board of Directors
United Tribes of North Dakota

House Bill No. 1536
Senate Human Service Committee

Testimony Presented by

1. [Culture](#)
2. [Features](#)

The Long History of Native American Adoptions

The Supreme Court will decide a case that affects Native children and their adoptive families. Although both sides claim to have children's best interest at heart, removing kids from Native communities has a troubled history in America.

By [Elizabeth Hidalgo Reese](#) Published: Nov 30, 2022

Visions of America//Getty Images

In October 2017, a group of non-Native families, along with the states of Texas, Louisiana, and Indiana, filed a lawsuit in a Texas federal district court. Their claim: A law called the Indian Child Welfare Act (ICWA) is unconstitutional, because it tramples on the States' rights and racially discriminates against both the non-Native families and the Native children they are trying to adopt. The case made its way through the federal court system until, on November 9, 2022, the United States Supreme Court spent four hours debating the fate of ICWA in the case, now called *Haaland v. Brackeen*.

The families claim that this law is nothing more than a racial preference that goes against what's in the best interest of these Native children. But this law, and the policies that gave rise to it, were never about race. Since a 1974 case called *Morton v. Mancari*, the Supreme Court has recognized that laws targeting members of Native American tribes are racially discriminatory, they are about the political identity that is tied to tribal sovereignty. As such, the government is given more leeway to pass laws that treat tribal members differently. That is why tribal members can live on federal lands reserved for their tribes, why they receive federal health care meant to fulfill treaty promises, and why tribes can have separate governments at all. None of this is a special right given to a racial group. It is fulfilling the United States' promises to tribal nations.

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Nations are complex, living, breathing entities. But they need one thing for sure to exist: people.

There are 574 tribal nations within the United States. These are the successors to the precolonial independent nations that once ruled the territory that is now the United States and have become "domestic dependent nations," as the Supreme Court first described them back in 1831. Native American tribes are an inspiring testament to what it means for people to love their countries so much, they ensured their survival, no matter the odds. Tribes survived not only violent conquest, but long and brutal periods of colonial rule during which the United States made it federal policy to try to dismantle tribal lands, borders, culture, and political identity.

More From Harper's BAZAAR

Current Time 2:54

Remaining Time -10:57

Watch: Karol G | Fashion Flashback

It is no accident that many of these efforts to dismantle tribes targeted tribal children. Nations are not just their governments, they are societies, made up of the food, the language, the songs, the traditions, and the politics. It is all these things and more. Nations are complex, living, breathing entities. But they need one thing for sure to exist: people. Citizens. The United States figured out a long time ago that it is impossible for a tribal nation to survive without its next generation.

In the late 1800s, in what we call the “assimilationist era” of federal policy toward Native nations, the United States took Native children away from their families and put them in government-run boarding schools aimed at erasing their tribal identities and ties to their communities. As Brigadier General Richard Henry Pratt, the architect of these schools described it, these schools were always acts of political violence. In the famous speech where he described the school policy to “kill the Indian in him, and save the man,” he also said, “Transfer the savage-born infant to the surroundings of civilization, and he will grow to possess a civilized language and habit. ... [Even older children] lose the already acquired qualities belonging to the side of their birth, and gradually take on those of the side to which they have been transferred. ... The [Indian boarding] school at Carlisle is an attempt on the part of the government to do this. Carlisle has always planted treason to the tribe and loyalty to the nation at large. ... Carlisle fills young Indians with the spirit of loyalty to the stars and stripes.”

The United States figured out that it is impossible for a tribal nation to survive without citizens.

Indian boarding schools are a particularly horrific chapter of American history. But it was not the last time the United States encouraged the assimilation of Native children. In the 1950s, during the next anti-tribal era that is known as the “termination era” for the federal policy of explicitly terminating the political rights and identities of Indian tribes, the federal government again promoted taking Native kids away from their families. With the help of churches and adoption agencies, the federal government, in what is known as the Indian Adoption Project, encouraged the removal of Native children from their families and then their adoption by non-Native families. According to a 1976 report by the Association on American Indian Affairs, between 1941 and 1967, as many as one in three Native children were taken from their families. A 1976 report to Congress described these processes—which were not always ill intended—as follows, “Within these systems, two levels of abuse can and do occur. In the initial determination of parental neglect the conceptual basis for removing a child from the custody of his/her parents is widely discretionary and the evaluation process involves the imposition of cultural and familial values which are often opposed to values held by the Indian family. Second, assuming that there is a real need to remove the child from its natural parents, children are all too frequently placed in non-Indian homes, thereby depriving the child of his or her tribal and cultural heritage.”

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Following this report, and a brutal hearing documenting the devastation that these adoptions had caused to parents, children, and tribal communities, the United States realized the harm it was causing Native people. In 1978, Congress passed the Indian Child Welfare Act (ICWA), a law designed to prevent history from repeating itself.

The law protects Native families and the integrity of Native nations in multiple ways. Tribes are notified whenever one of their children is being put up for adoption and are given the right to intervene or transfer these cases in tribal court. There are also safeguards designed to prevent cultural bias and socioeconomic disparities from stacking the deck against Native families. State or private adoption agencies are required to take “active efforts”—in other words, to go above and beyond the traditional standard of “reasonable efforts”—to help get families help before giving up on family reunification. Whether they are struggling with the cycles of abuse, poverty, or addiction, which are so tragically intertwined with the trauma of colonized peoples, tribal parents are supposed to get help before the system gives up on them. And when tribal children are placed up for adoption, ICWA creates a set of family placement preferences. These preferences favor keeping the child with their extended family, a family that is also a member the child’s tribe, or a Native family enrolled in any tribe, before placing the child with a non-Indian family. Families without familial ties to the children or tribal identities say this set of preferences discriminates against them on the basis of race.

Native American may be a racial group, but the Native American tribes are a people, or more correctly, 574 different peoples. Just like the American people, the French people, or the Brazilian people, the Cherokee Nation people, the Navajo people, or the Standing Rock Sioux people are multiracial groups of citizens committed to their nations.

It is very hard for one nation to exist inside of another.

Nobody doubts that there is racial discrimination against Native people. But that is not what ICWA is. The law does not apply to all Native people; it applies only to tribal citizens and their children who are eligible for tribal citizenship.

I don’t doubt that the non-Native families in this case have good intentions, that they believe they are fighting for what is best for these children. But unfortunately, the road to Native genocide has often been paved with good intentions and the belief that non-Natives know better than Native people do about what’s best for them. And Native people, indeed, disagree; 497 of the 574 federally recognized Indian tribes signed on to a brief supporting ICWA. They are joined by countless child welfare, child psychology, and medical experts who all say laws like ICWA are what is in the best interests of these children. Perhaps most telling is the brief submitted by Native people who were placed in non-Native foster care or adoptions, and who wrote about the damage, grief, and loss they experienced as a result.

It is very hard for one nation to exist inside of another. Even without direct efforts to force tribal citizens to assimilate into broader American society, the pressures to conform to American cultural, economic, and political ways of life are strong. Yet, Native tribes have survived by protecting their distinct identities as something that is closely held, loved, nurtured, and protected. It is because of this failure of American ways of life catching on within Indian

reservations that policies taking children away from them were concocted. As General Pratt said, “We make our greatest mistake in feeding our civilization to the Indians instead of feeding the Indians to our civilization.”

To one side, this case is about the right of every American—no matter who they are—to adopt and raise Native children. To the other side, it is about survival, and the right of Native children to grow up as just that: *Native children*. The choice to “[sever their] tribal relation to the Indian tribes, and fully and completely [surrender themselves] to the jurisdiction of the United States” should never be made on behalf of anyone else, least of all children.

[Elizabeth Hidalgo Reese](#)

Elizabeth Hidalgo Reese, Yunpoví (Tewa: Willow Flower) is a scholar of American Indian tribal law, federal Indian law, and constitutional law focusing on the intersection of identity, race, citizenship, and government structure. She is Assistant Professor of Law at Stanford University.

Testimony in support of HB1536

Hello Chairman Lee and members of the Senate Human Services Committee. My name is Vincent Gillette and I currently serve as the Tribal Liaison for the Three Rivers Human Service Zone, in Mandan ND and I was previously the County Director for Sioux County Social Services for 30 years.

I support the study of HB1536 for all the following reasons included below. The study should include Tribal Nations, Human Service Zones, DHS, DJS, Courts and anyone else dealing with the out of home placement of Native children.

The Indian Child Welfare Act, (ICWA) was a Federal Law passed on Nov 8, 1978. Primarily because about 35% of native children were removed from their homes and eventually adopted. Tribes were concerned that they were losing their culture because their children were removed and adopted by non-tribal homes and within a few generations, our culture would be lost.

In 1978 I started my career in Human Services. I worked at the ND Industrial School, as a Residency Counselor. I had never heard of ICWA and had no idea what it was. I did notice a large percentage of Native children that had been adopted and made it into the juvenile justice system. I would estimate that 50% of the Native children, I worked with had their adoption dissolved because of acting out.

I worked with 5 boys from the Standing Rock Reservation, who had been adopted by non-Indian homes and had their adoptions dissolved. These boys had been adopted at a very young age and had no contact with relatives on the reservation. They were in their teens when I worked with them. I attempted to place these boys back with their original families, by introducing them, doing visits, overnight visits etc. I was not able to place any of them with the original families. The families and the boys felt they didn't fit in on the reservation, because they didn't understand the culture, the language, relationships etc. They felt the same way in the off reservation foster homes, because they didn't see people like them. They were eventually placed in non-Indian foster homes when they left the Industrial School. I always wondered what happened to them.

Flash forward to 1991, I became the Director of Sioux County Social Services, Ft Yates, ND. Sioux County and the Standing Rock Indian Reservation, on the North Dakota side, are in the land area. News travels fast on the Reservation and two of the young man I worked with, would come and visit me. I found out that all five had made it back to the reservation. Three of them had committed suicide and the two that were alive were actively using alcohol/drugs and died in their 30's. Those boys told me they still felt like they didn't belong...

In 1958 the Bureau of Indian Affairs and the Child Welfare League of America started a program to adopt called "Indian Adoption Program." The goal was to take Native children off the reservations and place them in non-Indian homes located in the East. This program ran from 1958-1967 and adopted hundreds of native children off reservations and they were adopted on the east coast. This program was particularly big on Standing Rock. In my time working there, I have talked to literally hundreds of adoptee's trying to find their way back home to Standing Rock. My point in these two stories is that these Adoptee's have always had a longing, never felt whole, knew they belonged somewhere else, never belonged where they were, had a hole in their heart. These are some of the words they used to describe how they felt. Had ICWA been around and done properly we might have been able to save these children years of trauma. According to a 1976 report by the Association of American Indian Affairs, between 1941 and 1967, as many as one in three children were taken from their families.

North Dakota and the Tribes have worked together on ICWA since 1983, when they signed the first MOU. ND DHS and ND Supreme has ICWA work committees, DHS meets regularly with tribes to ensure that things are working and identify any problems areas. We have invested a lot of time and energy to see it all go away by not codifying ICWA into State Law, if something happens with the Supreme Court. There are several states that have ICWA in State law, the biggest being California and they added it to state law in 2006.

I'll end this on an interesting side note. ICWA has it roots in ND. A group of Grandmothers from Spirit Lake went to Washington to protest the removal

of their children and testified in congress, and they had a part in starting the ICWA movement. I have attached some prints of pictures and news articles.

I have attached an article, "the Long History of Native American Adoptions." That gives an excellent synopsis to read when you have time.

I am Vincent Gillette, an enrolled Member of the Mandan Hidatsa and Arikara Tribes, and I would stand in support HB 1536.

There isn't a more apt quote than the Hunkpapa Sitting Bull said, "Let us put our minds together, and see what life we can make for our Children."

Association on American Indian Affairs, Inc.
432 Park Avenue South, New York, N. Y. 10016

THE DELEGATION

- Mr. Lewis Goodhouse -
Chairman
Devils Lake Sioux Tribe
Fort Totten, North Dakota
- is in his 60's and has been tribal
chairman for 11 years.
- Mrs. Lewis Goodhouse -
- is in her 40's and is the mother of
10 children. She is a volunteer com-
munity health worker and is leading
the mothers' effort to alleviate child
welfare problems on the Devils Lake
Sioux Reservation.
- Mrs. Alvina Alberts -
- is in her 50's and the mother of 8
children. She is a Bureau of Indian
Affairs education counselor
- Mrs. Left Bear -
- is in her 40's and all her 6 children
are in non-Indian foster homes off
the Reservation.
- Mrs. Elsie Greywind -
- is in her 50's and the mother of 5
children. She looks after her grand-
children.
- Mrs. Alex Fournier -
- is in her 60's and has 19 children, her
own and foster children. She is currently
the center of a court case in which the
Benson County Welfare Board is seeking
to remove an infant from her custody.



Martin J. Dain



Sioux delegation at press conference, left to right: Mrs. Lewis Goodhouse, Mrs. Alvina Alberts, Tribal Chairman Lewis Goodhouse, and Mrs. Alex Fournier. Far right: Mr. William Byler, Executive Director of the AAIA.

Don't Take Our Children Away, Indian Mothers Plead

By ANTHONY BURTON

For Mrs. Left Bear, a Sioux Indian, yesterday was the day that the renowned stoicism of her people finally deserted her.

The white man had slaughtered the buffalo on which her ancestors had depended. The white man had taken the plains and forests for his own and herded the tribes of Indians onto reservations.

That was history and it could not be changed. But Mrs. Left Bear was suffering another cruelty, and yesterday she came to New York from Devils Lake reservation in North Dakota to plead that this should not become history too.

Her Children Were Taken Away

She sat in a room in midtown Manhattan and told a press conference that the white man, in the guise of a welfare agency, had stolen all her five children.

The youngsters, aged 8 to 16, had been taken away despite her protests and put in white foster homes.

With her was Lewis Goodhouse, chairman of her tribe, and four other Indian mothers who had firsthand knowledge of what they called child-snatching.

Their protest sponsored by the Association on American Indian Affairs, a private charity group,

they will go to Washington today to repeat their plea to government officials.

Mrs. Left Bear was shy and inarticulate in the strange surroundings of the press conference yesterday. But she did her best, and then the association's executive director, William Byler, took over.

Fit Everyone in Middle-Class Mold

He said that white welfare workers, with middle-class suburban outlooks, were taking the children away in an attempt to turn them into white people.

He agreed that conditions were bad on the reservations, but added:

"As sad and terrible as the conditions are that Indian children must face as they grow up, nothing exceeds the cruelty of being unjustly and unnecessarily removed from their families.

"On the Devils Lake reservation, approximately 25% of the children born on the reservation are eventually taken from their parents to live in adoptive homes, foster homes or institutions.

"This is 50 times the rate for the nation as a whole. Eighty per cent of all Navajo children between the ages of 6 and 9 are taken from their parents in order to 'educate them' to the white man's way."

Byler said that on the Devils Lake reservation, the

county welfare agency was responsible for removing the children. He claimed that the tribal court which heard the custody cases was intimidated by white officials.

"Today, in this Indian community, a welfare worker is looked on as a symbol of fear rather than of hope," Byler said. "The children, when they hear the sound of a strange car coming down the road, fear that it is the welfare worker coming to take them away."

Another of the Indian mothers, Mrs. Alvina Alberts, said she knew one little boy who said he would throw his spear at the welfare workers if they came for him and then he would run away.

Little Wealth, Plenty of Love

"They're trying to make white people out of us," she said. "They use their own standards to judge us. What is the difference if an Indian woman has plenty of love but her child is barefoot with a dirty face and jam on his nose?"

Byler claimed that experience had shown there was a high rate of suicide and alcoholism among Indians removed as children from their families.

"And what is so wonderful about white people that we want to change Indians and make them like us?" he asked.

DAILY NEWS, WEDNESDAY, JULY 17, 1968



Devils Lake

And now, when the Indian comes before us, he is no longer a diversion; he is a reproach and a warning.

There were these six Sioux from the Devils Lake Tribe at Fort Totten, N. D., who stopped at the Overseas Press Club yesterday on their way to Washington and the presentation of their grievance.

One of them was Lewis Goodhouse, their tribal chairman; the others were women. They had come all this way in search of their children.

There are only 1,721 Devils Lake Sioux left on the reservation. One quarter of their children have been taken away and put into institutions or foster homes or adopted into families they do not know.

In the winter many Devils Lake Sioux have no resource except public relief, Mrs. Goodhouse says. County welfare makes them wait until they have exhausted their last credit: "The children are always hungry and bare-footed; the mother starts drinking; the mother starts drinking then they are unfit parents and the Welfare takes the children away from them.

MURRAY KEMPTON

Indians, of course, have the special protection of the ancient treaty pledges of the United States of America and for just as much as that's worth. The Devils Lake Sioux have their own Court of Indian Offenses, governed by tribal statute, and their own judge, Margaret Iron Heart, appointed for them by the U. S. Bureau of Indian Affairs.

So the Dept. of Welfare of Benson County, N. D., took its complaints to Judge Iron Heart, who assumed in her confusion that it was her duty to do what the county government told her and surrendered the children.

* * *

One of the pilgrims here was a Mrs. Left Bear, who has had all six of her children scattered by this process to different homes. Another was Mrs. Alex Fournier, who is in her 60s and has been taking in the lost children of other Devils Lake families for more than 30 years now.

There ought to be a time when Mrs. Fournier is recognized as a woman of a peculiar and special nobility instead of the object of a sheriff's pursuit.

"A long time ago, one of the women in the tribe died and left her husband with nine children. They were like steps, they were so close together. He couldn't do with them, and I said to him, 'Why don't you bring them to me? I'll find a place for them.' That was before welfare and we lived by selling firewood."

Now her 18 natural and foster children are grown and gone away, and she has no company except a 3-year-old orphan she had taken in. Last winter the county Welfare Dept. ordered her to surrender him to a white foster mother.

"They said I had boys who had been in jail and sometimes came to see me and that it was a bad influence."

One night the county sheriff descended upon her and Mrs. Fournier held the child while her foster-mother-successor-designate tugged at him. The tribal chairman went off to get his camera and record this triumph of official benevolence, at which the sheriff took alarm and left. Mrs. Fournier is in court now trying to keep her last foster child. "I'd hate to part with him," she says.

The Indians are a warning to us because they were the first Americans guaranteed the special care of the U. S. government. They gave up to civilization their right to hunt and fish and our treaties promised them the compensation of education, food when needed and our Public Health Services. They were the first wards of our first welfare system.

The Bureau of Indian Affairs is responsible for every case of kidnapping of Indian children. It is not to be treated as a joke.

Indian friends charge abuse of children

By Peter C. Stuart
Staff correspondent of
The Christian Science Monitor

New York

An American Indian assistance group charges that the white man has found a new way to prey upon the red man—plucking away his children and placing them in foster homes.

And a leader in the welfare-rights movement suggests that "child snatching" is a major problem among other deprived Americans.

The Association on American Indian Affairs leveled its charge at a press conference here. Spokesmen said:

- Eighty percent of all Navajo children between ages 6 and 9 are taken from their parents.

- In North and South Dakota, where Indians comprise only 3 percent of the population, Indian children account for nearly half of all children placed in foster homes.

Removal set at 250%

- On the Devils Lake Sioux Reservation in North Dakota, about 25 percent of children born there are eventually removed from their homes—50 times the rate for the United States as a whole.

- Some of the 20,000 Indian children who attend boarding schools operated by the United States Bureau of Indian Affairs must do so because welfare workers feel the schools offer a better environment than the home.

William Byler, executive director of the group which claims a membership of 30,000, said Indian children are removed through "the missionary zeal of welfare workers to impose the standards of white middle-class suburbia."

He said welfare workers see only the overcrowding, low income, and other physical limitations of many Indian homes. He said they overlook the rich emotional environment to be found there.

Intimidation charged

Mr. Byler said most Indian children are removed in a manner that is technically legal, but the tribal courts often are "intimidated" by welfare workers—or shunned altogether.

In some cases, however, welfare workers resort to threatening to cut off an Indian foster family's aid if it refuses to surrender a foster child, Mr. Byler said.

The Association on American Indian Affairs flew a delegation of seven Sioux from the North Dakota reservation to New York to dramatize its case.

Blinking into the strange glare of television floodlights at the press conference, they told the human side of the problem.

Mrs. Left Bear, a pretty, young mother, related in broken English how all six of her children had been taken from her and put in non-Indian foster homes off the reservation.

Mrs. Alvina Alberts, a mother of eight with a kindly, bronzed face, protested that

"Indian children lose their Indian identity" when reared outside the reservation.

Problem emphasized

Dr. George A. Wiley, executive director of the National Welfare Rights Organization, with headquarters in Washington, told this reporter that the removal of children for foster homes is "a very substantial problem"—not only among Indians, but also among other disadvantaged Americans.

He charged that provisions in the recent amendments to the Social Security Act "encourage this." He said welfare agencies now are instructed to make full use of child-placement services as one means of compelling mothers on welfare to take job training.

Investigations asked

He added that the federal government now offers to reimburse foster parents for child-placement costs at a rate up to three times as great as that for the natural parents (a maximum of \$100 per month, compared with a maximum of \$32 a month).

The Association on American Indian Affairs wants the federal government to investigate charges of "child-welfare abuses" against Indians and to cut "to a minimum" the unnecessary enrollments in Bureau of Indian Affairs boarding schools.

The group has written Wilbur J. Cohen, Secretary of Health, Education, and Welfare, and Stewart L. Udall, Secretary of the Interior, to press its demands. Leaders of the organization and the Sioux delegation planned to follow up with a visit to Washington.

JUL 17 1968

By *Martin Gershen*

A proud Indian on the warpath for her tribe

By MARTIN GERSHEN
Star-Ledger New York Bureau

NEW YORK — She was better educated than most of the Sioux from North Dakota. She had a high school education because, as she explained, her father was a tough old disciplinarian. He made his kids go to school.

That was one reason Mrs. Alvina Alberts came to New York yesterday. The Sioux of Ft. Totten in Benson County, North Dakota had asked her to speak for them.

The county welfare people, charged Mrs. Alberts, a woman in her 50s, are breaking up Indian families illegally by taking children from poor homes and forcefully sending them off for adoption with white families.

LOSE IDENTITY

"They want to make white people out of the Indians. They want to assimilate Indians into the white race. They're starting with the kids because they couldn't do it to us," Mrs. Alberts said proudly.

The story she told was corroborated by five other Sioux who had come to New York with her and by William Byler, executive secretary of the Association of American Indian Affairs.

The Indians of North Dakota charged Mrs. Alberts and brought in a cycle of payments to welfare

local welfare agencies are physically breaking up families.

The excuse used, she says, is that parents are unfit guardians of their young and that Indian homes are too unhealthy for the children.

"They are using white middle class standards to judge the Indian way of life," said Byler.

LOVE THE KEY

"What is the difference if an Indian home is poor," asked Mrs. Alberts "as long as there is an abundance of love?"

Mrs. Alberts said in North Dakota there was no way to bring the questionable tactics of the local welfare agencies before the public. That was why she and the other Sioux had come to New York.

"We want our children and our grandchildren but we are not allowed to keep them," Mrs. Alberts said.

"We are told we have no rights. Sometimes we don't know which way to turn or what to do. We need help."

"We are too backward," she continued eloquently. "Sometimes our people just despair and give up their children without a fight."

THE THREATS

Mrs. Alberts said that welfare workers threaten Indian parents with jail and loss of welfare payments if they do

not give up their children.

Some 50 per cent of the Indian population is unemployed, Byler pointed out. The average Indian family earns \$1,500 a year. Indians hardly have more than five years of schooling, 90 per cent of their housing is substandard and their average age at death is 44 years.

There was a second reason, Mrs. Alberts said she had come to New York. Her son, one of nine children, was killed in Vietnam last February and she felt she had

earned the right to speak for her fellow Indians.

Mrs. Alberts pointed out that although her husband, George is a farm laborer and makes little money none of their nine children had gone bad.

"Don't misunderstand. I'm not bitter about my boy dying in Vietnam. I have two other sons in the service. None of them were drafted. They all volunteered. He died for a good cause.

"You see, we have no Indian draft dodgers or Indians who burn draft cards. When it's time to go, you go. Just like in the old days when the chief said it was time to go on the warpath the young men went.

"That is why I feel I have a right to speak," Mrs. Alberts said. "Besides we have no complaint against the federal government. Its the Benson County welfare people we don't like."

Association on American Indian Affairs, Inc.



432 Park Avenue South
New York, N. Y. 10016

MU 9-8720

For further information:
Press Office: Felice Maier - EL 5-3818

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(1932-1963)

Roger C. Ernst, *President*

Benjamin C. O'Sullivan, *1st Vice President*

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Mrs. Henry S. Forbes, *Secretary*

Thomas Shaw Hale, *Treasurer*

William Byler, *Executive Director*

Arthur Lazarus, Jr., Richard Schifter, *General Counsel*

FOR RELEASE TO PUBLICATIONS
DATED WEDNESDAY, JULY 17, 1968

Charges of child-snatching from American Indian parents and coercion by welfare workers through starvation threats were made at a news conference at the Overseas Press Club yesterday (Tues., July 16).

Making the charges was a mothers' delegation of Devil's Lake Sioux Indian women and their Tribal Chairman, Lewis Goodhouse, who came from their North Dakota reservation to New York before their appearance today in Washington, to beseech help from government officials.

The Association on American Indian Affairs, a national citizens' voluntary organization of 30,000 members, called the news conference in order "to expose the scandalous situation regarding forcible removal of Indian youngsters without due process of law, which has reached epidemic proportions," according to William Byler, Executive Director of the Association.

He stated that the rate of American Indian children on the Devil's Lake Sioux Reservation who have been removed from their home environments is 50 times higher than the national rate of all American children separated from home. "This shameful situation should not be allowed to exist in this country," Mr. Byler said.

Children are forcibly removed from their Indian homes and

placed in white foster care because, he continued, "a concerted effort is being made to assimilate Indian children into white society, without regard to the wishes of the Indian people themselves. What the Indians are fighting against is the missionary zeal of welfare workers to impose the standards of white middle class suburbia."

In letters released at the news conference to Secretary of Health, Education and Welfare Wilbur Cohen, and to Secretary of the Interior Stewart Udall, the Association on American Indian Affairs requested a probe of child custody abuses that victimize American Indians and the nation's poor people in general.

PLEASE SEE TEXT OF ATTACHED LETTERS FOR DETAILS.

#

Association on American Indian Affairs, Inc.



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The Association on American Indian Affairs has called upon Health, Education, and Welfare Secretary Wilbur Cohen to probe charges by American Indian parents that many of them are unjustly deprived of their children.

In a letter to Secretary Cohen released today, William Byler, Executive Director of the national Indian-interest organization, stated that there is evidence to show that Indian children are unnecessarily and unjustly taken from their parents or Indian foster parents for placement in white homes.

He pointed out that on one reservation in North Dakota approximately 1 out of 4 children born on the reservation are separated from their parents and placed in foster homes, adoptive homes, or in institutional care. He indicated that this rate was 50 times greater than the rate for our society as a whole.

Byler indicated that discrimination by welfare officials and discriminatory standards and laws are a major reason for this high rate.

In a letter to Secretary of Interior Udall released today, Byler also urged the Bureau of Indian Affairs to launch a crash program to reduce sharply the number of Indian **children** institutionalized in Bureau of Indian Affairs boarding schools.

The text of the letters to Secretary Cohen and Secretary Udall are attached.

Association on American Indian Affairs, Inc.



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The Honorable Wilbur Cohen
Secretary
Department of Health, Education, and Welfare
Washington, D. C.

July 12, 1968

Dear Mr. Secretary:

On behalf of the Association on American Indian Affairs I would like to call to your attention certain acute child custody problems among American Indians and the children of the poor in general.

There is evidence to suggest that in several states a large number of Indian parents or foster parents are unjustly deprived of their children, and consequently the children are subjected to emotional hazards resulting from separation from their parents or Indian foster families.

As an indication of the seriousness of this problem, approximately twenty-five percent (25%) of the children born on one reservation in North Dakota are eventually separated from their parents and placed in foster homes, adoptive homes, or in institutional care (chiefly Bureau of Indian Affairs boarding schools). This figure indicates that in this tribe the incidence of separation of a child from his parents is 50 times greater than the rate for our society as a whole. In the States of North and South Dakota nearly half of all children placed with foster families are American Indians, yet American Indians represent only three percent (3%) of the total population of these two states.

We believe that these extraordinary figures are an indication of abusive child welfare practices by welfare officials, discriminatory standards and laws in child custody matters, and the absence of appropriate preventive and rehabilitative services to Indian communities. They are emphatically not an accurate measure of the suitability of American Indians as parents.

Indian leaders and parents charge that county welfare workers frequently evaluate the suitability of an Indian child's home on the basis of economic or social standards unrelated to the child's physical or emotional wellbeing and that Indian children are removed from the custody of their parents or Indian foster family for placement in non-Indian homes without sufficient cause and without due process of law.

The Honorable Wilbur Cohen

July 12, 1968

Indian parents and leaders on the above-mentioned North Dakota reservation further allege that Indian foster families have been cut off the welfare rolls in order to coerce those families to surrender custody of their foster children for placement in non-Indian homes.

Additionally, thousands of Indian children are sent to Bureau of Indian Affairs boarding schools on presumptive evidence as to the unsuitability of the child's home environment and without adequate concern for the suitability of the environment in which the child is placed -- an institutional setting where the child is subjected to severe emotional hazards.

The Association on American Indian Affairs looks to you for the same constructive, practical, and considerate approach to these problems that has characterized your administration in other areas of human welfare. We believe there is an urgent need for the Department of Health, Education, and Welfare to:

1. Survey child custody problems and official child welfare abuses among the American Indians and among the nation's poor people in general.
2. Develop recommended guidelines for state legislation to guard against discriminatory child welfare practices by establishing culture-free, non-discriminatory criteria in custody matters that do not penalize the poor or the racially different -- guidelines that make the physical and emotional wellbeing of the child the sole test as to the suitability of the child's home.
3. Conduct national and regional conferences and training institutes for State and local court and welfare officials.
4. Evaluate the adequacy of present preventive and rehabilitative services available to the families of the nation's poor in order to minimize those conditions that may make it necessary to remove a child from his home environment.
5. Explore with the Department of Justice and the Office of Economic Opportunity ways to provide legal assistance to parents or guardians who have lost or are threatened with the loss of their children unjustly.
6. Evaluate the adequacy of existing Federal law to protect the rights of parents and children.

We are also writing to the Secretary of the Interior asking his assistance with particular respect to the problem of Indian children placed unnecessarily in Bureau of Indian Affairs boarding schools.

Your thoughtful consideration of our request is deeply appreciated.

Sincerely,

Melvin B. Baker

Association on American Indian Affairs, Inc.



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The Honorable Stewart L. Udall
Secretary
Department of the Interior
Washington, D. C.

July 12, 1968

Dear Mr. Secretary:

On behalf of the Association on American Indian Affairs I am writing to express our deep concern over child welfare problems associated with the placement of Indian children in Federal boarding schools.

According to the figures provided by the Bureau of Indian Affairs, approximately 30,000 Indian children attend BIA boarding schools. Some of these children are required to attend boarding schools because of the absence of day-school facilities and an adequate road system. Other children attend boarding schools because welfare officials believe that this is a more suitable environment for them than the environment from which they come, for reasons of alleged neglect, abandonment, or abuse by their parents. Additionally, there are those older children who attend boarding schools for educational reasons. It is with the first two groups that we are chiefly concerned.

We consider it urgent for the Department of Interior and the Bureau of Indian Affairs to determine the cost of providing a day-school education to all Indian children presently denied this opportunity because of a lack of Federal financing for road-building, school construction, and operation of the schools. We believe Congress should have an opportunity to consider appropriating the necessary funds.

Second, we recommend that the Department of Interior adopt new guidelines and standards for use by the Bureau of Indian Affairs welfare personnel to help insure that children are not unnecessarily and unjustly taken from their parents or Indian foster families for placement in non-Indian homes or BIA boarding schools.

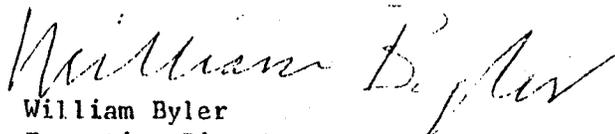
Third, we respectfully urge the Department of Interior to direct the Bureau of Indian Affairs to launch a crash program to identify suitable Indian foster homes so that Indian children who do not have an adequate home environment may receive Indian foster care rather than the institutional care presently provided by the BIA.

The Honorable Stewart L. Udall

July 12, 1968

We are also writing at this time to the Honorable Wilbur Cohen, Secretary of the Department of Health, Education, and Welfare on related matters. We are confident that your two departments working together cooperatively can find humane solutions.

Sincerely,


William Byler
Executive Director

cc: The Honorable Wilbur Cohen
Secretary
Department of Health, Education, and Welfare
Washington, D. C.

STATEMENT BY WILLIAM BYLER, EXECUTIVE DIRECTOR
of the
Association on American Indian Affairs
at a
News Conference held at the Overseas Press Club,
New York City - July 16, 1968

President Johnson has stated that:

"It is a fact -- a shameful fact -- that America's first citizens, our Indian people, suffer more from poverty today than any other group in America"

Here is the harsh profile of poverty among American Indians:

Unemployment -- between 40 and 50% -- more than 10 times the national average
Average schooling - 5 years
Family income - \$1500
Housing - 90% of it below minimum standards
Average age at death - 44 years

It is difficult for most Americans to comprehend the appalling conditions in which the nation's half million American Indian citizens live.

There are Indian people today who live in abandoned automobiles and freight cars; and I know of one Indian family in North Dakota who lives in an outdoor toilet.

An Indian child may die because the mother does not know what a doorbell is, and the doctor does not know that the Indian mother does not know.

As sad and as terrible as the conditions are that Indian children must face as they grow up, nothing exceeds the cruelty of being unjustly and unnecessarily removed from their families. Among more visible kinds of poverty, this problem has gone unnoticed. On the Devils Lake Sioux Reservation approximately 25% of the children born on the reservation are eventually taken from their parents to live in adoptive homes, foster homes, or institutions. This is 50 times the rate for our nation as a whole. Fifty percent of the children placed in foster care in the States of North and South Dakota are Indians, yet Indians represent only 3% of the population of these two states.

The Devils Lake Sioux people and America's Indian tribes have been unjustly dispossessed of their lands and their livelihoods, and now they are being dispossessed of their children.

The delegation of Devils Lake Sioux tribal leaders that have come here today are on their way to Washington to seek redress of their grievances over child welfare abuses on their reservation. Today in this Indian community a welfare worker is looked on as a symbol of fear rather than of hope. The children, when they hear the sound of a strange car coming down the road, fear that it is the welfare worker coming to take them away. Many adult members of the tribe are afraid to speak out on the manner in which they are treated for fear that their children will be taken away from them in revenge.

Thousands of Indian children are placed in Bureau of Indian Affairs boarding schools, either because of a lack of day-school facilities or because of the alleged unsuitability of their home environment.

I am today releasing a letter I have written to Secretary of Health, Education, and Welfare Wilbur Cohen requesting a federal probe into official child welfare abuses against American Indians and poor people in general. I am also releasing today the text of a letter I have written to Interior Secretary Stewart L. Udall urging that he direct the Bureau of Indian Affairs to launch a crash program to reduce to a minimum the number of Indian children institutionalized in federal boarding schools unnecessarily and to their hazard.

(This was followed by press interviews with Mr. Lewis Goodhouse, Chairman of the Devils Lake Sioux Tribe of Fort Totten, North Dakota, and a delegation of five Devils Lake Sioux mothers).



AMERICAN NATIONAL CONGRESS OF INDIANS

1346 CONNECTICUT AVENUE, N. W. WASHINGTON, D. C. 20036 • ROOM 1019 • 223-5532

MESSAGE TO ALL INDIAN TRIBES AND ORGANIZATIONS, CLUBS,

Today is surely a time for collecting one's thoughts. In the past several years a number of outstanding Americans have been brutally slain because they tried to better the lot of their fellow man. Robert F. Kennedy had compassion for the American Indian people the way his brother did for the Appalachian Whites. Over the past two years Senator Kennedy did a great deal to improve the programs available to Indian people and to put the spotlight on Indian problems so that people would understand the Indian and want to help him.

There is no way of knowing what will happen to America now that the assassin's gun has become the method of electing people to office. It would be too much like guesswork to determine what the future of Indians, in fact of all minority groups, now holds. Even today Indian people are in Resurrection City demonstrating against the Poverty situation. Many Indian people have communicated their embarrassment at having Indians agitate against Poverty conditions. They should not be embarrassed, they should be ashamed because most of them are directly the cause of those Indian people having to take to the streets and demonstrate.

Time after time, the National Congress of American Indians has appealed to the various tribes to work together. To support good legislation, to join together to solve problems, to join together to develop programs and policies which will assist all Indian people in achieving peaceful solutions to their problems. But

too many times tribes have tuned us out on their listening sets and have refused to look at what was really happening.

Last year we appealed for support of a Legal Research Program to assist the tribes with their Hunting and Fishing Problems. No tribes wanted to do anything so last week a group of dissident Indians stormed the Supreme Court building after an adverse ruling on Indian Hunting and Fishing Rights. If we had been able to act last year, we would have been able to win those suits and we would not have had the mess and bad publicity last week that we had.

For years we have been asking for assistance in pushing appropriations but very few tribes responded. So now a group of Indian individuals is in Washington agitating for money to do the job in their home communities. ANY responsibility for violence now must fall on those tribes who have stuck their heads in the sand and refused to face everyday problems to the point where their people and other Indian people are willing to go to any extreme, face any danger, to bring change and progress in Indian communities.

After the death of John Kennedy, after Martin Luther King's death and now that Robert Kennedy has been killed, people have mourned and asked why these things happened. These things have happened and will happen so long as the ordinary man does not take any responsibility for what is going on.

The mood of Congress is such that at any time Indians could be completely cut off from all services and programs, their tribes scattered and destroyed and their rights trampled under foot. Congress is not responding to the Poor People's march. Instead there is a good chance that some type of vengeance will be taken on those groups that are agitating. If so, the brunt of the disaster will fall directly on the tribes NOT demonstrating, not on the demonstrators.

The time for dodging the issues is now over. We must not condemn the wrong people. If tribes were unified and working together we would have been able to solve many more of our problems and gotten more progressive programs for our people. We would not have Indians demonstrating in Washington.

For 24 years the National Congress of American Indians has tried to hold the line against bad legislation and promote the good legislation. Tribes have been content to sit by and benefit from the hard work of a few individuals and tribes. Now the crisis we have been trying to prevent is upon us. There is no place you can hide.

The only way out now is absolute unity of purpose and programs. Indians are the only people with a direct legal relationship with the United States -overnment. We do not have to demonstrate to get what we want. We have the legal rights to get all the services we need from the Federal Government. BUT we must know what we want and we must use the proper means of getting it.

BUT tribal councils have sat back and allowed disunity and unwillingness to work together create a violent crisis in Indian Affairs. WE MUST UNITE NOW AND PLAN A UNIFIED INDIAN POSITION BEFORE WE ARE COMPLETELY OVERRUN WITH VIOLENCE.

For your own good and for your future, we urge you to join the National Congress of American Indians and help us push through constructive legislation and present a rational non-violent approach to Indian problems before it is too late. A membership form is included, pass the resolution to join at ypur next council meeting and help us developa strong unified position on legislation that will soothe the hurts and agitation in Indian Affairs and develop a reasonable answer to the problems of Indian people. We have only about 1/3 rd of the recognized tribes in the organization. There can be on other way than unity now, Let's have total unity as quickly as we can so that we can present a unified Indian community to the rest of America.

BEFORE IT IS TOO LATE FOR US

STATEMENT BY WILLIAM BYLER, EXECUTIVE DIRECTOR
of the
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at a
News Conference held at the Overseas Press Club,
New York City - July 16, 1968

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The Devils Lake Sioux people and America's Indian tribes have been unjustly dispossessed of their lands and their livelihoods, and now they are being dispossessed of their children.

House Bill No. 1536

Senate Human Service Committee

Testimony Presented by

Jessi Leneagh, ICWA Family Preservationist Program Coordinator

Native American Training Institute

March 21, 2023

I am writing in full support of House Bill 1536. As an advocate for ICWA, especially in the last 4 years I have seen its protections produce the intended outcomes that the letter and spirit of the law call for to preserve families. ICWA was enacted to protect Native American families but it can and should be a family preservation model for all families, it is best practice. However in stating that, in order to be recognized as that it must have the protections in place to be practiced as such. We have come a long way regarding ICWA in our state but there is still much work to be done. Passing this bill is a step in the right direction of honoring the law that specifies what is best for Native American children and families. We should not have to sacrifice cultural connections with an out of home placement. The trauma of removal is intensified when children are placed into completely unfamiliar living situations. Permanency is so important for a length of time in a child's life but culture is identity and that is lifelong. We have the opportunity to do better by passing bills such as 1536. I hope you will join me in supporting the further protections of ICWA in our State as well as continue progress to see the state of North Dakota recognized as a national model for practicing ICWA law as intended.

HB 1536
Senate Human Services Committee
March 23, 2023
Testimony of Todd N. Ewell, Deputy Director, NDCLCI

Good Morning. Madam Chair Lee, members of the Committee, my name is Todd Ewell and I am the Deputy Director of the North Dakota Commission on Legal Counsel for Indigents (hereinafter "the Commission").

I rise today to in support of HB 1536. The Commission is responsible for providing legal counsel for parents and children in these court proceedings. Our agency understands and appreciates the need for this legislation to address the needs of Native American children. On behalf of the Commission, I request a Do Pass recommendation for HB 1536.

Respectfully submitted:



Todd N. Ewell, Deputy Director

N.D. Comm. on Legal Counsel for Indigents

House Bill 1536

Senate Human Services Committee, Sen. Judy Lee Chairwoman

Tuesday March 22, 2023

Testimony presented by Scott J Davis

Good morning, Madam Chair Lee and members of the Committee. My name is Scott Davis, I am the former Executive Director of the ND Indian Affairs Commission. I post I held for 12 years. Today I represent the Turtle Mt. Band of Chippewa here in North Dakota.

The last 10+ years a lot work has been done between the North Dakota Tribes a number of State Agencies. This would include the State Court Systems, The ND Supreme Courts, District Courts and Tribal Courts. Also, various Tribal and State and County agencies have played key roles during that time in making sure the American Indian Child Welfare Act (ICWA) is followed when a court decision is made regarding a Native American Child.

Basically, what this Bill does is secure in State Law the already established legal processes being done in our State Court Systems.

Like many of you in this Committee, I am always against Federal Government overreach when it comes to our State Rights and especially when it comes to the long withstanding relations between our State and Tribes.

The State of North Dakota and the 5 Tribal Nations have done a lot of work in establishing a good system of shared communications, polices and committees that already address ICWA in our State. We do not need the Federal Government to establish another One Size Fits All law that does not fit our State nor our Tribal Nations.

I also request to amend back to the original 3000 version of the Bill and to keep the study. It is important that we continue to build upon an already established process and vote Green on HB 1536.

Madam Chair, this concludes my testimony and I'd be happy to answer any questions.



North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Jayme Davis

District 9A
601 John Street
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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 gentlemen 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



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Statement of Sharnell Seaboy regarding HB 1536
Field Organizer at North Dakota Native Vote
March 22, 2023
Senate Human Services Committee

Chairwoman Lee and members of the Senate Human Services Committee, my name is Sharnell Seaboy. I am an enrolled citizen of the Mni Wakan Oyate (Spirit Lake Nation) and I am a Field Organizer at North Dakota Native Vote. I am here to support House bill 1536 on behalf of North Dakota Native Vote. North Dakota Native Vote is a non-partisan grassroots organization. Our mission is to create and affect policy to promote equitable representation for the Native people of North Dakota. This includes working to promote the safety, success, and well being of our relatives.

This past fall, I experienced the benefit of how ICWA works for families like mine. I received a call from a social worker regarding a newborn baby relative of mine. Baby is a boy and he was abandoned at the hospital. Because of ICWA requirements, I felt the agency took the time and effort to locate his family and relatives, and because of that, I am currently going through the process to adopt him. Thankfully, social services followed ICWA requirements and started contacting family members, I was the last relative contacted. I am considered a distant relative, a fourth cousin. In the Native way, he is now my son. He became my son the day I agreed to take care of him. Baby is growing up surrounded by his Tiwahe (family). He has great grandparents, grandparents, aunts, uncles, lots of cousins, and some biological siblings involved in his life now. Most importantly, he is loved and connected to his culture and spirituality.

The Indian Child Welfare Act (ICWA) is a federal law passed in 1978 which establishes basic requirements to protect Native American children from continued forced removal from their families, tribes, and tribal culture. It is currently being reviewed by the Supreme Court via *Brackeen v. Haaland*.

If the Supreme Court overturns the Indian Child Welfare Act, it would have devastating consequences for Native children, families and tribes. Without ICWA's protections, Native children could be forcibly removed from their families and culture while simultaneously depriving tribes of their greatest asset, our future generations.

House bill 1536 will protect Native children by upholding family integrity and stability within the child's community. Its protections consider the immediate needs of Indian children and recognize that growing up connected to family and tribal culture is in a child's long-term best interest.

It is especially important in North Dakota to understand ICWA requirements and to understand that continuing ICWA requirements is essential for the welfare of Native children in North Dakota. A report by North Dakota Kids Count shows that in North Dakota, Native children are placed in foster care at a five times higher rate than in the general population. In 2021, Native children made up 9% of the overall population, but 44% of all the children in foster care.¹ We must make sure Native children have the opportunity to grow up in their own communities.

Placing the child with family members promotes a sense of community and identity for children who otherwise might feel lost in the system. The state system is often overburdened by the sheer number of cases that go through it each month, therefore, working with Tribal agencies under ICWA requirements will ensure that Native children will not suffer unnecessary trauma by removal from their families.

North Dakota Native Vote recommends the committee give a do pass on House Bill 1536. Thank you for your time, I stand for questions.

¹ <https://ndkidscount.org/policy-basics-indian-child-welfare-act-icwa>

House Bill. 1536
Human Service Committee
Testimony Presented by
Jill Doernbach (Wilkie), ICWA Family Preservationist
Native American Training Institute
March 21st, 2023

Good morning, Mr. Chairperson, and members of the Committee: I appreciate the chance to give testimony to all of you today.

My name is Jill Doernbach (Wilkie), I am an ICWA Family Preservationist serving indigenous families in Cass County in North Dakota. I am here today in full support of House Bill 1536.

I have been an ICWA Family Preservationist since January 2022, which is a part of the ICWA Family Preservationist program located in Bismarck, North Dakota. The IFP Program is supported and funded by the state of North Dakota and is a bridge between the state social service agencies and the tribes. As an ICWA family preservationist, I am a tribal representative and qualified expert witness only for the tribes who authorize me to do so. In the future, the IFP program plans on expanding and connecting with all tribes within North Dakota and hoping to expand throughout the United States. Through the IFP program, we hope to create unity with all the tribes in order to give all indigenous children a community and warm welcome to protect and preserve Native American culture. In Native American culture, hospitality and helping others in a time of need, no matter the connection someone may have with another, is a common trait across tribes and we will always welcome others into our hearts and homes. The ICWA placement preferences are in place to preserve and protect Native American families as well as our culture and traditions, since the Indian Child Welfare Act become a law. To take away these placement preferences, would be removing the essence of what the Indian Child Welfare Act represents and stands for. I strongly encourage you to be in support of House Bill 1536 and to continue to allow the spirit of the Indian Child Welfare Act to live on in the state of North Dakota.

I would like to thank you and the members of the committee for opening your minds and hearts for your support of the Indian Child Welfare Act. By maintaining the ICWA placement preferences, it will help with the improvement of Child Welfare, which is important in our society and additionally to preserve Native American families in North Dakota.

Jill Doernbach (Wilkie)

ICWA Family Preservationist

Native American Training Institute

23.0481.03000

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1536

Introduced by

Representatives Davis, Conmy, Finley-DeVille, Hager, Henderson, Klemin, Pyle, Rohr, Weisz
Senator Luick

1 A BILL for an Act to create and enact sections 27-20.3-19.1, 27-20.3-19.2, 27-20.3-19.3,
2 27-20.3-19.4, and 27-20.3-19.5 of the North Dakota Century Code, relating to adopting a state
3 Indian child welfare act; and to amend and reenact section 27-20.3-19 of the North Dakota
4 Century Code, relating to Indian child welfare.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 27-20.3-19 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **27-20.3-19. Indian child welfare - Active efforts and procedures.**

9 1. As used in this section and sections 27-20.3-19.1 through 27-20.3-19.5:

- 10 ~~Φ Fed/ND~~ - a. "Act" means this section and sections 27-20.3-19.2 through 27-20.3-19.5.
- 11 ~~NDV~~ - b. "Active efforts" means affirmative, active, thorough, and timely efforts intended
- 12 ~~Φ Fed~~ primarily to maintain or reunite an Indian child with the Indian child's family. ~~Active~~
- 13 ~~efforts required of the federal Indian Child Welfare Act of 1978 [25 U.S.C. 1901-~~
- 14 ~~through 1963] apply or may apply, including during the verification process. If an~~
- 15 agency is involved in the child-custody proceeding, active efforts must involve
- 16 assisting ~~the parent or parents~~ a parent or Indian custodian ~~through~~ with the steps
- 17 of a case plan ~~and with~~ including accessing or developing the resources
- 18 necessary to satisfy the case plan. To the maximum extent possible, active efforts
- 19 should be provided in a manner consistent with the prevailing social and cultural
- 20 conditions and way of life of the Indian child's tribe and should be conducted in
- 21 partnership with the Indian child and the Indian child's parents, extended family
- 22 members, Indian custodians, and tribe. Active efforts are to be tailored to the
- 23 facts and circumstances of the case. The term includes:

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ND ✓
Fed ☐

- (1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal, with ongoing timely assessment to determine when the threat is resolved and placement of the Indian child can be returned to the custodian.
- (2) Identifying appropriate services and helping ~~the parents~~ a parent or Indian custodian to overcome barriers, including actively assisting ~~the parents~~ a parent or Indian custodian in obtaining such services.
- (3) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues.
- (4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's ~~parents~~ parent or Indian custodian.
- (5) Offering and employing available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the Indian child's tribe.
- (6) Taking steps to keep siblings together, if possible.
- (7) Supporting regular visits with ~~parents~~ a parent or Indian custodian in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the Indian child.
- (8) Identifying community resources, including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's ~~parents~~ parent or Indian custodian or, as appropriate, the Indian child's family, in utilizing and accessing those resources.
- (9) Monitoring progress and participation in services.

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- 1 ND ✓
2 Fed ✓
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4 (10) Considering alternative ways to address the needs of the Indian child's
5 parents parent or Indian custodian and where appropriate, the family, if the
6 optimum services do not exist or are not available.
- 7 ND ✓
8 Fed ✓ - b.c. (11) Providing post-reunification services and monitoring.
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12 Fed ✓ - b.c. "Adoptive placement" means the permanent placement of an Indian child for
13 ND ✓ adoption.
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21 Fed ✓ - d. "Extended family member" means a relationship defined by the law or custom of
22 ND ✓ the Indian child's tribe or, in the absence of such law or custom, means an
23 individual who has reached the age of eighteen and who is the Indian child's
24 grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece
25 or nephew, first or second cousin, or stepparent.
- 26 Fed ✓ - e. "Foster care or non-foster care placement" means the removal of an Indian child
27 ND ✓ from the home of his or her parent or Indian custodian for temporary placement in
28 a foster home, qualified residential treatment program, residential care center for
29 Indian children and youth, or shelter care facility, in the home of a relative other
30 than a parent or Indian custodian, or in the home of a guardian, from which
31 placement the parent or Indian custodian cannot have the Indian child returned
upon demand. The term does not include an adoptive placement, a preadoptive
placement, and emergency change in placement under section 27-20.3-06 or
holding an Indian child in custody.
- 21 Fed ✓ - e.f. "Indian" means an individual who is a member of an Indian tribe, or who is a
22 ND ✓ native and a member of a regional corporation as defined under 43 U.S.C. 1606.
- 23 Fed ✓ - d.g. "Indian child" means any unmarried individual who is under the age of eighteen
24 ND ✓ and is either a member of an Indian tribe or is eligible for membership in an
Indian tribe and is the biological child of a member of an Indian tribe.
- 26 Fed ✓ - e.h. "Indian child custody proceeding" means a proceeding brought by the state
27 ND ✓ involving:
- 28 * Definition
29 Needed (1) Foster care or non-foster care placement;
30 (2) A preadoptive placement;
31 (3) An adoptive placement; or
(4) A termination of parental rights under section 27-20.3-20 for an Indian child.

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- 1 Fed✓ - i. "Indian child's tribe" means the Indian tribe in which an Indian child is a member
2 ND✓ or eligible for membership or, in the case of an Indian child who is a member of or
3 eligible for membership in more than one tribe, the Indian tribe with which the
4 Indian child has the more significant contacts.
- 5 Fed✓ - f.j. "Indian custodian" means any Indian individual who has legal custody of an
6 ND✓ Indian child under tribal law or custom or under state law or to whom temporary
7 physical care, custody, and control has been transferred by the parent of the
8 Indian child.
- 9 Fed✓ - g.k. "Indian tribe" means an Indian tribe, band, nation, or other organized Indian
10 ND✓ group or community of Indians recognized as eligible for services provided to
11 Indians by the United States secretary of the interior because of their status as
12 Indians, including any Alaska native village as defined in 43 U.S.C. 1602(c).
- 13 Fed✓ - h.l. "Parent" means ~~any~~ biological parent ~~or parents~~ of an Indian child or anyan
14 ND✓ Indian individual who has lawfully adopted an Indian child, including adoptions
15 under tribal law or custom. The term does not include the unwed father if
16 paternity has not been acknowledged or established.
- 17 Fed✓ - i.m. "Preadoptive placement" means the temporary placement of an Indian child in a
18 foster home, qualified residential treatment program, residential care center for
19 children and youth, home of a relative other than a parent or Indian custodian, or
20 home of a guardian after a termination of parental rights but before or in lieu of an
21 adoptive placement, but does not include an emergency change in placement
22 ND✓ - under section 27-20.3-06.
- 23 Fed✓ - n. "Termination of parental rights" means any action resulting in the termination of
24 ND✓ the parent-child relationship. It does not include a placement based upon an act
25 by an Indian child which, if committed by an adult, would be deemed a crime or a
26 placement upon award of custody to one of the Indian child's parents in a divorce
27 proceeding.
- 28 Fed✓ - 2. Before removal of an Indian child from the custody of a parent or Indian custodian for
29 ND✓ purposes of involuntary foster care placement or the termination of parental rights over
30 an Indian child, the court shall find that active efforts have been made to provide
31 remedial services and rehabilitative services designed to prevent the breakup of the

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- 1 Fedφ Indian family and that these efforts have proved unsuccessful. The court may not
2 ND✓ order the removal unless evidence of active efforts shows there has been a vigorous
3 and concerted level of casework beyond the level that would constitute reasonable
4 efforts under section 27-20.3-26. Reasonable efforts may not be construed to be
5 active efforts. Active efforts must be made in a manner that takes into account the
6 prevailing social and cultural values, conditions, and way of life of the Indian child's
7 tribe. Active efforts must utilize the available resources of the Indian child's extended
8 family, tribe, tribal and other relevant social service agencies, and individual Indian
9 caregivers.
- 10 Fedφ - 3. The court may order the removal of the Indian child for involuntary foster care
11 ND✓ placement only if the court determines, by clear and convincing evidence, that
12 continued custody of the Indian child by the parent or Indian custodian is likely to
13 result in serious emotional or physical damage to the Indian child. Evidence must
14 show a causal relationship between the particular conditions in the home and the
15 likelihood that continued custody of the Indian child will result in serious emotional or
16 physical damage to the particular Indian child who is the subject of the proceeding.
17 Poverty, isolation, custodian age, crowded or inadequate housing, substance use, or
18 nonconforming social behavior does not by itself constitute clear and convincing
19 evidence of imminent serious emotional or physical damage to the Indian child. As
20 soon as the threat has been removed and the Indian child is no longer at risk, the state
21 should terminate the removal, by returning the Indian child to the parent or Indian
22 custodian while offering a solution to mitigate the situation that gave rise to the need
23 for emergency removal and placement.
- 24 Fedφ - 4. The court may ~~only~~ order the termination of parental rights over the Indian child only if
25 ND✓ the court determines, by evidence beyond a reasonable doubt that continued custody
26 of the Indian child by the parent or Indian custodian is likely to result in serious
27 emotional or physical damage to the Indian child.
- 28 Fedφ - 5. In considering whether to involuntarily place an Indian child in foster care or to
29 ND✓ terminate the parental rights of the parent of an Indian child, the court shall require that
30 a qualified expert witness must be qualified to testify regarding whether the Indian
31 child's continued custody by the parent or Indian custodian is likely to result in serious

1 Fed φ emotional or physical damage to the Indian child and should be qualified to testify as
2 ND ✓ to the prevailing social and cultural standards of the Indian child's tribe. An individual
3 may be designated by the Indian child's tribe as being qualified to testify to the
4 prevailing social and cultural standards of the Indian child's tribe. If the parties
5 stipulate in writing and the court is satisfied the stipulation is made knowingly,
6 Tribal intelligently, and voluntarily, the court may accept a declaration or affidavit from a
7 Recommend qualified expert witness in lieu of testimony. The court or any party may request the
8 assistance of the Indian child's tribe or the bureau of Indian affairs office serving the
9 Indian child's tribe in locating individuals qualified to serve as expert witnesses. The
10 social worker regularly assigned to the Indian child may not serve as a qualified expert
11 witness in child-custody proceedings concerning the Indian child. The qualified expert
12 witness should be someone familiar with the particular Indian child and have contact
13 with the parentsparent or Indian custodian to observe interaction between the
14 parentsparent or Indian custodian, Indian child, and extended family members. The
15 child welfare agency and courts should facilitate access to the family and records to
16 facilitate accurate testimony.

17 Fed φ - 6. An emergency removal or placement of an Indian child under state law must terminate
18 #1922 immediately when the removal or placement is no longer necessary to prevent
19 ND φ imminent physical damage or harm to the Indian child.

20 Fed φ - 7. To facilitate the intent of the act, the agency, in cooperation with the Indian child's tribe
21 ND φ of affiliation, unless a parent objects, shall take steps to enroll the Indian child in the
22 Tribal tribe with the goal of finalizing enrollment before termination.
Recommend

23 **SECTION 2.** Section 27-20.3-19.1 of the North Dakota Century Code is created and
24 enacted as follows:

25 **27-20.3-19.1. Indian child welfare - Jurisdiction over custody proceedings.**

26 1. The act includes requirements that apply if an Indian child is the subject of:

27 a. A child-custody proceeding, including:

28 ✓ Fed #1912 - (1) An involuntary proceeding;

29 ✓ Fed #1913 - (2) A voluntary proceeding that could prohibit the parent or Indian custodian
30 from regaining custody of the Indian child upon demand; and

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- 1 Fedφ - (3) A proceeding involving status offenses if any part of the proceeding results
2 NDφ in the need for out-of-home placement of the Indian child, including a foster
3 Tribal care, preadoptive, or adoptive placement, or termination of parental rights.
Recommend
- 4 Fedφ -b. An emergency proceeding other than:
5 NDφ (1) A tribal court proceeding; or
6 Tribal (2) A proceeding regarding a criminal act that is not a status offense.
Recommend
- 7 Fed✓ - c. An award of custody of the Indian child to one of the parents, including an award
8 #1913 NDφ in a divorce proceeding; or
- 9 Fedφ -d. A voluntary placement that either parent, both parents, or the Indian custodian
10 NDφ has, of his or her or their free will, without a threat of removal by a state agency,
11 Tribal chosen for the Indian child and that does not operate to prohibit the Indian child's
Recommend parent or Indian custodian from regaining custody of the Indian child upon
12 demand.
13
- 14 Fedφ -2. If a proceeding under subsection 1 concerns an Indian child, the act applies to that
15 NDφ proceeding. In determining whether the act applies to a proceeding, the state court
16 Tribal may not consider factors such as the participation of a parent or the Indian child in
Recommend tribal cultural, social, religious, or political activities; the relationship between the Indian
17 child and the Indian child's parent; whether the parent ever had custody of the Indian
18 child; or the Indian child's blood quantum.
19
- 20 Fedφ -3. If the act applies at the commencement of a proceeding, the act does not cease to
21 NDφ apply solely because the Indian child reaches age eighteen during the pendency of the
22 Tribal proceeding.
Recommend
- 23 Fed✓ A. In an Indian child custody proceeding under this chapter involving an Indian child who
24 #1911.6 is not residing or domiciled within the reservation of the Indian child's tribe, the court
25 NDφ assigned to exercise jurisdiction under this chapter, upon the petition of the Indian
26 child's parent, Indian custodian, or tribe, shall transfer the proceeding to the
27 jurisdiction of the tribe unless either of the following applies:
- 28 a. A parent of the Indian child objects to the transfer.
29 b. An Indian tribe has exclusive jurisdiction over an Indian child custody proceeding
30 involving an Indian child who resides or is domiciled within the reservation of the
31 tribe, except if that jurisdiction is otherwise vested in the state by federal law. If an

1 Indian child is a ward of a tribal court, the Indian tribe retains exclusive
2 jurisdiction regardless of the residence or domicile of the Indian child.

3 Fed ✓ -5. In an Indian child custody proceeding under this chapter involving an Indian child who
4 NDF is not residing or domiciled within the reservation of the Indian child's tribe, the court
5 §1911 assigned to exercise jurisdiction under this chapter, upon the petition of the Indian
6 child's parent, Indian custodian, or tribe, shall transfer the proceeding to the
7 jurisdiction of the tribe unless any of the following apply:

- 8 a. A parent of the Indian child objects to the transfer.
9 b. The Indian child's tribe does not have a tribal court, or the tribal court of the
10 Indian child's tribe declines jurisdiction.
11 c. The court determines good cause exists to deny the transfer. In determining
12 whether good cause exists to deny the transfer, the court may not consider any
13 perceived inadequacy of the tribal social services department or the tribal court of
14 the Indian child's tribe. The court may determine good cause exists to deny the
15 transfer only if the person opposing the transfer shows by clear and convincing
16 evidence the evidence or testimony necessary to decide the case cannot be
17 presented in tribal court without undue hardship to the parties or the witnesses
18 and that the tribal court is unable to mitigate the hardship by making
19 arrangements to receive the evidence or testimony by use of telephone or live
20 audiovisual means, by hearing the evidence or testimony at a location that is
21 convenient to the parties and witnesses, or by use of other means permissible
22 under the tribal court's rules of evidence.

23 Fed ✓ -6. An Indian child's tribe may intervene at any point in an Indian child custody
24 §1911.C proceeding.

25 NDF -7. The state shall give full faith and credit to the public acts, records, and judicial
26 Fed ✓ proceedings of an Indian tribe which are applicable to an Indian child custody
27 §1911.d proceeding to the same extent that the state gives full faith and credit to the public
28 NDF acts, records, and judicial proceedings of any other governmental entity.

29 **SECTION 3.** Section 27-20.3-19.2 of the North Dakota Century Code is created and
30 enacted as follows:

1 **27-20.3-19.2. Indian child welfare - Court proceedings.**

2 -1. In a proceeding involving the foster care or non-foster care placement of or termination
3 Fed ✓ of parental rights to an Indian child whom the court knows or has reason to know may
4 \$1912.a be an Indian child, the party seeking the foster care or non-foster care placement or
5 NDφ termination of parental rights, for the first hearing of the proceeding, shall notify the
6 Indian child's parent, Indian custodian, and tribe, by registered mail, return receipt
7 requested, of the pending proceeding and of the parties' right to intervene in the
8 proceeding and shall file the return receipt with the court. Notice of subsequent
9 hearings in a proceeding must be in writing and may be given by mail, personal
10 delivery, facsimile transmission, or electronic mail. If the identity or location of the
11 Indian child's parent, Indian custodian, or tribe cannot be determined, that notice shall
12 be given to the United States secretary of the interior in like manner. The first hearing
13 in the proceeding may not be held until at least ten days after receipt of the notice by
14 the parent, Indian custodian, and tribe or until at least fifteen days after receipt of the
15 notice by the United States secretary of the interior. On request of the parent, Indian
16 custodian, or tribe, the court shall grant a continuance of up to twenty additional days
17 to enable the requester to prepare for that hearing.

18 Fed ✓ 2. Each party to a child custody proceeding of an Indian child has the right to examine all
19 \$1912.c reports or other documents filed with the court upon which a decision with respect to
20 NDφ the out-of-home care placement, termination of parental rights, or return of custody
21 may be based.

22 **SECTION 4.** Section 27-20.3-19.3 of the North Dakota Century Code is created and
23 enacted as follows:

24 **27-20.3-19.3. Indian child welfare - Voluntary proceedings - Consent - Withdrawal.**

25 -1. A voluntary consent by a parent or Indian custodian to a foster care or non-foster care
26 Fed ✓ placement of an Indian child is not valid unless the consent or delegation is executed
27 \$1913.a in writing, recorded before a judge, and accompanied by a written certification by the
28 NDφ judge that the terms and consequences of the consent or delegation were fully
29 explained in detail to and were fully understood by the parent or Indian custodian. The
30 judge also shall certify the parent or Indian custodian fully understood the explanation
31 in English or that the explanation was interpreted into a language the parent or Indian

Sixty-eighth
Legislative Assembly

1 Fed 19B.a custodian understood. Any consent or delegation of powers given under this
2 subsection before or within ten days after the birth of the Indian child is not valid. A
3 parent or Indian custodian who has executed a consent or delegation of powers under
4 this subsection may withdraw the consent or delegation for any reason at any time,
5 and the Indian child must be returned to the parent or Indian custodian. A parent or
6 Indian custodian who has executed a consent or delegation of powers under this
7 subsection also may move to invalidate the out-of-home care placement.
8 -2. A voluntary consent by a parent to a termination of parental rights under subdivision d
9 of section 27-20.3-20 is not valid unless the consent is executed in writing, recorded
10 before a judge, and accompanied by a written certification by the judge that the terms
11 and consequences of the consent were fully explained in detail to and were fully
12 understood by the parent. The judge also shall certify the parent fully understood the
13 explanation in English or that the explanation was interpreted into a language that the
14 parent understood. Consent given under this subsection before or within ten days after
15 the birth of the Indian child is not valid. A parent who has executed a consent under
16 this subsection may withdraw the consent for any reason at any time before the entry
17 of a final order terminating parental rights, and the Indian child must be returned to the
18 Indian child's parent.
19 Fed -3. After the entry of a final order granting adoption of an Indian child, a parent who has
20 consented to termination of parental rights may withdraw that consent and move the
21 court for relief from the judgment on the grounds the consent was obtained through
22 fraud or duress. This motion must be filed within two years after the entry of an order
23 granting adoption of the Indian child. A motion under this subsection does not affect
24 the finality or suspend the operation of the judgment or order terminating parental
25 rights or granting adoption. If the court finds the consent was obtained through fraud
26 or duress, the court shall vacate the judgment or order terminating parental rights and,
27 if applicable, the order granting adoption and return the Indian child.

28 **SECTION 5.** Section 27-20.3-19.4 of the North Dakota Century Code is created and
29 enacted as follows:

1 **27-20.3-19.4 Indian child welfare - Placements preferences.**

2 Fed✓ - 1. Subject to subsections 3 and 4, in placing an Indian child for adoption or in delegating
3 \$1915 powers, as described in a lawful executed power of attorney regarding an Indian child,
4 NDφ preference must be given, in the absence of good cause, as described in
5 subsection 6, to the contrary, to a placement with or delegation to one of the following,
6 in the order of preference listed:

7 a. An extended family member of the Indian child;

8 b. Another member of the Indian child's tribe;

9 c. Another Indian family with whom the Indian child has a relationship or an Indian
10 family from a tribe that is culturally similar to or linguistically connected to the
11 Indian child's tribe; or

12 d. The tribe's statutory adopted placement preferences.

13 Fed✓ - 2. An Indian child who is accepted for a foster care or non-foster care placement or a
14 \$1915 preadoptive placement must be placed in the least restrictive setting that most
15 NDφ approximates a family that meets the Indian child's special needs, if any, and which is
16 within reasonable proximity to the Indian child's home, taking into account those
17 special needs. Subject to subsections 4 and 6, in placing an Indian child in a foster
18 care or non-foster care placement or a pre adoptive placement, preference must be
19 given, in the absence of good cause, as described in subsection 6, to the contrary, to a
20 placement in one of the following, in the order of preference listed:

21 a. The home of an extended family member of the Indian child;

22 b. A foster home licensed, approved, or specified by the Indian child's tribe;

23 c. An Indian foster home licensed or approved by the department; or

24 d. A qualified residential treatment facility or residential care center for children and
25 youth approved by an Indian tribe or operated by an Indian organization that has
26 a program suitable to meet the needs of the Indian child.

27 - 3. An Indian child who is the subject of an emergency removal or placement under a
28 NDφ child custody determination under section 27-20.3-06 must be placed in compliance

29 Fed✓ - with foster care or non-foster care placement or preadoptive placement preferences,
30 \$1915 unless the person responsible for determining the placement finds good cause, as

31 described in subsection 6, for departing from the order of placement preference under

- 1 subsection 2 or finds that emergency conditions necessitate departing from that order.
2 When the reason for departing from that order is resolved, the Indian child must be
3 placed in compliance with the order of placement preference under subsection 2.
4 - 4. In placing an Indian child under subsections 1 and 2 regarding an Indian child under
5 *Classification* subsection 1, if the Indian child's tribe has established, by resolution, an order of
6 *Tribe* preference that is different from the order specified in subsection 1 or 2, the order of
7 *Recommend* preference established by that tribe must be followed, in the absence of good cause,
8 as described in subsection 6, to the contrary, so long as the placement under
9 subsection 1 is appropriate for the Indian child's special needs, if any, and the
10 placement under subsection 2 is the least restrictive setting appropriate for the Indian
11 child's needs as specified in subsection 2.
12 *Fed ✓ -5.* The standards to be applied in meeting the placement preference requirements of this
13 *1901 (5)* subsection must be the prevailing social and cultural standards of the Indian
14 *NDφ* community in which the Indian child's parent, Indian custodian, or extended family
15 members reside or with which the Indian child's parent, Indian custodian, or extended
16 family members maintain social and cultural ties.
17 - 6. a. If a party asserts that good cause not to follow the placement preferences exists,
18 *Fed ✓* the reasons for that belief or assertion must be stated orally on the record or
19 *NDφ* provided in writing to the parties to the child-custody proceeding and the court.
20 *Tribe* b. The party seeking departure from the placement preferences bears the burden of
21 *Recommend* proving by clear and convincing evidence that there is good cause to depart from
22 the placement preferences.
23 c. A court's determination of good cause to depart from the placement preferences
24 must be made on the record or in writing and must be based on one or more of
25 the following considerations:
26 (1) The request of the Indian child's parent, if they attest that they have
27 reviewed the placement options, if any, that comply with the order of
28 preference.
29 (2) The request of the Indian child, if the Indian child is of sufficient age and
30 capacity to understand the decision being made.

1 Tribe
2 Recommend

(3) The presence of a sibling attachment that can be maintained only through a particular placement.

3

(4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.

4

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6 FedV
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(5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent, Indian custodian, or extended family resides or with which the Indian child's parent, Indian custodian, or extended family members maintain social and cultural ties.

8

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10 Tribe
11 Recommend

d. A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.

12

e. A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a nonpreferred placement that was made in violation of the act.

13

f. The burden of establishing good cause to depart from the order of placement preference is on the party requesting that departure.

14

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16 FedV - Z.
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18 ND\$

The department or a child welfare agency shall maintain a record of each adoptive placement, foster care or non-foster care placement, preadoptive placement, and delegation of powers, made of an Indian child, evidencing the efforts made to comply with the placement preference requirements specified in this section, and shall make that record available at any time on the request of the United States secretary of the interior or the Indian child's tribe.

19
20
21 **SECTION 6.** Section 27-20.3-19.5 of the North Dakota Century Code is created and enacted as follows:

22 **27-20.3-19.5. Adoptee information.**

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The state court entering a final adoption decree or order in any voluntary or involuntary Indian child adoptive placement must furnish a copy of the decree or order within thirty

- 1 days to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849
2 C Street NW, Mail Stop 3645 MIB, Washington, DC 20240, along with the following
3 information, in an envelope marked "Confidential":
4 a. The birth name and birth date of the Indian child, and tribal affiliation and name of
5 the Indian child after adoption;
6 b. The names and addresses of the biological parents;
7 c. The names and addresses of the adoptive parents;
8 d. The name and contact information for any agency having files or information
9 relating to the adoption;
10 e. Any affidavit signed by the biological parent or parents requesting the parent's
11 identity remain confidential; and
12 f. Any information relating to tribal membership or eligibility for tribal membership of
13 the adopted Indian child.
14 2. The court shall give the birth parent of an Indian child the opportunity to file an affidavit
15 indicating that the birth parent wishes the United States secretary of the interior to
16 maintain the confidentiality of the birth parent's identity. If the birth parent files that
17 affidavit, the court shall include the affidavit with the information provided to the United
18 States secretary of the interior under subsection 1, and that secretary shall maintain
19 the confidentiality of the birth parent's identity.

Fed ✓
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MDP

HB 1536, ICWA Hearing 3-22-23 Senate Human Services

Good morning, Chairwoman Lee, and members of the Senate Human Services Committee. For the record my name is Representative Lisa Finley-DeVillie. I am an enrolled member of the Mandan, Hidatsa and Arikara nation. I represent the people of District 4 A which includes the Fort Berthold Reservation. I am here to testify in support of House bill 1536 as I am a cosponsor of the bill.

As you may know, Federal ICWA laws are facing scrutiny at the highest level of our judicial system. Which is why I support North Dakota adopting similar provisions to protect our Native children.

House bill 1536 addresses the unique needs and rights of Native children in the foster care system by placing Native children in Native homes. Like ICWA, House bill 1536 will preserve the cultural and kinship ties that exist within our communities by placing Native Children in homes where they will be raised within their own cultural traditions and values. As Native people, our identity is our culture, tradition, heritage, language, and our families. By adopting and implementing State ICWA policies, we can ensure that Native children receive the best possible care and support while preserving their cultural, heritage, tradition and familial ties.

As young children, my two younger siblings and I were removed from our home. Because of ICWA, we were placed with our grandmother who took us in and raised us. Stories like mine are about how ICWA was designed to work and benefit Native children.

While there have been legal challenges to the law, many agencies continue to support its underlying principles and its goal of promoting the best interests of Native American children. I ask that the committee recognize the need for State ICWA provisions and how it is essential to the well-being of Native American children. I ask that you give a do pass recommendation for House bill 1536 and join us to work for the protection of Native children and youth. Thank you, I will now stand for questions.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1536

Page 3, line 15, after "or" insert "certified"

Page 4, line 18, remove ", qualified residential treatment program, residential care center for"

Page 4, line 19, remove "children and youth"

Page 6, line 28, after the underscored semicolon insert "and"

Page 6, line 30, replace "; and" with an underscored period

Page 7, remove lines 1 through 3

Page 7, line 6, replace "criminal" with "delinquent"

Page 7, line 6, remove "that is not a status offense"

Page 10, remove lines 19 through 27

Renumber accordingly