

2018 Regular Session

HOUSE BILL NO. 182

BY REPRESENTATIVE JOHNSON

(On Recommendation of the Louisiana State Law Institute)

CHILDRENS CODE: Provides relative to the Indian Child Welfare Act

1 AN ACT

2 To amend and reenact Children's Code Articles 612(A)(2), 624(D), (E), (F), and (G),  
3 634(A), 749(A) and (B), 1019(A) and (B), and 1122(A)(3), to enact Children's Code  
4 Articles 103.1, 116(6.1) and (6.2), 624(H), 624.1, 661.1, 767.1, 767.2, 1034.1,  
5 1034.2, 1515(A)(8) and (C) and 1518(C), and to provide Comments to Children's  
6 Code Article 680, relative to the Indian Child Welfare Act; to provide for the  
7 applicability of the Indian Child Welfare Act; to provide definitions; to provide for  
8 an inquiry; to provide for the standard for determining whether a child is an Indian  
9 child; to provide for procedures and effects; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Children's Code Articles 612(A)(2), 624(D), (E), (F), and (G), 634(A),  
12 749(A) and (B), 1019(A) and (B), and 1122(A)(3) are hereby amended and reenacted and  
13 Children's Code Articles 103.1, 116(6.1) and (6.2), 624(H), 624.1, 661.1, 767.1, 767.2,  
14 1034.1, 1034.2, 1515(A)(8) and (C) and 1518(C) are hereby enacted to read as follows:

15 Art. 103.1. Applicability of Indian Child Welfare Act

16 A. The provisions of the federal Indian Child Welfare Act and the  
17 regulations promulgated thereunder supersede the Children's Code whenever the  
18 outcome of an involuntary or voluntary proceeding may result in the removal of an  
19 Indian child from a parent under circumstances in which the parent cannot have the  
20 child returned upon demand.





1 include an inquiry as to whether there is reason to know that the child is an Indian  
 2 child. This preliminary investigation shall also include an interview with the child  
 3 and his parent or parents or other caretaker and shall include consideration of all  
 4 available medical information provided to the department pertaining to the child's  
 5 condition. ~~Such~~ This preliminary investigation shall also include an immediate  
 6 assessment of any existing visitation or custody order or agreement involving the  
 7 alleged perpetrator and the child. The department shall request a temporary  
 8 restraining order pursuant to Article 617, a protective order pursuant to Article 618,  
 9 or an instanter safety plan order pursuant to Article 619 or Article 620 if the  
 10 department determines that any such previously ordered visitation or custody would  
 11 put the child's health and safety at risk. Admission of the investigator on school  
 12 premises or access to the child in school shall not be denied by school personnel.  
 13 However, the request for a temporary restraining order or a protective order in  
 14 accordance with this Article shall not independently confer exclusive jurisdiction on  
 15 the juvenile court in accordance with Article 303.

\* \* \*

Comments - 2018

18 If, during the investigation of an allegation of abuse or neglect, the  
 19 department uncovers information that the child is or may be an Indian child as  
 20 defined by Article 116, the department must pursue that investigation. If there is  
 21 reason to know that the child is an Indian child, the federal Indian Child Welfare Act  
 22 applies in all subsequent proceedings. Specifically, 25 U.S.C. 1922 governs the  
 23 emergency removal of an Indian child.

\* \* \*

25 Art. 624. Continued custody hearing; continued safety plan hearing; federal Indian  
 26 Child Welfare Act

\* \* \*

28 D. At the commencement of the hearing, on the record, the court shall ask  
 29 each person before the court whether he knows or has reason to know that the child  
 30 is an Indian child. Each person before the court shall be instructed to inform the  
 31 court if he subsequently discovers information indicating that the child is an Indian  
 32 child.





1 (d) Neither ICWA nor the regulations promulgated thereunder require notice  
2 prior to an emergency removal because of the short time frame in which emergency  
3 proceedings are conducted to secure the safety of the child. *Guidelines for*  
4 *Implementing the Indian Child Welfare Act (Bureau of Indian Affairs, Dec. 2016),*  
5 Section 23.113(c), at p. 29. However, if the child is found to be an Indian child,  
6 notice of the proceedings must be immediately given to any identified tribe or, if the  
7 tribe cannot be identified, to the Bureau of Indian Affairs of the Department of the  
8 Interior, in accordance with ICWA. All other ICWA requirements will apply to the  
9 court's proceedings after entry of a continued custody order, unless thereafter the  
10 court finds that the child is not an Indian child in accordance with Article 661.1.

11 \* \* \*

12 Art. 634. Contents of petition

13 A. The petition shall set forth with specificity:

14 (1) The name, date and place of birth, sex, race, and address of the child. If  
15 the child is in a foster home, the identification of the parish in which he resides shall  
16 suffice for his address.

17 (2) The name and current address of each parent.

18 (3) A statement as to whether the petitioner knows or has reason to know  
19 that the child is an Indian child and facts that support that statement.

20 (4) Facts which that show that the child is a child in need of care, including  
21 the acts or omissions of either parent which caused or contributed to the child's  
22 condition.

23 \* \* \*

24 Comments - 2018

25 25 C.F.R. 23.1 et seq. requires that the court make an inquiry at the  
26 commencement of every child custody proceeding about whether there is reason to  
27 know that the child is an Indian child. A child in need of care proceeding is a child  
28 custody proceeding subject to the provisions of the federal Indian Child Welfare Act,  
29 25 U.S.C. 1901-1963.

30 \* \* \*

31 Art. 661.1. Federal Indian Child Welfare Act inquiry

32 A. At the commencement of the adjudication hearing, the court shall inquire  
33 as to whether the petitioner or any person before the court knows or has reason to  
34 know that the child is an Indian child. If no person before the court responds  
35 affirmatively, the court may proceed, although it shall instruct each person before the

1 court to inform the court if he subsequently discovers information indicating that the  
2 child is an Indian child.

3 B. In accordance with Article 624.1, if the court finds that there is reason to  
4 know that the child is an Indian child, the court shall immediately proceed pursuant  
5 to the federal Indian Child Welfare Act and the regulations promulgated thereunder.

6 C. If a tribe fails to respond to multiple requests for verification that the child  
7 is an Indian child and the court or department has sought the assistance of the Bureau  
8 of Indian Affairs in contacting the tribe, the court may make the determination that  
9 the child is not an Indian child based on the information it has available and proceed  
10 to adjudication in accordance with this Title.

11 Comments - 2018

12 (a) The threshold issue under the federal Indian Child Welfare Act (ICWA)  
13 is whether there is reason to know that the child is an Indian child in a child custody  
14 proceeding. See Articles 103.1 and 624.1. Paragraph A reflects the requirement that  
15 an inquiry as to whether there is reason to know that the child is an Indian child must  
16 be made at the commencement of every proceeding.

17 (b) Paragraph B requires the court to comply with ICWA, which is replete  
18 with requirements that must be met before an Indian child is placed outside of his  
19 parent's or Indian caretaker's home. Notice of the pending proceedings must be  
20 given to the child's alleged tribe or tribes as well as to the Bureau of Indian Affairs.  
21 25 U.S.C. 1912(a). The Department of Children and Family Services must submit  
22 a detailed predisposition report and an affidavit attesting to its "active efforts" to  
23 avoid disruption of the Indian family. 25 U.S.C. 1912(d). Evidence from "qualified  
24 expert witnesses," who, among other attributes, must be familiar with Indian customs  
25 and traditions, must be received about potential placements. 25 U.S.C. 1912(c) and  
26 (f). ICWA mandates the use of specific "placement preferences" unless the court  
27 finds by clear and convincing evidence that there is good cause to depart from those  
28 preferences. 25 U.S.C. 1915(a) and 1916(b).

29 (c) Paragraph C governs the court's duty in the face of tribal inaction. After  
30 a CINC proceeding is commenced, if no response or motion to intervene has been  
31 received from the tribe or the Department of the Interior, the court may determine  
32 based on the information it has available that the child does not qualify as an Indian  
33 child. Guidelines for Implementing the Indian Child Welfare Act (Bureau of Indian  
34 Affairs, Dec. 2016), Section 23.108, at p. 22. Thus, additional notice of changes in  
35 placement or permanency hearings is not required. However, the Guidelines  
36 recommend that state courts give notice of any change of placement as well as any  
37 change to the child's permanency plan or concurrent plan. Guidelines for  
38 Implementing the Indian Child Welfare Act (Bureau of Indian Affairs, Dec. 2016),  
39 Section 23.111, at p. 30. In contrast, if the Department of Children and Family  
40 Services seeks to terminate parental rights, notice must again be attempted. See  
41 Article 1034.1.

42 \* \* \*

1 Art. 749. Contents of petition

2 A. The petition shall set forth with specificity:

3 (1) The name, date, and place of birth, sex, race, address, and present  
4 location of the child.

5 (2) The name, age, sex, race, and current address of the child's parents and  
6 caretakers.

7 (3) The name, age, sex, and race of any other family members living within  
8 the child's home.

9 (4) The name of any public institution or agency having the responsibility  
10 or ability to supply services alleged to be needed by the family.

11 (5) ~~Whether~~ A statement as to whether the child is currently under the  
12 supervision of any state or local entity, including but not limited to, the Department  
13 of Children and Family Services or the Department of Public Safety and Corrections,  
14 youth services, or the office of juvenile justice.

15 (6) A statement as to whether the petitioner knows or has reason to know  
16 that the child is an Indian child and facts that support that statement.

17 B. If any of the information required by Paragraph A of this Article is  
18 unknown, the petition shall so allege. Any defects in the allegations required by  
19 Paragraph A of this Article shall be considered defects of form. The petitioner shall  
20 inform the court if he subsequently discovers information indicating that the child  
21 is an Indian child.

22 \* \* \*

23 Comments - 2018

24 The federal Indian Child Welfare Act (ICWA) applies to any involuntary  
25 proceeding in a state court involving an Indian child when foster care placement is  
26 under consideration as an option. 25 U.S.C. 1901-1963. The procedures, known as  
27 informal FINS, Articles 731-732 are voluntary attempts to resolve the dispute by  
28 mediation; hence, ICWA does not apply even if the child is an Indian child.  
29 However, if a formal FINS petition is initiated, ICWA applies because Article 780  
30 authorizes the removal of the child from the caretaker's home, and a court order is  
31 needed for the child's return.

32 \* \* \*



1 recommend that state courts give notice of any change of placement as well as any  
2 change to the child's permanency plan or concurrent plan. *Guidelines for*  
3 *Implementing the Indian Child Welfare Act* (Bureau of Indian Affairs, Dec. 2016),  
4 Section 23.111, at p. 30.

5 Art. 767.2. Reason to know a child is an Indian child; federal Indian Child Welfare  
6 Act

7 Upon conducting the inquiry required by Article 767.1, a court has reason to  
8 know that a child is an Indian child if any of the following occurs:

9 (1) A person before the court, an officer of the court involved in the  
10 proceeding, an Indian Tribe, an Indian organization, or an agency informs the court  
11 that the child is an Indian child.

12 (2) A person before the court, an officer of the court involved in the  
13 proceeding, an Indian Tribe, an Indian organization, or an agency informs the court  
14 that it has discovered information indicating that the child is an Indian child.

15 (3) The child who is the subject of the proceeding gives the court reason to  
16 know that he is an Indian child.

17 (4) The court is informed that the domicile or residence of the child, the  
18 child's parent, or the child's Indian custodian is on a reservation or in an Alaska  
19 Native village.

20 (5) The court is informed that the child is or has been a ward of a Tribal  
21 court.

22 (6) The court is informed that either parent or the child possesses an  
23 identification card indicating membership in an Indian Tribe.

24 Comments - 2018

25 This Article is in all substantive aspects a verbatim copy of 25 C.F.R.  
26 23.107(c). The identification of a child as an "Indian child" means that the informant  
27 has knowledge that the child is already a member of a particular tribe or tribes or that  
28 the child is eligible for membership because his parent is a member. See the 2018  
29 Comment to Article 116. The identity of a particular tribe or tribes is important to  
30 fulfill the requirements of the federal Indian Child Welfare Act (ICWA) that notice  
31 of the pendency of a child custody proceeding be given to all tribes of which there  
32 is a reason to know that the child or parent is a member. However, ICWA  
33 recognizes that the particular tribe or tribes may not be known although the  
34 informant produces credible evidence of a parent's tribal membership; in that case,  
35 notice is given to the Bureau of Indian Affairs.

36 \* \* \*

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 Art. 1019. Contents of the petition

2 A. The petition shall set forth with specificity:

3 (1) The name, date, and place of birth, sex, race, and address of the child.

4 If the child is in a foster home, the identification of the parish in which he resides  
5 shall suffice for his address.

6 (2) The name and current address of the child's parents.

7 (3) The name, age, and sex of any other biological relatives of the child who  
8 are currently living with the child in his home.

9 (4) The name of any public institution or agency having the responsibility  
10 or ability to supply services alleged to be needed by the family.

11 (5) A statement as to whether the petitioner knows or has reason to know  
12 that the child is an Indian child and facts that support that statement.

13 B. If any of the information required by Paragraph A of this Article is  
14 unknown, the petition shall so allege. Any defects in the information required by  
15 Paragraph A of this Article shall be considered defects of form. The petitioner shall  
16 inform the court if he subsequently discovers information indicating that the child  
17 is an Indian child.

18 \* \* \*

19 Comments - 2018

20 Subparagraph (A)(5) is new. A termination of parental rights proceeding is  
21 a child custody proceeding subject to the federal Indian Child Welfare Act. See  
22 Article 103.1. Because certification proceedings can result in the permanent  
23 severance of all parental ties, the Act's restrictions on these cases are even more  
24 stringent than those governing CINC or FINS proceedings. For example, even if the  
25 court found at a prior CINC proceeding that there was no reason to believe that the  
26 child was an Indian child, the issue of potential tribal affiliation must be readdressed  
27 in the termination hearing, and even if notice was given to a tribe and the tribe failed  
28 to answer, any tribe to which the child may be affiliated must be given new notice  
29 of the termination proceeding. 25 C.F.R. 23.107. Courts must take special caution  
30 in any certification action involving an Indian child so as not to destabilize any  
31 adoption.

32 \* \* \*

33 Art. 1034.1. Federal Indian Child Welfare Act inquiry

34 A. At the commencement of the hearing, the court shall inquire as to whether  
35 the petitioner or any person before the court knows or has reason to know that the

1 child is an Indian child. If no person before the court responds affirmatively, the  
 2 court may proceed, although it shall instruct each person before the court to inform  
 3 the court if he subsequently discovers information indicating that the child is an  
 4 Indian child.

5 B. In accordance with Article 1034.2, if the court finds that there is reason  
 6 to know that the child is an Indian child, the court shall immediately proceed  
 7 pursuant to the federal Indian Child Welfare Act and the regulations promulgated  
 8 thereunder.

9 C. If a tribe fails to respond to multiple requests for verification that the child  
 10 is an Indian child and the court or department has sought the assistance of the Bureau  
 11 of Indian Affairs in contacting the tribe, the court may make the determination that  
 12 the child is not an Indian child based on the information it has available and proceed  
 13 to termination in accordance with this Title.

14 Comments - 2018

15 (a) The threshold issue under the federal Indian Child Welfare Act (ICWA)  
 16 is whether there is reason to know that the child is an Indian child in a child custody  
 17 proceeding. See Articles 103.1 and 1034.2. Paragraph A reflects the requirement  
 18 that an inquiry as to whether there is reason to know that the child is an Indian child  
 19 must be made at the commencement of every proceeding.

20 (b) Paragraph B requires the court to comply with ICWA, which is replete  
 21 with requirements that must be met before an Indian child is placed outside of his  
 22 parent's or Indian caretaker's home. Notice of the pending proceedings must be  
 23 given to the child's alleged tribe or tribes as well as to the Bureau of Indian Affairs.  
 24 25 U.S.C. 1912(a). The Department of Children and Family Services must submit  
 25 a detailed predisposition report and an affidavit attesting to its "active efforts" to  
 26 avoid disruption of the Indian family. 25 U.S.C. 1912(d). Evidence from "qualified  
 27 expert witnesses," who, among other attributes, must be familiar with Indian customs  
 28 and traditions, must be received about potential placements. 25 U.S.C. 1912(c) and  
 29 (f). ICWA mandates the use of specific "placement preferences" unless the court  
 30 finds by clear and convincing evidence that there is good cause to depart from those  
 31 preferences. 25 U.S.C. 1915(a) and 1916(b).

32 (c) Paragraph C governs the court's duty in the face of tribal inaction. After  
 33 a certification for adoption proceeding is commenced, if no response or motion to  
 34 intervene has been received from the tribe or the Department of the Interior, the court  
 35 may determine based on the information it has available that the child does not  
 36 qualify as an Indian child. *Guidelines for Implementing the Indian Child Welfare Act*  
 37 (Bureau of Indian Affairs, Dec. 2016), Section 23.108, at p. 22. Even though neither  
 38 a tribe nor the Bureau of Indian Affairs responded to notice in an earlier proceeding,  
 39 notice must again be attempted if the Department of Children and Family Services  
 40 seeks to terminate parental rights.



1 Art. 1122. Contents of surrender; form

2 A. Every Act of Surrender shall contain the following information:

3 \* \* \*

4 (3) The birth name, place, ~~and~~ date of birth of the child, and a statement as  
5 to whether the child is an Indian child.

6 \* \* \*

7 Comments - 2018

8 If the child to be surrendered is an Indian child, the provisions of the federal  
9 Indian Child Welfare Act are triggered and preempt inconsistent state law. 25 U.S.C.  
10 1901-1963. The federal statute differs substantially from the provisions of this Title.  
11 For example, in accordance with 25 C.F.R. 23.125, an Indian child cannot be  
12 surrendered for adoption until the tenth day following his birth, in contrast to the  
13 time delays in Articles 1122 and 1130. More importantly, federal law grants the  
14 parent or Indian custodian the right to withdraw his consent to the child's  
15 pre-adoptive or adoptive placement at any time prior to the entry of a final decree of  
16 adoption, in contrast to Articles 1123 and 1263. Courts must proceed with special  
17 caution in any surrender of an Indian child to avoid destabilizing any adoption.  
18 Helpful guidance about the federal Indian Child Welfare Act's requirements can be  
19 found in the *Guidelines for Implementing the Indian Child Welfare Act* (Bureau of  
20 Indian Affairs, Dec. 2016). See also B.J. Jones, Mark Tilden & Kelly Gaines-Stoner,  
21 *The Indian Child Welfare Act Handbook* (2008) (2d ed.).

22 \* \* \*

23 Art. 1515. Petition; contents; form

24 A. A petition for voluntary transfer of custody shall set forth specifically:

25 \* \* \*

26 (8) Whether the child is an Indian child.

27 \* \* \*

28 C. The petitioner shall inform the court if he subsequently discovers  
29 information indicating that the child is an Indian child.

30 \* \* \*

31 Art. 1518. Pretrial orders; contribution to costs; appointment of counsel; Indian  
32 parent or custodian

33 \* \* \*

34 C. If the court finds that the parent or custodian of an Indian child is  
35 indigent, it shall appoint counsel for the parent or custodian.



Proposed law retains present law and in accordance with the Indian Child Welfare Act, requires the court to ask whether there is reason to know that the child may be an Indian child.

Proposed law (Ch.C. Art. 624.1) lists the factors from the federal regulations that give the court reason to know that a child is an Indian child and, if so, requires the court to proceed as such in accordance with the Indian Child Welfare Act.

Present law (Ch.C. Art. 634) provides for the contents of a child in need of care petition.

Proposed law retains present law and additionally requires the petitioner to state whether he knows or has reason to know that the child is an Indian child.

Proposed law (Ch.C. Art. 661.1) provides that prior to adjudication of a child in need of care proceeding, the court is required to inquire as to whether the child is an Indian child, and if the child is not, the court may proceed with the adjudication. However, if there is reason to know that the child is an Indian child, the court shall immediately proceed in accordance with the Indian Child Welfare Act.

Proposed law further provides that if a tribe receiving notice of a proceeding fails to respond, the court may determine that the child is not an Indian child and proceed to adjudication.

Proposed law adds a Comment to present law (Ch.C. Art. 680) to clarify that if the court knows that the child is an Indian child, it must proceed in accordance with the Indian Child Welfare Act which requires notice to the tribe, active efforts to prevent removal of the child, the appointment of experts, and strict standards of evidence.

Present law (Ch.C. Art. 749) provides for the contents of a families in need of services petition.

Proposed law retains present law and additionally requires the petition to state whether the petitioner knows or has reason to know that the child is an Indian child.

Proposed law (Ch.C. Art. 767.1) provides that prior to adjudication of a families in need of services proceeding, the court is required to inquire as to whether the child is an Indian child, and if the child is not, the court may proceed with the adjudication. However, if there is reason to know that the child is an Indian child, the court shall immediately proceed in accordance with the Indian Child Welfare Act.

Proposed law further provides that if a tribe receiving notice of a proceeding fails to respond, the court may determine that the child is not an Indian child and proceed to adjudication.

Proposed law (Ch.C. Art. 767.2) lists the factors from the federal regulations that give the court reason to know that a child is an Indian child, and, if so, requires the court to proceed as such in accordance with the Indian Child Welfare Act.

Present law (Ch.C. Art. 1019) provides for the contents of a petition for adoption.

Proposed law retains present law and additionally requires the petitioner to state whether he knows or has reason to know that the child is an Indian child.

Proposed law (Ch.C. Art. 1034.1) provides that at the termination of parental rights hearing, the court is required to inquire as to whether the child is an Indian child, and if the child is not, the court may proceed with termination. However, if there is reason to know that the child is an Indian child, the court shall immediately proceed in accordance with the Indian Child Welfare Act.

Proposed law further provides that if a tribe receiving notice of a proceeding fails to respond, the court may determine that the child is not an Indian child and proceed to termination.

Proposed law (Ch.C. Art. 1034.2) lists the factors from the federal regulations that give the court reason to know that a child is an Indian child, and, if so, requires the court to proceed as such in accordance with the Indian Child Welfare Act.

Present law (Ch.C. Art. 1122) provides for the surrender of parental rights form.

Proposed law retains present law and requires the petitioner to state whether the child is an Indian child.

Present law (Ch.C. Art. 1515) provides for a petition for voluntary transfer of custody.

Proposed law retains present law and requires the petitioner to state whether the child is an Indian child.

Present law (Ch.C. Art. 1518) authorizes the court to render orders it deems necessary to protect the best interests of a child in a voluntary transfer of custody proceeding.

Proposed law retains present law and, in accordance with the Indian Child Welfare Act, requires the court to appoint counsel for an indigent parent or custodian of an Indian child.

(Amends Ch.C. Arts. 612(A)(2), 624(D), (E), (F), and (G), 634(A), 749(A) and (B), 1019(A) and (B), and 1122(A)(3); Adds Ch.C. Arts. 103.1, 116(6.1) and (6.2), 624(H), 624.1, 661.1, 767.1, 767.2, 1034.1, 1034.2, 1515(A)(8) and (C) and 1518(C); Provides Comments to Ch.C. Art. 680)