

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

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Children's Code Articles 612(A)(2), 624(D), (E), (F), and (G), 634(A),  
13 749(A) and (B), 1019(A) and (B), 1515(B), and 1122(A)(3) are hereby amended and  
14 reenacted and Children's Code Articles 103.1, 116(6.1) and (6.2), 624(H), 624.1, 661.1,  
15 767.1, 767.2, 1034.1, 1034.2, 1515(A)(8) and (C) and 1518(C) are hereby enacted to read  
16 as follows:

17 Art. 103.1. Applicability of Indian Child Welfare Act

18 A. The provisions of the federal Indian Child Welfare Act and the  
19 regulations promulgated thereunder supersede the Children's Code whenever the  
20 outcome of an involuntary or voluntary proceeding may result in the removal of an

1 Indian child from a parent under circumstances in which the parent cannot have the  
2 child returned upon demand.

3 B. Child custody proceedings to which the federal Indian Child Welfare Act  
4 and the regulations promulgated thereunder apply include the following:

5 (a) A child in need of care proceeding.

6 (b) A certification for adoption proceeding.

7 (c) A family in need of services proceeding.

8 (d) A transfer of custody, a surrender for adoption, and any other voluntary  
9 proceeding.

10 Comments - 2018

11 The purpose of the federal Indian Child Welfare Act (ICWA), 25 U.S.C.  
12 1901-1963 and 25 C.F.R. 23, is to express a preference for keeping Indian children  
13 with their families, deferring to tribal judgment on matters concerning the custody  
14 of tribal children and placing Indian children who must be removed from their homes  
15 within their own families or with their own or other Indian tribes. Among other  
16 added responsibilities is a mandate that the court shall ensure and document in the  
17 record a timely inquiry about Indian heritage. See Articles 612, 612.1, 624, 634,  
18 661.1, 746, 1004, 1034.1, and 1122. If the court knows or has reason to know the  
19 child is an Indian child, then the court must ensure and document in the record  
20 adherence to the provisions of ICWA, including a thirty-day limit on emergency  
21 removals, a determination of jurisdiction, proper notice to the appropriate tribe(s),  
22 placement preferences, use of "qualified expert witnesses," and the burden of proof  
23 required for the particular proceeding. ICWA also imposes significant procedural  
24 requirements aimed at ensuring that the interests of a child's tribe and any tribal  
25 heritage are recognized as important and distinguishable from the interests and rights  
26 of the child's parents. Under ICWA, proper notice must be given in "child custody  
27 proceedings" which include: "foster care placement; termination of parental rights;  
28 pre-adoptive placement; adoptive placements; and some dispositions in families in  
29 need of services cases." 25 C.F.R. 23.103. The terminology encompassing "child  
30 custody proceedings" as defined in federal law has been adapted to Louisiana law in  
31 Paragraph B of this Article. ICWA applies to private placements and adoptions as  
32 well as those initiated by the state. 25 U.S.C. 1903(1). See also B.J. Jones, Mark  
33 Tilden & Kelly Gaines-Stoner, *The Indian Child Welfare Act Handbook* (2008) (2d  
34 ed.).

35 \* \* \*

36 Art. 116. Definitions

37 Except where the context clearly indicates otherwise, these definitions apply  
38 for the following terms used throughout this Code.

39 \* \* \*



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

\* \* \*

Comments - 2018

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

\* \* \*

29           Art. 624. Continued custody hearing; continued safety plan hearing; federal Indian  
30           Child Welfare Act

\* \* \*





1 should proceed with a child in need of care proceeding, which provides full due  
2 process and ICWA protections. *Guidelines for Implementing the Indian Child*  
3 *Welfare Act* (Bureau of Indian Affairs, Dec. 2016), Section 23.113(e), at p. 27.

4 (c) According to 25 C.F.R. 23.107(b), if there is reason to know that the  
5 child is an Indian child, but the court does not have sufficient evidence to determine  
6 that the child is or is not an Indian child, the court must confirm (by a report,  
7 declaration, or testimony in the record) that the agency used due diligence to identify  
8 and work with the tribe to verify membership. The court must also treat the child as  
9 an Indian child until it is determined on the record that the child does not meet the  
10 definition of Indian child.

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

21 \* \* \*

22 Art. 634. Contents of petition

23 A. The petition shall set forth with specificity:

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

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

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

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

33 \* \* \*

34 Comments - 2018

35 25 C.F.R. 23.1 et seq. requires that the court make an inquiry at the  
36 commencement of every child custody proceeding about whether there is reason to  
37 know that the child is an Indian child. A child in need of care proceeding is a child  
38 custody proceeding subject to the provisions of the federal Indian Child Welfare Act,  
39 25 U.S.C. 1901-1963.

40 \* \* \*



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. In contrast, if the Department of Children and Family  
5 Services seeks to terminate parental rights, notice must again be attempted. See  
6 Article 1034.1.

7 \* \* \*

8 Art. 749. Contents of petition

9 A. The petition shall set forth with specificity:

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

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

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

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

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

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

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

29 \* \* \*

30 Comments - 2018

31 The federal Indian Child Welfare Act (ICWA) applies to any involuntary  
32 proceeding in a state court involving an Indian child when foster care placement is  
33 under consideration as an option. 25 U.S.C. 1901-1963. The procedures, known as

1 informal FINS, Articles 731-732 are voluntary attempts to resolve the dispute by  
2 mediation; hence, ICWA does not apply even if the child is an Indian child.  
3 However, if a formal FINS petition is initiated, ICWA applies because Article 780  
4 authorizes the removal of the child from the caretaker's home, and a court order is  
5 needed for the child's return.

6 \* \* \*

7 Art. 767.1. Federal Indian Child Welfare Act inquiry

8 A. At the commencement of the adjudication hearing, the court shall inquire  
9 as to whether the petitioner or any person before the court knows or has reason to  
10 know that the child is an Indian child. If no person before the court responds  
11 affirmatively, the court may proceed, although it shall instruct each person before the  
12 court to inform the court if he subsequently discovers information indicating that the  
13 child is an Indian child.

14 B. In accordance with Article 767.2, if the court finds that there is reason to  
15 know that the child is an Indian child, the court shall immediately proceed pursuant  
16 to the federal Indian Child Welfare Act and the regulations promulgated thereunder.

17 C. If a tribe fails to respond to multiple requests for verification that the child  
18 is an Indian child and the court or Department of Children and Family Services has  
19 sought the assistance of the Bureau of Indian Affairs in contacting the tribe, the court  
20 may make the determination that the child is not an Indian child based on the  
21 information it has available and proceed to adjudication in accordance with this Title.

22 Comments - 2018

23 (a) The threshold issue under the federal Indian Child Welfare Act (ICWA)  
24 is whether there is reason to know that the child is an Indian child in a child custody  
25 proceeding. See Articles 103.1 and 767.2. Paragraph A reflects the requirement that  
26 an inquiry as to whether there is reason to know that the child is an Indian child must  
27 be made at the commencement of every proceeding.

28 (b) Paragraph B requires the court to comply with ICWA, which is replete  
29 with requirements that must be met before an Indian child is placed outside of his  
30 parent's or Indian caretaker's home. Notice of the pending proceedings must be  
31 given to the child's alleged tribe or tribes as well as to the Bureau of Indian Affairs.  
32 25 U.S.C. 1912(a). The Department of Children and Family Services must submit  
33 a detailed predisposition report and an affidavit attesting to its "active efforts" to  
34 avoid disruption of the Indian family. 25 U.S.C. 1912(d). Evidence from "qualified  
35 expert witnesses," who, among other attributes, must be familiar with Indian customs  
36 and traditions, must be received about potential placements. 25 U.S.C. 1912(c) and  
37 (f). ICWA mandates the use of specific "placement preferences" unless the court  
38 finds by clear and convincing evidence that there is good cause to depart from those  
39 preferences. 25 U.S.C. 1915(a) and 1916(b).

1 (c) Paragraph C governs the court's duty in the face of tribal inaction. After  
 2 a FINS proceeding is commenced, if no response or motion to intervene has been  
 3 received from the tribe or the Department of the Interior, the court may determine  
 4 based on the information it has available that the child does not qualify as an Indian  
 5 child. *Guidelines for Implementing the Indian Child Welfare Act* (Bureau of Indian  
 6 Affairs, Dec. 2016), Section 23.108, at p. 22. Thus, additional notice of changes in  
 7 placement or permanency hearings is not required. However, the Guidelines  
 8 recommend that state courts give notice of any change of placement as well as any  
 9 change to the child's permanency plan or concurrent plan. *Guidelines for*  
 10 *Implementing the Indian Child Welfare Act* (Bureau of Indian Affairs, Dec. 2016),  
 11 Section 23.111, at p. 30.

12 Art. 767.2. Reason to know a child is an Indian child; federal Indian Child Welfare

13 Act

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

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

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

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

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

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

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

31 Comments - 2018

32 This Article is in all substantive aspects a verbatim copy of 25 C.F.R.  
 33 23.107(c). The identification of a child as an "Indian child" means that the informant  
 34 has knowledge that the child is already a member of a particular tribe or tribes or that  
 35 the child is eligible for membership because his parent is a member. See the 2018  
 36 Comment to Article 116. The identity of a particular tribe or tribes is important to  
 37 fulfill the requirements of the federal Indian Child Welfare Act (ICWA) that notice

1 of the pendency of a child custody proceeding be given to all tribes of which there  
2 is a reason to know that the child or parent is a member. However, ICWA  
3 recognizes that the particular tribe or tribes may not be known although the  
4 informant produces credible evidence of a parent's tribal membership; in that case,  
5 notice is given to the Bureau of Indian Affairs.

6 \* \* \*

7 Art. 1019. Contents of the petition

8 A. The petition shall set forth with specificity:

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

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

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

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

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

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

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

24 \* \* \*

25 Comments - 2018

26 Subparagraph (A)(5) is new. A termination of parental rights proceeding is  
27 a child custody proceeding subject to the federal Indian Child Welfare Act. See  
28 Article 103.1. Because certification proceedings can result in the permanent  
29 severance of all parental ties, the Act's restrictions on these cases are even more  
30 stringent than those governing CINC or FINS proceedings. For example, even if the  
31 court found at a prior CINC proceeding that there was no reason to believe that the  
32 child was an Indian child, the issue of potential tribal affiliation must be readdressed  
33 in the termination hearing, and even if notice was given to a tribe and the tribe failed  
34 to answer, any tribe to which the child may be affiliated must be given new notice  
35 of the termination proceeding. 25 C.F.R. 23.107. Courts must take special caution

1 in any certification action involving an Indian child so as not to destabilize any  
2 adoption.

3 \* \* \*

4 Art. 1034.1. Federal Indian Child Welfare Act inquiry

5 A. At the commencement of the hearing, the court shall inquire as to whether  
6 the petitioner or any person before the court knows or has reason to know that the  
7 child is an Indian child. If no person before the court responds affirmatively, the  
8 court may proceed, although it shall instruct each person before the court to inform  
9 the court if he subsequently discovers information indicating that the child is an  
10 Indian child.

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

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

20 Comments - 2018

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

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

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

10 Art. 1034.2. Reason to know a child is an Indian child; federal Indian Child Welfare  
11 Act

12 Upon conducting the inquiry required by Article 1034.1, a court has reason  
13 to know that a child is an Indian child if any of the following occurs:

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

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

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

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

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

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

29 Comments - 2018

30 This Article is in all substantive aspects a verbatim copy of 25 C.F.R.  
31 23.107(c). The identification of a child as an "Indian child" means that the informant  
32 has knowledge that the child is already a member of a particular tribe or tribes or that  
33 the child is eligible for membership because his parent is a member. See the 2018  
34 Comment to Article 116. The identity of a particular tribe or tribes is important to  
35 fulfill the requirements of the federal Indian Child Welfare Act (ICWA) that notice  
36 of the pendency of a child custody proceeding be given to all tribes of which there  
37 is a reason to know that the child or parent is a member. However, ICWA

1 recognizes that the particular tribe or tribes may not be known although the  
2 informant produces credible evidence of a parent's tribal membership; in that case,  
3 notice is given to the Bureau of Indian Affairs.

4 \* \* \*

5 Art. 1122. Contents of surrender; form

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

7 \* \* \*

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

10 \* \* \*

11 Comments - 2018

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

26 \* \* \*

27 Art. 1515. Petition; contents; form

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

29 \* \* \*

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

31 B. The form for the petition shall be as follows:

32 "PETITION FOR VOLUNTARY TRANSFER OF CUSTODY

33 The petition of \_\_\_\_\_ (all legal custodians of the child unless otherwise indicated  
34 in Paragraph III of the petition), domiciled in the parish of \_\_\_\_\_, respectfully  
35 represent(s):

36 I.



1 V.

2 That petitioner(s) desire to transfer physical custody OR legal custody of the person  
3 of the children (indicate one) for the period of time \_\_\_\_\_ (specify intended  
4 duration) in accordance with the following terms and conditions  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 (may include provisions for support and/or visitation).

8 VI.

9 That petitioners desire this transfer of custody for the following reasons:  
10 \_\_\_\_\_  
11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_.

15 Has the Department of Children and Family Services recommended to you that this  
16 petition be filed?

17 \_\_\_\_\_  
18 Yes No

19 If yes, state name of the Department of Children and Family Services worker  
20 making the recommendation and the reasons for the recommendation with particularity.

21 If the department has recommended that this petition be filed, you have a right to  
22 counsel. Have you consulted with an attorney?

23 \_\_\_\_\_  
24 Yes No

25 VII.

26 That \_\_\_\_\_ has/have agreed to and does/do desire to accept  
27 custody of the child(ren) to the extent and under the terms and conditions stated in this  
28 petition, as more fully appears in the attached Affidavit of Acceptance.

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



1 Comments-2018

2 If the child is an Indian child as defined by Article 116, the federal Indian  
3 Child Welfare Act (ICWA) applies in all subsequent proceedings. For example, the  
4 court will be required to ensure that proper notice is given, that active efforts to  
5 prevent removal are made, that qualified expert witnesses on the culture and customs  
6 of Indian tribes are appointed, and that the ICWA standards of evidence are followed  
7 in accordance with the strict provisions of the Act.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 182 Engrossed

2018 Regular Session

Johnson

**Abstract:** Provides for the applicability of the Indian Child Welfare Act in certain Children's Code proceedings.

Proposed law (Ch.C. Art. 103.1) provides that the Indian Child Welfare Act supersedes the Children's Code when a child may be removed from a parent. Proposed law also lists the child custody proceedings to which the Indian Child Welfare Act applies.

Present law (Ch.C. Art. 116) provides for definitions.

Proposed law retains present law and defines "Indian child" and "Indian tribe".

Present law (Ch.C. Art. 612) requires Department of Children and Family Services (DCFS) to investigate reports of abuse.

Proposed law retains present law and requires DCFS to inquire whether a child is an Indian child during their investigation.

Present law (Ch.C. Art. 624) provides for a continued custody hearing in a child in need of care proceeding.

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.

Present law provides a form for the voluntary transfer of custody. Proposed law adds to this form a question regarding if a child is an Indian child for the purposes of complying with the federal Indian Child Welfare Act.

Proposed law makes technical changes.

(Amends Ch.C. Arts. 612(A)(2), 624(D), (E), (F), and (G), 634(A), 749(A) and (B), 1019(A) and (B), 1515(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)

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Add to the voluntary transfer of custody form a question regarding if a child is an Indian child for the purpose of complying with the federal Indian Child Welfare Act.
2. Make technical corrections.