
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)]

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.