

# U.S. House passes ICWA changes, State accused of non-compliance

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On May 10, an Omnibus Adoption bill, H.R. 3286, was passed which included amendments to Title III of the Indian Child Welfare Act (ICWA). These amendments would make massive changes in ICWA by removing from tribal courts, and giving to state courts, jurisdiction of whether or not the Act applies to certain Indian children.

Congressman Don Young opposed the inclusion of the measure, but the House decided by a 17-vote margin, to include this provision in the bill. The bill now goes to the Senate for consideration.

Tribal members and allies say the House action is an erosion of tribal sovereignty. Opponents say the action prevents tribes from disputing the adoptions of children who have lost their ties to tribal cultures.

According to *The Council*, monthly newsletter of the Tanana Chiefs Conference, another pending bill is H.R. 3156, which would remove all voluntary placements from coverage under ICWA. The National Council for Adoption is sponsoring this new legislation and has been circulating information critical of the current ICWA law.

In a May 30 letter to tribal leaders, Young asked for help to develop a consensus legislative alternative to the Title III provisions.

"Never in all my years of Congress has a major Committee been overruled by the Rules Committee in repealing a Committee's recommendation with regard to legislation within

their jurisdiction. It was a first, and I want to assure every Alaska Native group and American Indian Tribe that I will continue to work to ensure that this does not occur again with regard to major legislation affecting each member," said Young.

## ***Native Village of Unalakleet***

In *Native Village of Unalakleet v. Superior Court, Third Judicial District, State of Alaska, et. al.*, the Native Village of Unalakleet, a federally recognized Indian tribe, sought relief in the U.S. District Court for the District of Alaska. In March, the federal court ruled in favor of the tribe. In a 37-page opinion, Judge H. Russel Holland ruled that the Native Village of Unalakleet has primary jurisdiction of child custody proceedings over Samantha Huckstep, a three-year-old Native child.

Holland's opinion highlights tension created by Alaska Supreme Court decisions regarding tribal jurisdiction that directly contradict decisions of the 9th Circuit Court of Appeals.

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Kari Bazy Garber, attorney for the tribe, said she hopes that this decision will provide a basis for the state to foster cooperative and respectful relations with tribal courts in Alaska that will most certainly benefit all Alaskans.

Judge Holland's order invalidated the state court's orders, and the case will now go before the tribal court.

## **Alaska Federation of Natives**

The Alaska Federation of Natives is awaiting a response from Governor Tony Knowles to a request for an ICWA policy discussion. Concerns that will be addressed include the apparent non-compliance and inconsistency with which the state is handling foster care and adoption of Alaska Native children. Specific cases will not be addressed because of the confidentiality of these types of cases.

"We feel like we are (in compliance)," said Deann Grummett, program coordinator with the Division of Family and Youth Services. "We're working with tribal groups and representatives from social service corporations

who represent individual tribes to improve relationships with tribes. Compliance is not always uniform. We can always improve the degree of compliance and follow the spirit (of ICWA) a little more."

AFN believes that the non-compliance issues stem primarily in the Anchorage area, stating that the one ICWA caseworker lacks time for training, monitoring and compliance issues.

"Court procedures are different in Anchorage than in rural areas," said Grummett. "Anchorage is the place where we've heard the most complaints."

Some Native parents agree to whatever recommendations case workers make for fear of losing their parental rights. This is prevalent among single Native mothers.

In Anchorage, the community with the largest Native population, it is difficult to recruit Native foster homes for Native children as required by ICWA.

"We're streamlining the licensing process. I think one of the problems is that families are

not interested," said Grummett.

AFN has determined that in spite of the many problems with the state's compliance, no new federal legislation is needed to foster and protect Alaska Native children and families, as long as the state is in compliance with its own policies.

Knowles has responded to earlier requests by forming a group to work on ICWA issues, identify problems, and develop ways to alleviate those problems. Some organizations believe that the Tribal/State Collaboration Group is more of a dog-and-pony show than a substantive policy initiative. The group meets quarterly.

"My general feeling, at least within that group, is the working relationship is positive," said Grummett.

## **Citizen's Review Panel**

As with other areas of Native concern, Native children in the custody of the state appears to be disproportionate – 53% of the state total, according to a report by the Citizen's Review Panel for Permanency Plan-

ning completed in April.

The report stated, "The initial placement of the majority of Alaska Native children did not comply with the ICWA placement preferences. . . . Two-thirds of our children are living in non-relative foster homes or institutions."

Recommendations from the panel to the legislature include:

- Additional funding is needed to comply with the statute by reviewing children in each judicial district and continuing at the present level of staffing.
- Statutes should be amended to require other state agencies (DFYS and GAL) to comply with the recommendations of the Citizen's Panel, or justify why they will not.
- Limit the total number of cases a DFYS social worker can carry, and authorize budget numbers that reflect those limits.
- Mandate a DFYS budget that provides for adequate support services to social workers, including paralegals, case aides, etc., thus freeing social workers' time to provide intensive reunification and placement services for children in out-of-home care.
- Fully fund or provide generous assistance to substance abuse evaluation and treatment programs through the state.