WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2009 Senate Bill 288	Senate Amendments 1, 2, and 3
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2009 Senate Bill 288 codifies the federal Indian Child Welfare Act (ICWA) into ch. 48, the Children's Code, and ch. 938, Stats., the Juvenile Justice Code.

Senate Amendment 1

Senate Amendment 1 does the following:

1. Amends the definition of "parent" in ch. 48, Stats., for the purposes of ICWA to specifically refer to an "Indian person" who has lawfully adopted an Indian child. Therefore, non-Indian adoptive parents are no longer included in the definition of "parent."

2. Further amends the definition of "parent" to provide an additional means of acknowledging paternity to include an acknowledgement of paternity made under tribal law or custom.

3. Provides that certain court proceedings under chs. 48 and 938, Stats., may not be held until at least 15 days (rather than 10 days, under the bill) after receipt of the notice by the U.S. Secretary of the Interior, in cases where the Indian child's parent, the Indian custodian, or tribe cannot be determined. These changes conform the bill to the notice requirements in ICWA.

4. Amends the definition of "fact-finding hearing" on a petition to terminate the parental rights to an Indian child, to provide that if a partial summary judgment on the grounds of TPR is granted the findings required at the fact-finding hearing may, in that case, be made at the dispositional hearing.

Senate Amendment 2

Senate Amendment 2 amends the provision under which a court must find good cause to deny a request to transfer a proceeding to the tribal court. First, the amendment provides that one of the

elements for determining whether the proceeding is at an advanced state is that the tribe exceeded six months in requesting a transfer after receiving notice of the proceeding. The time limit in the bill is three months and, under the amendment, is three months if the proceeding is a termination of parental rights proceeding. In addition, the amendment eliminates the requirement that if the tribe exceeds the above deadline for requesting a transfer in writing that must be due to "gross negligence."

Senate Amendment 3

Senate Amendment 3 modifies a provision relating to qualified expert witnesses. Under the bill, any party to a proceeding involving the out-of-home placement of, or involuntary termination of parental rights to, an Indian child may call a qualified expert witness. A qualified expert witness must be chosen in a specified order of preference with a member of the Indian child's tribe recognized by the Indian child's tribal community as knowledgeable regarding the tribe's customs relating to family organization or child-rearing practices being the first in the order of preference. A qualified expert witness from a lower order of preference may be chosen only if the party calling the qualified expert witness shows that it has made a diligent effort to secure the attendance of a qualified expert witness from a higher order of preference. Under the bill, the fact that a qualified expert witness called by one party is from a lower order of preference than a qualified expert witness called by another party may not be the sole consideration in weighing the testimony and opinions of the qualified expert witness.

Senate Amendment 3 provides that, in weighing the testimony of all witnesses, the court must consider as paramount the best interests of the Indian child, as set forth in the bill.

Legislative History

The Senate Committee on Children and Families and Workforce Development offered Senate Amendments 1, 2, and 3 on October 7, 2009. On that date, the committee voted unanimously to recommend adoption of Senate Amendments 1, 2, and 3 and passage of the bill, as amended.

AS:ksm