



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 616 (as enacted)
Sponsor: Senator Judy K. Emmons
Senate Committee: Families, Seniors and Human Services
House Committee: Families, Children, and Seniors

PUBLIC ACT 56 of 2018

Date Completed: 4-8-19

RATIONALE

The Michigan Indian Families Preservation Act (MIFPA) establishes standards and procedures for child custody proceedings, including foster care placement, termination of parental rights, and adoption, that involve an Indian child. The Act gives an Indian tribe exclusive jurisdiction over any child custody proceeding involving an Indian child who lives within the tribe's reservation, specifies circumstances under which a State court may exercise jurisdiction over Indian child custody proceedings, and identifies responsibilities of the Department of Health and Human Services (DHHS) in those proceedings. Under MIFPA, in Indian child custody proceedings, courts must protect the best interests of Indian children and ensure that the DHHS uses practices that are designed to prevent the voluntary or involuntary out-of-home care placement of Indian children. Under the Child Protection Law, however, the DHHS was prohibited from giving confidential reports of suspected child abuse or neglect to Indian tribes, unless the tribes *otherwise* qualified for access to that information. As a result, the Department was prevented from contacting a tribe to make its leaders aware of DHHS involvement in a Child Protection Services matter involving an Indian child or from engaging a tribe to provide culturally appropriate services. The Department's policy was to share information with a tribal representative only after the DHHS had initiated a child custody proceeding. Some people believed that, by sharing information only at this point, the DHHS was not meeting its obligations to prevent the breakup of Indian families. It was suggested that, in order for the DHHS to comply with MIFPA, the Child Protection Law should explicitly permit the sharing of confidential documents regarding an Indian child with a tribal representative acting on behalf of the child.

CONTENT

The bill amended the Child Protection Law to make certain confidential reports or records related to a child who was a member of a tribe available to a tribal entity or tribal social services representative acting on behalf of that child.

The bill took effect June 4, 2018

The Law requires certain people, such as medical professionals, teachers, and members of the clergy, to report to the DHHS if they have reasonable cause to suspect child abuse or neglect. In addition, any person who has reasonable cause to suspect child abuse or neglect may report to the DHHS or a law enforcement agency. The DHHS is required to maintain a statewide electronic central registry to carry out the intent of the Law.

Unless the DHHS Director releases the information at his or her own initiative or upon written request, a written report, document, or photograph filed with the DHHS is a confidential record available only to certain individuals and entities, such as a police agency or law enforcement agency investigating a report of known or suspected child abuse or neglect, a physician who is

treating a child whom the physician reasonably suspects may be abused or neglected, or a grand jury that determines the information is necessary to conduct the grand jury's official business.

Under the bill, a confidential written report, confidential document, or confidential photograph also is available to a tribal representative, agency, or organization, including a multidisciplinary team, authorized by the Indian child's tribe, to care for, diagnose, treat, review, evaluate, or monitor active efforts regarding an Indian child, parent, or Indian custodian.

The term "active efforts" is defined as it is in the Michigan Indian Family Preservation Act (actions to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and reunify the Indian child with the Indian family).

MCL 722.627

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Confidential documents related to an Indian child should be available to a tribal entity or tribal representative, especially if the child is suspected of being abused or neglected, Child Protective Services is involved, and a child custody proceeding might be initiated. The Michigan Indian Family Preservation Act requires the State to pursue "active efforts", which include reasonable efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to reunify the Indian child with the Indian family. Sharing information regarding an Indian child with tribal leadership is a reasonable effort toward this end and, in many situations, helps to resolve a child custody proceeding before the State acted in a way that would separate an Indian child from his or her family. The DHHS's obligation to share information should be made explicit in the Child Protection Law to ensure compliance with MIFPA.

It is not the State's place to determine whether a tribal representative is concerned with child safety or can meet a specified child welfare purpose listed in the Child Protection Law, which would authorize access to confidential records. Tribes are sovereign governments with their own laws and separate statutes regarding privacy. Furthermore, a tribe is in the best position to know what services are culturally appropriate for any situation involving an Indian child. Tribes are not identical to any of the other parties with access to confidential information listed in the Law. Tribes are the best resources to prevent the breakup of an Indian family as recognized in MIFPA, which requires consultation between the State and a tribe when the State is providing services to an Indian child. Under the bill, a representative, organization, or group of individuals authorized by an Indian child's tribe to provide certain child welfare services, is able to obtain confidential documents related to the Indian child.

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: John Maxwell

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.