



STATE OF WASHINGTON
OFFICE OF THE FAMILY AND CHILDREN'S OMBUDSMAN

6720 FORT DENT WAY, SUITE 240
TUKWILA, WA 98188
(206) 439-3870 · (800) 571-7321 · FAX (206) 439-3877

TESTIMONY ON ESSB 5656
HOUSE COMMITTEE ON EARLY LEARNING AND HUMAN SERVICES
Thursday March 10, 2011
House Hearing Room D, John L. O'Brien Building, 8:00a.m.

Good morning Madame Chair and Members of the Committee. My name is Mary Meinig and I am the Director of the Office of the Family & Children's Ombudsman ("OFCO"). We welcome the opportunity to comment on ESSB 5656.

While OFCO remains neutral on proposed legislation, I support the intent of SB 5656, which establishes a Washington State Indian Child Welfare Act to protect the rights and interests of Indian Tribes, prevent the need for out-of-home placement of Indian children and when placement is necessary, promote placements that reflect and honors the child's tribal culture and maintains the child's relationship with the tribal community.

In its capacity as Ombudsman, OFCO routinely investigates various issues regarding Indian children, families and tribes involved with the state child welfare system. These issues were highlighted in the Ombudsman's *2006 Annual Report*.¹ OFCO noted the following systemic concerns:

- Over representation of Indian children in the child welfare system;
- Disproportionally high rate of Indian child fatalities;
- Delays in establishing permanency for Indian children;
- Philosophical differences over what constitutes the "best interest of the child" for Indian children;
- Disagreement over whether a child qualifies as an "Indian child" under the Indian Child Welfare Act; and
- Ensuing confusion by stakeholders over which specific laws and policies apply to a case.

¹ OFCO reports and publications are available at: <http://www.governor.wa.gov/ofco/reports/default.asp>

Additionally, this report also discusses the types of complaints OFCO receives regarding Indian children and families. The most common complaint issues brought to our attention are whether the department:

- Honored the tribe’s decision whether or not the child meets the ICWA definition of an “Indian child”;
- Provided proper and timely notice to the tribe;
- Followed placement preferences under ICWA;
- Unreasonably removed a child from a non-Native placement;
- Maintained regular contact with the tribe and/or collaborated with the tribe;
- Made “active efforts” to prevent the breakup of the Indian family; and
- Adequately promoted the best interests of the child by presenting reports and recommendations in cases before a tribal court, when the department continues to provide child welfare services.

ICWA was established to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families. Under current state law, the requirements of the Federal ICWA already apply to all child custody proceedings under RCW 13.34 and RCW 26.33.² Establishing a state Indian Child Welfare Act, ESSB 5656 clarifies existing policies and practices and reduces confusion regarding state and federal legal requirements affecting Indian children, families and tribes. This bill addresses many of the issues discussed above. For example, this bill:

- Reiterates that tribal membership is determined by the tribe, is not necessarily limited by blood quantum and that the tribe’s decision is final;
- Establishes in state law requirements to make a “good faith effort” to determine whether the child is an Indian child, including consulting with the parents, persons with whom the child resides and any other person who may have knowledge about the child’s heritage;
- Requires that the Indian child’s tribe receive notice of any child custody proceeding and of their right to intervene;
- Defines the term “active efforts” and specifies that this requires making timely and affirmative efforts to provide reasonably available and culturally appropriate preventative, remedial or rehabilitative services and not simply handing the parent a list of referrals;
- Clarifies that any potential harm resulting from interfering with the bond between a child and foster care provider shall not be a basis for terminating parental rights of an Indian child; and
- Provides a remedy if there is a violation of this act- an aggrieved party may petition the court to invalidate such action.

Establishing a Washington State Indian Child Welfare Act will help assure the consistent application and enforcement of federal and state laws and policies designed to protect the best interests of Indian children and promote the stability and security of Indian tribes and Native families. Thank you for this opportunity to provide you with our thoughts on this proposed legislation.

² RCW 13.34.040(3) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903. If the child is an Indian child as defined under the Indian child welfare act, the provisions of the act shall apply.

RCW 26.33.040 (1)(a) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903. If the child is an Indian child as defined under the Indian child welfare act, the provisions of the act shall apply.