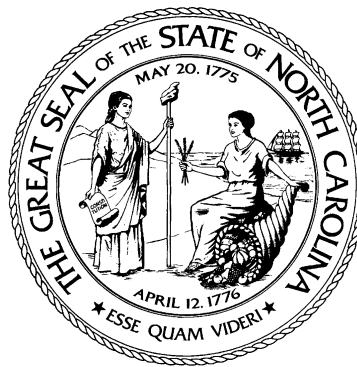


**HOUSE STUDY COMMITTEE TO
PRESERVE THE CULTURE & CUSTOMS OF
INDIAN CHILDREN**



***REPORT TO THE
2011 GENERAL ASSEMBLY
OF NORTH CAROLINA***

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TABLE OF CONTENTS

LETTER OF TRANSMITTAL.....	1
COMMITTEE MEMBERSHIP.....	2
AUTHORIZING LEGISLATION.....	3
COMMITTEE PROCEEDINGS.....	6
SUMMARY OF COMMITTEE PROCEEDINGS.....	8
COMMITTEE FINDINGS AND RECOMMENDATIONS.....	11

STATE OF NORTH CAROLINA

HOUSE STUDY COMMITTEE TO
PRESERVE THE CULTURE AND CUSTOMS OF INDIAN CHILDREN

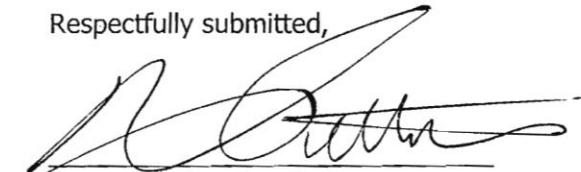


Dec. 10th, 2010

TO THE MEMBERS OF THE 2011 HOUSE OF REPRESENTATIVES:

Attached for your consideration is the report of the House Study Committee to Preserve the Culture and Customs of Indian Children established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representatives of the 2009 General Assembly.

Respectfully submitted,



Representative Ron Sutton
Chair

**HOUSE STUDY COMMITTEE TO
PRESERVE THE CULTURE AND CUSTOMS
OF INDIAN CHILDREN**

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HOUSE STUDY COMMITTEE TO PRESERVE THE CULTURE AND CUSTOMS
OF INDIAN CHILDREN

TO THE HONORABLE MEMBERS OF THE
NORTH CAROLINA HOUSE OF REPRESENTATIVES

Section 1. The House Study Committee to Preserve the Culture and Customs of Indian Children (hereinafter "Committee") is established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representatives of the 2009 General Assembly.

Section 2. The Committee consists of 13 members appointed by the Speaker of the House of Representatives. The membership of the committee shall include 4 legislators, one of whom shall be a Native American, and 9 public members as specified below. Members serve at the pleasure of the Speaker of the House of Representatives. The Speaker of the House of Representatives may dissolve the Committee at any time. Vacancies are filled by the Speaker of the House of Representatives.

Representative Sutton - Chair
Representative Stevens
Representative E. Warren
Representative Wray
American Indian Mothers - Beverly Collins-Hall
Commission on Indian Affairs - Greg Richardson
DHHS - Charisse Johnson
Tribes rec. - Tammy Jacobs
Tribes rec. - Rhonda Jones
Tribes rec. - Julia Phipps
Tribes rec. - Juanita Wilson
Groups rec. - Kara Jones
Groups rec. - Rick Oxendine

Section 3. The Committee may study any issues or matters that would impact the preservation of the customs and culture of Indian children who are not covered under the Indian Child Welfare Act (ICWA) and who are the subject of legal proceedings in State courts, including adoption, custody, and visitation. The Committee may study:

- (1) Current State laws applicable to family-related legal proceedings and their impact on retention of the cultural heritage of child members of Indian tribes.
- (2) Guidelines for local departments of social service agencies that would implement the same or similar policies and practices that are applicable to Indian children under federal law.
- (3) The creation of a State council or commission, to include members of Indian tribes, State and local social services agencies, the judiciary, and other appropriate officials to recommend policies and procedures to the General Assembly.
- (4) Any other matter that is relevant to promoting the preservation of the customs and culture of Indian children who are the subject of legal proceedings in State courts.

Section 4. The Committee shall meet upon the call of its Chair. A quorum of the Committee shall be a majority of its members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

Section 5. The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes.

Section 6. Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1.

Section 7. The expenses of the Committee including per diem, subsistence, travel allowances for Committee members, and contracts for professional or consultant services shall be paid upon the written approval of the Speaker of the House of Representatives pursuant to G.S. 120-32.02(c) and G.S. 120-35 from funds available to the House of Representatives for its operations. Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of the Chair of the Committee. Individual expenses in excess of \$5,000 shall be paid upon the written approval of the Speaker of the House of Representatives.

Section 8. The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The Director of Legislative Assistants of the House of Representatives shall assign clerical support staff to the Committee.

Section 9. The Committee may meet at various locations around the State in order to promote greater public participation in its deliberations.

Section 10. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the House of Representatives prior to the convening of the 2011 General Assembly by filing the final report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee terminates upon the convening of the 2011 General Assembly or upon the filing of its final report, whichever occurs first.

Effective this the 16th day of July, 2010.



Joe Hackney
Speaker

COMMITTEE PROCEEDINGS

Prior to the end of the 2010 Session of the 2009 General Assembly, the Committee and Subcommittee of the House Study Committee to Preserve the Culture and Customs of Indian Children met on the following dates:

March 26, 2010

Subcommittee Meeting Chaired by Rep. Sarah Stevens

April 7, 2010

Subcommittee Meeting Chaired by Rep. Sarah Stevens

February 11, 2010

Committee Meeting Chaired by Rep. Sutton, Committee Chair

- Charisse Johnson, MSW, Child Welfare Services Section Chief,
- Candice Britt, MSW, Child and Family Services Review Coordinator, North Carolina Department of Social Services (NCDSS), Department of Health and Human Services (DHHS)
- Angenette Stephenson, JD, MSW, Child Welfare Attorney North Carolina Department of Justice

March 16, 2010

Committee Meeting Chaired by Rep. Sutton, Committee Chair

- Mellicent O'Brien Blythe, Clinical Instructor
Jordan Institute for Families
UNC-CH School of Social Work
- Greg Richardson, Executive Director
NC Commission of Indian Affairs
NC Department of Administration
- Rhonda Jones, CEO
Red Path Child and Family Agency

April 23, 2010

Committee Meeting Chaired by Rep. Sutton, Committee Chair

- Ms. Beverly Collins Hall, Executive Director
American Indian Mothers
- Subcommittee Report, Representative Sarah Stevens, Subcommittee Chair
- Ms. Tonia Jacobs, Human Services Senior Practitioner
Task Force Member

The Committee proceedings for these meetings can be found in the Committee's 2010 Report to the 2009 General Assembly. Copies of the report are available in the Legislative Library.

The Committee was authorized to continue its work following the 2010 Session of the 2009 General Assembly. The Subcommittee to Preserve the Culture and Customs of Indian Children held 2 meetings on August 20, 2010 and September 17, 2010. The full Committee met on December 10, 2010.

August 20, 2010

Subcommittee Meeting Chaired by Rep. Sarah Stevens

- Update from the Indian Child Welfare Task Force
Mellicent O'Brien Blythe, LCSW
Jordan Institute for Families, UNC-CH School of Social Work

September 17, 2010

Subcommittee Meeting Chaired by Rep. Sarah Stevens

- North Carolina Administrative Offices of the Courts
Pete Powell, General Counsel

December 10, 2010

Committee Meeting Chaired by Rep. Sutton

The Study Committee to Preserve the Culture and Customs of Indian Children met on December 10, 2010 to receive the recommendations of the Subcommittee. The Committee discussed and approved its final recommendations, which are contained in this report.

A summary of these Subcommittee and Committee meetings is provided below.

SUMMARY OF COMMITTEE PROCEEDINGS

House Study Committee to Preserve the Culture and Customs of Indian Children

Subcommittee Meeting

August 20, 2010 – 11:00 am – Room 421, Legislative Office Building

The Chair of the Subcommittee, Rep. Sarah Stevens, called the meeting to order and recognized Rep. Sutton to address the Subcommittee. Rep. Sutton stated that the Committee was performing an extremely important function for the Indian children in the State and was looking forward to a good proposal to be taken up by the General Assembly in the 2011 Session.

Mellicent O'Brien Blythe next presented an update on the Indian Child Welfare Task Force (Task Force). The Task Force did not have any specific recommendations at this point but that it would be concentrating on improving its data collection as well continuing to work on a process that could provide further data breakdowns on Indian children in the State, particularly as it relates to their tribal affiliations. The Task Force was also still exploring the statutory requirements of G.S. 143B-139.5A (Collaboration between Division of Social Services and Commission of Indian Affairs on Indian Child Welfare Issues) as well as the issues surrounding notification requirements. Ms. Blythe stated that four tribal organizations had not yet provided a representative to the Task Force.

There was a lengthy discussion among Subcommittee members regarding a bill draft submitted by the American Indian Mothers and the legislative history of House Bill 945 which was introduced as "Enforce Federal Indian Child Welfare Act".

Kara Jones stated that the Task Force was made a standing Committee with the Commission on Indian Affairs and that the tribes were represented at a June 4 meeting. However, American Indian Mothers was not present at that meeting and she was not sure they were getting information on the meetings.

Charisse Johnson commented that the Indian tribes in the State needed to reach consensus on whether American Indian Mothers should be the organization that represents all of them for Indian child welfare issues. She stated that there needs to be some mechanism to obtain from all of the tribes what they need from the State and the Department of Health and Human Services. Rep. Stevens specified that confidentiality issues need to be addressed as well as tribal notification.

Kara Jones stated that they want their tribal attorneys and representatives recognized in State courts. Charisse Johnson suggested that the Administrative Offices of the Courts be involved in the discussion since there are local rules as to who will be recognized in court for cases related to child welfare.

House Study Committee to Preserve the Culture and Customs of Indian Children
Subcommittee Meeting
September 17, 2010 – 10:30 am – Room 421, Legislative Office Building

The Chair of the Subcommittee, Rep. Sarah Stevens, called the meeting to order and recognized Pete Powell, General Counsel for the North Carolina Administrative Offices of the Courts, to address the Subcommittee.

Mr. Powell stated that the polar star of the court system for the placement of children is the best interest of the child. The Indian Child Welfare Act applies only to federally recognized tribes and grants the recognized tribe exclusive jurisdiction over American Indian children residing within tribal lands. For those Indian children residing off of the reservation, the Indian Child Welfare Act provides for concurrent jurisdiction between tribal and state courts but also allows the tribe to move to transfer the case to tribal court at any time. The Multi-Ethnic Placement Act prohibits discrimination in adoption or foster care placements. Race, culture, or ethnicity cannot be used as a the basis for any denial of placement and no person can be denied the opportunity to become an adoptive or foster parent based on race, color, or national origin.

Mr. Powell further stated that the consideration of race and ethnicity may be permitted in individual cases where circumstances indicate it is warranted. In the event that a court is made aware of the ethnicity of a child and the culture or training of all potential foster parents, the court may take into account the individual needs of that child and the particular assets, traits, or training of each of the potential foster parents. He emphasized that the recruitment of American Indian families as foster parents or the training of non-American Indian potential foster families in American Indian culture and history should be a matter of great importance. He cautioned that any consideration of heritage and culture must be nondiscriminatory and that it may not be used as a replacement for the prohibited consideration of race, color, or national origin. He made a final note that all court decisions are made locally by independently elected judges based on the evidence before the court in that particular case. The Administrative Office of the Courts has no authority to dictate, review, or change the decisions by any court at any level of the judicial system.

There was discussion among the members of the Subcommittee. Beverley Collins-Hall asked about the recognition of state tribes versus federal tribes and Rep. Stevens stated that the Indian Child Welfare Act only applies to federally recognized tribes. She further stated that the Multi-Ethnic Placement Act applies to state recognized tribes. Kara Jones stated that the current laws need enforcement mechanisms.

House Study Committee to Preserve the Culture and Customs of Indian Children
Committee Meeting
December 10, 2010 – 11:00 am – Room 1228, Legislative Building

Rep. Ron Sutton, Chair of the Committee, called the meeting to order and recognized Mr. Tim Hovis, Staff, to review the draft of the Committee's final report to the 2011 General Assembly. The Committee made changes, including the approval of additional

language recommending that the Study Committee continue its work following the 2011 Session. The Committee approved the final report, as amended.

COMMITTEE FINDINGS AND RECOMMENDATIONS

Background

As noted in its report to the 2010 General Assembly, the Committee has followed with interest the work of the Indian Child Welfare Task Force. In June 2010, the Commission of Indian Affairs voted to make the Task Force a standing committee of the Commission and named the Committee the "American Indian Standing Committee on Indian Child Welfare of the Commission of Indian Affairs." Both the work of this Committee and the Task Force, now the Committee on Indian Child Welfare, originated out of legislation enacted by the General Assembly in 2001 as G.S. 143-139.5A. This statute calls for, among other things, the establishment of a relationship between the Division of Social Services (DSS) and State Indian tribes to enable tribes to receive notice of Indian children being placed in foster care, adoption, or child protective services. It also requires the development of a process for the identification of Indian child welfare advocacy, placement, and training entities with which the Department of Health and Human Services might contract or form partnerships for training and recruitment of Indian foster care and adoptive parents and for child placement.

- **Finding**

The Committee finds that the dialogue initiated by the American Indian Standing Committee on Indian Child Welfare with the various stakeholders such as the North Carolina Commission of Indian Affairs, the North Carolina Department of Social Services, State tribal leaders, and State tribal advocates has proved beneficial in identifying the issues and concerns of all stakeholders interested in the appropriate placement of Indian children.

Recommendation 1

The Committee endorses the efforts of the stakeholders through the American Indian Standing Committee to further cooperation between them. The Committee recommends that the Standing Committee on Indian Child Welfare continue its efforts to ensure that Indian children of State recognized tribes receive similar consideration to the consideration given to children of federally recognized tribes pursuant to the Federal Indian Child Welfare Act (ICWA). The importance of these issues requires continued attention and this Committee recommends that the American Indian Standing Committee of the Commission of Indian Affairs continue its work.

Recommendation 2

Issues surrounding the proper placement of Indian children require continued legislative attention and the Committee recommends that it be reauthorized to continue its work with the stakeholders after the 2011 Session of the 2011 General Assembly.

- **Finding**

As stated in its report to the 2010 General Assembly, the Committee finds that it is of utmost importance that the culture and heritage of Indian children be preserved and protected if they enter the child welfare system in this State. To accomplish this goal, the North Carolina Department of Social Services is in need of strong mechanisms to identify the tribal backgrounds of Indian children and appropriately place Indian children with families that understand and maintain Indian customs, behaviors and beliefs.

Recommendation 3

The Committee supports the policy changes now integrated in Department of Social Services manuals and procedures, including appropriate mechanisms to assure that State recognized tribes are notified when children from those tribes come to the attention of the child welfare system. This Committee also supports the adoption of memoranda of agreement between local departments of social services and tribes. The Committee recommends continued reforms in this area.

Recommendation 4

The Committee supports efforts by the Committee on Indian Child Welfare to develop training mechanisms for the governing bodies and members of State recognized tribes and to provide increased awareness of the need for Indian foster and adoptive parents for Indian children, one of the key objectives of the 2001 legislation.

- **Finding**

The Policy and Procedures Manual of the Division of Social Services provides for "similar consideration" for children of State recognized tribes to that afforded children of federally recognized tribes. To clarify the meaning of the term "similar consideration," the Charlotte All-Sites Model Court Team of the National Council of Juvenile and Family Court Judges (NCJFCJ) set as a goal for 2011 the extension of ICWA as a best practice for all Indian children in North Carolina, including children of State recognized tribes. The Committee finds that clarification of the term "similar consideration" is needed.

Recommendation 5

To assist in clarifying the term "similar consideration," the Committee recommends that ICWA be adopted as a best practice for the placement of all Indian children in the State. (See Proposed Legislation attached as Appendix A)

- **Finding**

The Fostering Connections to Success and Increasing Adoptions Act enacted by Congress in 2008 authorizes Indian tribes, tribal organizations and tribal consortia to apply for and receive federal funds to operate foster care, adoption

assistance, and kinship guardianship assistance programs directly under Title IV-E of the Social Security Act. As a second option, the Act also requires States to negotiate in good faith with any tribe, tribal organization, or tribal consortia that requests the development of a Title IV-E agreement with the State to administer all or part of a program on behalf of Indian children. The Committee finds that, given past confusion in this area over the rights of Indian tribes, the State should affirm the rights of tribes to seek an agreement with the State, as provided under the federal law.

Recommendation 6

The Committee recommends legislation requiring the Department of Health and Human Services to negotiate in good faith with authorized Indian tribes, organizations, and consortia that request to develop an agreement with the State to administer programs under Title IV-E of the Social Security Act, as required by federal law. (See Proposed Legislation attached as Appendix A)

APPENDIX A
GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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BILL DRAFT 2011-RGz-1 [v.6] (11/20)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
11/30/2010 1:14:02 PM

Short Title: Indian Child Services Changes.

(Public)

Sponsors: Representative.

Referred to:

A BILL TO BE ENTITLED
AN ACT TO REQUIRE THE DIVISION OF SOCIAL SERVICES IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO NEGOTIATE IN GOOD FAITH WITH INDIAN TRIBES AND ORGANIZATIONS THAT REQUEST TO DEVELOP AGREEMENTS TO ADMINISTER PROGRAMS UNDER THE FEDERAL FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT AND TO REQUIRE THE DIVISION OF SOCIAL SERVICES IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ADOPT THE FEDERAL INDIAN CHILD WELFARE ACT AS A BEST PRACTICE IN THE PLACEMENT OF ALL INDIAN CHILDREN IN THE STATE, AS RECOMMENDED BY THE STUDY COMMITTEE TO PRESERVE THE CULTURE AND CUSTOMS OF INDIAN CHILDREN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-139.5A reads as rewritten:

"§ 143B-139.5A. Collaboration between Division of Social Services and Commission of Indian Affairs on Indian Child Welfare Issues.

(a) The Division of Social Services, Department of Health and Human Services, shall work in collaboration with the Commission of Indian Affairs, Department of Administration, and the North Carolina Directors of Social Services Association to develop, in a manner consistent with federal law, an effective process through which the following can be accomplished:

- (1) Establishment of a relationship between the Division of Social Services and the Indian tribes set forth in G.S. 143B-407(a), either separately or through a central entity, that will enable these tribes, in general, and tribal councils or other tribal organizations, in particular, to receive reasonable notice of identified Indian children who are

being placed in foster care or adoption or who otherwise enter the child protective services system, and to be consulted on policies and other matters pertinent to placement of Indian children in foster care or adoption.

- (2) Agreement on a process by which North Carolina Indians might be identified and recruited for purposes of becoming foster care and adoptive parents.
- (3) Agreement on a process by which the cultural, social, and historical perspective and significance associated with Indian life may be taught to appropriate child welfare workers and to foster and adoptive parents.
- (4) Identification or formation of Indian child welfare advocacy, placement and training entities with which the Department of Health and Human Services might contract or otherwise form partnerships for the purpose of implementing the provisions of this act.
- (5) Development of a valid and reliable process through which Indian children within the child welfare system can be identified.
- (6) Identify the appropriate roles of the State and of Indian tribes, organizations and agencies to ensure successful means for securing the best interests of Indian children.

(b) The Division of Social Services, Department of Health and Human Services shall negotiate in good faith with Indian tribes, organization and consortia that request the development of an agreement with the State to administer foster care, adoption assistance, and kinship guardianship assistance programs under Title IV-E of the Social Security Act on behalf of Indian children under their authority, as authorized and required by the federal Fostering Connections to Success and Increasing Adoptions Act.

(c) The Division of Social Services, Department of Health and Human Services shall adopt the federal Indian Child Welfare Act, 25 U.S.C. § 1901 et. seq., as a best practice in the placement of all Indian children recognized by federal law or formally acknowledged by a state in foster care or adoption by the Division."

SECTION 2. This act is effective when it becomes law.