

131st Legislature
Senate
of Maine
Senate District 31

Senator Donna Bailey
3 State House Station
Augusta, ME 04333-0003
Office (207) 287-1515

Testimony of Senator Donna Bailey introducing
LD 1970, An Act to Enact the Maine Indian Child Welfare Act
Before the Joint Standing Committee on Judiciary
May 31, 2023

Senator Carney, Representative Moonen, and colleagues of the Judiciary Committee, as you know, my name is Donna Bailey, and I proudly represent Senate District 31, which includes Buxton, Old Orchard Beach, and Saco. Today, I am pleased to introduce LD 1970, “An Act to Enact the Maine Indian Child Welfare Act.”

To start, I want to share some history and background about the Federal Indian Child Welfare Act (ICWA), which this bill is modeled after. The U.S. Congress enacted ICWA in 1978 to address the agency policies and practices that resulted in the wholesale separation of Indian children from their families. State and private agencies were removing as many as 25% to 35% of Indian children from their families and placing many of these children in non-Indian foster and adoptive homes. Congress determined that cultural ignorance and biases within the child welfare system were significant causes of this problem. In light of this, Congress recognized that it is in the best interest of a child to maintain Tribal connections and that children are vital to Tribes’ continued existence. That’s why ICWA aims to “protect the best interests of Indian children and promote the stability and security of Indian Tribes and families.”¹

The Federal ICWA governs State child-custody proceedings in multiple ways:

- Recognizes Tribal jurisdiction over decisions for their Indian children,
- Establishes minimum Federal standards for the removal of Indian children from their families,
- Establishes preferences for placement of Indian children with extended family or other Tribal families,
- Institutes protections to ensure that birth parents’ voluntary relinquishments of their children are truly voluntary.

In Maine, we have our own history with ICWA. In 1999, the Maine Office of Child and Family Services (OCFS) and tribal child welfare staff formed the ICWA Workgroup to address the

¹<https://www.bia.gov/sites/default/files/dup/assets/bia/ois/raca/pdf/ldc1-034295.pdf>

issues of state non-compliance with ICWA. The Workgroup sought to improve the history of mistrust and the lack of effective working relationships. After a decade of work, OCFS conducted a case review in 2009. The review found that, despite progress, some state child welfare workers needed to improve their engagement with the tribal child welfare workers and function as co-case managers. It “determined that the story of the Wabanaki people’s experiences with state child welfare needed to be unearthed in order to fully uphold the spirit, letter, and intent of ICWA in a way that promoted healing.”² By 2010, the Workgroup decided to create a Truth and Reconciliation Commission (TRC). The Commission’s Declaration of Intent outlined three goals:

- 1 To create a common understanding between the Wabanaki and the State of Maine concerning what happened and is happening to Wabanaki children in the child welfare system,
- 2 To act on information revealed during the TRC to improve the child welfare system and to better support the children and families served,
- 3 To promote healing, both among Wabanaki children and their families and the people who administered a widely acknowledged less-than-ideal system

Among the recommendations from the TRC, some focused specifically on ICWA:

- With the counsel of the tribes, develop a policy to monitor regular compliance with ICWA, the selection of ICWA liaisons, and the eventual provision of a supervisory-level staff member responsible for ICWA in each DHHS district office
- Fund the renewal of the ICWA Workgroup and involve them in designing and implementing training so that all levels of leadership are involved.³

To my understanding, the State and the ICWA Workgroup have continued to make progress and work collaboratively to improve the State’s compliance with the spirit, letter and intent of ICWA. I have heard from many involved in the system that ICWA has worked well in the State, and that outcomes for Indian children have improved over the years. I am not saying everything is perfect, but it is better than it was, and continuing to progress in the right direction.

Unfortunately, at the Federal level, there have been numerous court challenges to ICWA, the latest wave beginning most recently in 2013 and culminating in a case currently pending before the US Supreme Court (*Haaland v. Brackeen*, docket number 21-376) that may be ruled on soon. In response to these challenges, several states have, over the years, adopted their own versions of ICWA.⁴ These states include Iowa, Michigan, Minnesota, Nebraska, Oklahoma, and Washington. With LD 1970, Maine will join these other states to continue to promote the safety, permanence, and well-being of Indian children, no matter what decisions may be made at the Federal level.

²https://d3n8a8pro7vnmx.cloudfront.net/mainewabanakireach/pages/17/attachments/original/1468975303/Truth_Healing_and_Systems_Change_CWLA_Special_Issue_2013.pdf?1468975303

³https://d3n8a8pro7vnmx.cloudfront.net/mainewabanakireach/pages/1584/attachments/original/1617238921/FINAL_REPORT_-_RECOMMENDATIONS.pdf

⁴[https://www.ncsl.org/human-services/state-statutes-related-to-the-indian-child-welfare-act#:~:text=Six%20states%20\(Iowa%2C%20Michigan%2C,child%22%20and%20the%20notification%20requirement](https://www.ncsl.org/human-services/state-statutes-related-to-the-indian-child-welfare-act#:~:text=Six%20states%20(Iowa%2C%20Michigan%2C,child%22%20and%20the%20notification%20requirement)

Thank you for your time, I would be happy to answer any questions

A handwritten signature in black ink, appearing to read 'Donna Bailey', with a stylized, looping flourish at the end.

Donna Bailey

State Senator, Senate District 31

Buxton, Old Orchard Beach, and Saco