



# THE PAIUTE INDIAN TRIBE OF UTAH

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## RESOLUTION NO. 2022-26

### REQUEST FOR THE STATE OF UTAH LEGISLATURE TO PASS THE UTAH INDIAN CHILD WELFARE ACT LEGISLATION DURING THE 2023 UTAH STATE LEGISLATIVE SESSION

- WHEREAS**, the Paiute Indian Tribe of Utah (“Tribe”) is a federally recognized Indian tribe under 25 U.S.C. § 761, et seq., organized under the Tribe’s Constitution, as ratified by the Tribe on June 11, 1991, and approved by the Secretary of the Interior on July 15, 1991, and amended by the Tribe on August 12, 1997, and approved by the Secretary of the Interior on September 30, 1997, pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984); and
- WHEREAS**, the Tribe’s status as a federally recognized Indian tribe was restored on April 3, 1980 pursuant to Public Law 96-227, codified at 25 U.S.C. § 761, et seq.; and
- WHEREAS**, pursuant to Article IV and Article V of the Constitution of the Paiute Indian Tribe of Utah, the Tribal Council is the official governing body of the Tribe; and
- WHEREAS**, pursuant to Article V, Section 1 of the Constitution of the Paiute Indian Tribe of Utah, the Tribal Council is vested with all executive and legislative powers of the Tribe; and
- WHEREAS**, pursuant to its inherent sovereignty as an Indian Tribe and Article V, Section 1 of the Constitution of the Paiute Indian Tribe of Utah, the Tribal Council has the authority to represent the Tribe and act in all matters that concern the welfare of the Tribe; and
- WHEREAS**, Indian Tribes have existed since time immemorial and pre-date the United States Constitution. Since the founding of the United States, there is a well-documented history of genocide, diminishment, and attempted assimilation of Indians by the United States, both on a federal and state level.<sup>1</sup> This included, but was not limited to the removal of American Indian children from their homes for foster care and adoption; and
- WHEREAS**, the United States Congress enacted the Indian Child Welfare Act (“ICWA”), in 1978, which directly combatted the excess removal of American Indian children from their homes. ICWA, itself, acknowledged, “an alarmingly high percentage of Indian families are broken up by removal” and children were taken, “from [homes] by nontribal public and private

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<sup>1</sup>COHEN’S HANDBOOK OF FEDERAL INDIAN LAW §1.01(2) at 5, 7-8 (Nell Jessup Newton ed., 2021) [hereinafter, COHEN’S HANDBOOK] (indicating that Indian law and history are “opposite sides of the same coin” and despite categorizing “eras of Native policy” there has never been a single, clearly articulated American Indian policy at any given time with many conflicting policies swinging like a pendulum to solve the “Indian problem” within the United States.

agencies.”<sup>2</sup> “This separation of Indian children from their families, “is perhaps the most tragic and destructive aspect of American Indian life today.”<sup>3</sup>; and

**WHEREAS,** ICWA creates procedural and substantive protections to help American Indian Tribes and families combat the loss of identity that was occurring because of governmental policies which facilitated the removal of American Indian children from their homes. For example, ICWA requires that termination of parental rights must be proven beyond a reasonable doubt<sup>4</sup> and created specifications for preference placements with kin, members of the child’s Tribe, or with another native family.<sup>5</sup> ICWA improved child welfare systems all over the United States for American Indian children and became the “gold standard” in child welfare policy and practice; and

**WHEREAS,** over the past year, the American Indian Tribes in Utah have met with fellow Utah Tribal Leaders and Utah State leaders to meet three (3) major goals to strengthen and improve the child welfare system for American Indian children, families, and Tribes:

1. The first goal was to convince the State of Utah to work together with American Indian Tribes in Utah in combating the legal challenge to ICWA that is now pending before the United States Supreme Court – *Brackeen v. Haaland*. After several meetings with Utah’s leadership, the State of Utah agreed to work together with American Indian Tribes in Utah and submit an *amicus* brief in favor of ICWA. This goal has been met and Utah is now actively participating in the United States Court litigation through *amicus* briefs; and
2. The second goal was to create an Office of American Indian-Alaska Native Health and Family Services. This goal was accomplished through S.B. 28, which was signed into law on March 23, 2022. The purpose of this office is to oversee and coordinate department health and family services for Utah’s American Indian and Alaskan Native populations. The Director of the Office of American Indian-Alaska Native Health and Family Services elevates the importance of American Indian health and family service issues as the Director is a direct report to a member of the Utah State Governor’s Cabinet; and
3. The final goal in this plan is to enact/pass Utah State Indian Child Welfare Act legislation. As of today, ten (10) other States have enacted their own ICWA laws. Creating a Utah ICWA law will preserve ICWA’s procedural and substantive requirements that apply to Indian child custody proceedings " to protect the best interest of Indian children and to promote the stability and security of Indian tribes and families.”<sup>6</sup> The intent is to preserve the federal ICWA provisions, with as few changes as possible, with the possibility of making improvements in the future; and

**WHEREAS,** through this drafting process, the government-to-government relationship between the American Indian Tribal Nations and the State of Utah has been the highest priority, as the State of Utah has successfully consulted with American Indian Tribes in Utah. Through such

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<sup>2</sup> 25 U.S.C. § 1901.

<sup>3</sup> H.R. Rep. No. 95-1386, at 9 (1978).

<sup>4</sup> 25 U.S.C. § 1912(f).

<sup>5</sup> *Id.* at 21.

<sup>6</sup> 25 U.S.C. § 1902.

continued positive consultation and proactive policy, an official Utah State ICWA law will protect the well-being of Native children by upholding family integrity and stability within their community;<sup>7</sup> and

**WHEREAS,** the Utah State ICWA law is scheduled to go through the Utah State legislative system in February 2023. The proposal has been unanimously reviewed and approved by the Utah State Native American Legislative Liaison Committee (NALLC) and backed by the Utah State Executive Branch, Lieutenant Governor’s Office, Utah Division of Indian Affairs (UDIA), Utah Attorney General’s Office, DHHS Executive Director’s Office (EDO), Office of American Indian & Family Services, Utah Division of Child & Family Services (DCFS), Utah Division of Juvenile Justice & Youth Services (JJYS), Utah Foster Care (UFC), and other groups. The State of Utah Governor’s Office and American Indian Tribes are acting together to protect ICWA, improve the State of Utah’s child welfare system, and protect American Indian Children; and

**WHEREAS,** the Paiute Indian Tribe of Utah desires to pass this resolution to officially request that the Utah State Legislature pass the Utah State ICWA statute during the February 2023 legislative session.

**NOW THEREFORE BE IT RESOLVED** that the Paiute Indian Tribe of Utah Tribal Council hereby respectfully requests that the Utah State Legislature pass the Utah State Indian Child Welfare Act statute during the February 2023 legislative session; and

**BE IT FINALLY RESOLVED** that the Tribal Council hereby authorizes the Tribal Chairperson, or in his/her absence the Vice-Chairperson, or a designated representative, to sign to execute any and all documents pertaining to this resolution.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was fully considered by the Tribal Council and was passed by the quorum of the Tribal Council by a vote of  4  in favor,  0  opposed,  0  abstained, and  1  absent this 16<sup>th</sup> day of December 2022.

ATTEST:

  
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Rebecca Hill, Tribal Council Secretary

  
Corrina Bow (Jan 10, 2023 15:05 MST)  
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Corrina Bow, Chairperson

<sup>7</sup> National Indian Child Welfare Association, *ICWA Talking Points Guide*, 2 (Feb. 2019), (providing guidance from National Indian Welfare Association [NICWA], National Congress of American Indians [NCAI], Association of American Indian Affairs [AAIA] and Native American Rights Fund [NARF]), [https://www.nicwa.org/wp-content/uploads/2019/02/2019-02-12-ICWA-Talking-Points-Guide\\_NICWA-FINAL.pdf](https://www.nicwa.org/wp-content/uploads/2019/02/2019-02-12-ICWA-Talking-Points-Guide_NICWA-FINAL.pdf).