

INDIAN CHILD WELFARE ACT

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JOINT HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

AND THE

COMMITTEE ON RESOURCES

UNITED STATES HOUSE OF

REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

S. 569 and H.R. 1082

TO AMEND THE INDIAN CHILD WELFARE ACT OF 1978

JUNE 18, 1997

WASHINGTON, DC

Serial No. 105-44



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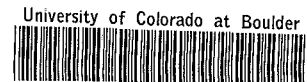
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INDIAN CHILD WELFARE ACT

WEDNESDAY, JUNE 18, 1997

U.S. SENATE, COMMITTEE ON INDIAN AFFAIRS, MEETING
JOINTLY WITH THE COMMITTEE ON RESOURCES, U.S.
HOUSE OF REPRESENTATIVES,

Washington, DC.

The committees met, pursuant to notice, at 10:35 a.m. in room 106, Dirksen Senate Office Building, Hon. Ben Nighthorse Campbell (chairman of the Senate Committee on Indian Affairs) presiding.

Present from the U.S. Senate Committee on Indian Affairs: Senators Campbell, Inouye, and McCain.

Present from the Committee on Resources, U.S. House of Representatives: Representatives Young, Kennedy, Christian-Green, and Faleomavaega.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning. The joint hearing of the Senate Indian Affairs Committee and the House Committee on Resources will be in session. If folks will take your seats, we'll get started.

Welcome to the Committee on Indian Affairs. Chairman Young is on his way and will be along shortly.

This morning we will receive testimony regarding two bills to amend the Indian Child Welfare Act of 1978. The proper standard to judge these amendments is simply this: Do we serve the best interest of Indian children? I believe that these changes will serve the best interest of Indian children, protecting families and tribes, and alleviate the cost, time, and heartache that some adoptive parents have experienced in adopting Indian children.

With rare exceptions, the ICWA statute has worked well since its enactment in 1978. To understand the bills we are considering today, we must understand the crisis that led to the passage of the ICWA in 1978. Prior to that time, there simply were no protections available in situations involving the removal of Indian children from their families, their tribes, and their cultures. Prior to the passage of that act, between 25 percent and 35 percent of all Indian children were separated from their families and adopted or put in foster care or in institutions.

The Congress sought to stop this practice by providing procedural safeguards for Indian families and tribes. The ICWA rein-

forces the strong interest Indian families and tribes have in maintaining the relationships with their children.

The bills before us today will strengthen that statute by providing certainty, stability, and finality to adoptions and other placements involving Indian children. These bills provide tribes with detailed notice of pending voluntary placements. They require a tribe to certify up front if a child is a tribal member or eligible for tribal membership, place strict time limits on tribal rights to intervene. It places also time limits on birth parents' rights to withdraw their consent to a placement, and proposes tough new criminal sanctions for any person who knowingly falsifies documents or conceals facts about a child's Indian heritage.

[Text of S. 569 and H.R. 1082 follows:]

105TH CONGRESS
1ST SESSION

S. 569

To amend the Indian Child Welfare Act of 1978, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 14, 1997

Mr. MCCAIN (for himself, Mr. CAMPBELL, Mr. DOMENICI, and Mr. DORGAN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To amend the Indian Child Welfare Act of 1978, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Indian Child Welfare Act Amendments of 1997”.

6 (b) **REFERENCES.**—Whenever in this Act an amend-
7 ment or repeal is expressed in terms of an amendment
8 to or repeal of a section or other provision, the reference
9 shall be considered to be made to a section or other provi-

1 sion of the Indian Child Welfare Act of 1978 (25 U.S.C.
2 1901 et seq.).

3 **SEC. 2. EXCLUSIVE JURISDICTION.**

4 Section 101(a) (25 U.S.C. 1911(a)) is amended—

5 (1) by inserting “(1)” after “(a)”; and
6 (2) by striking the last sentence and inserting
7 the following:

8 “(2) An Indian tribe shall retain exclusive jurisdiction
9 over any child custody proceeding that involves an Indian
10 child, notwithstanding any subsequent change in the resi-
11 dence or domicile of the Indian child, in any case in which
12 the Indian child—

13 “(A) resides or is domiciled within the reserva-
14 tion of the Indian tribe and is made a ward of a
15 tribal court of that Indian tribe; or

16 “(B) after a transfer of jurisdiction is carried
17 out under subsection (b), becomes a ward of a tribal
18 court of that Indian tribe.”

19 **SEC. 3. INTERVENTION IN STATE COURT PROCEEDINGS.**

20 Section 101(e) (25 U.S.C. 1911(e)) is amended by
21 striking “In any State court proceeding” and inserting
22 “Except as provided in section 103(e), in any State court
23 proceeding”.

24 **SEC. 4. VOLUNTARY TERMINATION OF PARENTAL RIGHTS.**

25 Section 103(a) (25 U.S.C. 1913(a)) is amended—

1 (1) by inserting “(1)” before “Where”;

2 (2) by striking “foster care placement” and in-
3 serting “foster care or preadoptive or adoptive place-
4 ment”;

5 (3) by striking “judge’s certificate that the
6 terms” and inserting the following: “judge’s certifi-
7 cate that—
8 “(A) the terms”;

9 (4) by striking “or Indian custodian.” and in-
10 serting “or Indian custodian; and”;

11 (5) by inserting after subparagraph (A), as des-
12 ignated by paragraph (3) of this subsection, the fol-
13 lowing new subparagraph:

14 “(B) any attorney or public or private agency
15 that facilitates the voluntary termination of parental
16 rights or preadoptive or adoptive placement has in-
17 formed the natural parents of the placement options
18 with respect to the child involved, has informed
19 those parents of the applicable provisions of this
20 Act, and has certified that the natural parents will
21 be notified within 10 days of any change in the
22 adoptive placement.”;

23 (6) by striking “The court shall also certify”
24 and inserting the following:

25 “(2) The court shall also certify”;

(7) by striking "Any consent given prior to,"
and inserting the following:

"(3) Any consent given prior to,"; and

(8) by adding at the end the following new
paragraph:

"(4) An Indian custodian who has the legal authority
to consent to an adoptive placement shall be treated as
a parent for the purposes of the notice and consent to
adoption provisions of this Act."

SEC. 5. WITHDRAWAL OF CONSENT.

Section 103(b) (25 U.S.C. 1913(b)) is amended—

(1) by inserting "(1)" before "Any"; and

(2) by adding at the end the following new
paragraphs:

"(2) Except as provided in paragraph (4), a consent
to adoption of an Indian child or voluntary termination
of parental rights to an Indian child may be revoked, only
if—

"(A) no final decree of adoption has been en-
tered; and

"(B)(i) the adoptive placement specified by the
parent terminates; or

"(ii) the revocation occurs before the later of
the end of—

"(I) the 180-day period beginning on the
date on which the Indian child's tribe receives
written notice of the adoptive placement pro-
vided in accordance with the requirements of
subsections (c) and (d); or

"(II) the 30-day period beginning on the
date on which the parent who revokes consent
receives notice of the commencement of the
adoption proceeding that includes an expla-
nation of the revocation period specified in this
subclause.

"(3) The Indian child with respect to whom a revoca-
tion under paragraph (2) is made shall be returned to the
parent who revokes consent immediately upon an effective
revocation under that paragraph.

"(4) Subject to paragraph (6), if, by the end of the
applicable period determined under subclause (I) or (II)
of paragraph (2)(B)(ii), a consent to adoption or voluntary
termination of parental rights has not been revoked, be-
ginning after that date, a parent may revoke such a con-
sent only—

"(A) pursuant to applicable State law; or

"(B) if the parent of the Indian child involved
petitions a court of competent jurisdiction, and the
court finds that the consent to adoption or voluntary

1 termination of parental rights was obtained through
2 fraud or duress.

3 “(5) Subject to paragraph (6), if a consent to adop-
4 tion or voluntary termination of parental rights is revoked
5 under paragraph (4)(B), with respect to the Indian child
6 involved—

7 “(A) in a manner consistent with paragraph
8 (3), the child shall be returned immediately to the
9 parent who revokes consent; and

10 “(B) if a final decree of adoption has been en-
11 tered, that final decree shall be vacated.

12 “(6) Except as otherwise provided under applicable
13 State law, no adoption that has been in effect for a period
14 longer than or equal to 2 years may be invalidated under
15 this subsection.”

16 **SEC. 6. NOTICE TO INDIAN TRIBES.**

17 Section 103(c) (25 U.S.C. 1913(c)) is amended to
18 read as follows:

19 “(c)(1) A party that seeks the voluntary placement
20 of an Indian child or the voluntary termination of the pa-
21 rental rights of a parent of an Indian child shall provide
22 written notice of the placement or proceeding to the Indian
23 child’s tribe. A notice under this subsection shall be sent
24 by registered mail (return receipt requested) to the Indian

1 child’s tribe, not later than the applicable date specified
2 in paragraph (2) or (3).

3 “(2)(A) Except as provided in paragraph (3), notice
4 shall be provided under paragraph (1) in each of the fol-
5 lowing cases:

6 “(i) Not later than 100 days after any foster
7 care placement of an Indian child occurs.

8 “(ii) Not later than 5 days after any
9 preadoptive or adoptive placement of an Indian
10 child.

11 “(iii) Not later than 10 days after the com-
12 mencement of any proceeding for a termination of
13 parental rights to an Indian child.

14 “(iv) Not later than 10 days after the com-
15 mencement of any adoption proceeding concerning
16 an Indian child.

17 “(B) A notice described in subparagraph (A)(ii) may
18 be provided before the birth of an Indian child if a party
19 referred to in paragraph (1) contemplates a specific adop-
20 tive or preadoptive placement.

21 “(3) If, after the expiration of the applicable period
22 specified in paragraph (2), a party referred to in para-
23 graph (1) discovers that the child involved may be an In-
24 dian child—

1 "(A) the party shall provide notice under para-
2 graph (1) not later than 10 days after the discovery;
3 and

4 "(B) any applicable time limit specified in sub-
5 section (e) shall apply to the notice provided under
6 subparagraph (A) only if the party referred to in
7 paragraph (1) has, on or before commencement of
8 the placement, made reasonable inquiry concerning
9 whether the child involved may be an Indian child."

10 **SEC. 7. CONTENT OF NOTICE.**

11 Section 103(d) (25 U.S.C. 1913(d)) is amended to
12 read as follows:

13 "(d) Each written notice provided under subsection
14 (c) shall contain the following:

15 "(1) The name of the Indian child involved, and
16 the actual or anticipated date and place of birth of
17 the Indian child.

18 "(2) A list containing the name, address, date
19 of birth, and (if applicable) the maiden name of each
20 Indian parent and grandparent of the Indian child,
21 if—

- 22 "(A) known after inquiry of—
- 23 "(i) the birth parent placing the child
- 24 or relinquishing parental rights; and

1 "(ii) the other birth parent (if avail-
2 able); or

3 "(B) otherwise ascertainable through other
4 reasonable inquiry.

5 "(3) A list containing the name and address of
6 each known extended family member (if any), that
7 has priority in placement under section 105.

8 "(4) A statement of the reasons why the child
9 involved may be an Indian child.

10 "(5) The names and addresses of the parties in-
11 volved in any applicable proceeding in a State court.

12 "(6)(A) The name and address of the State
13 court in which a proceeding referred to in paragraph
14 (5) is pending, or will be filed; and

15 "(B) the date and time of any related court
16 proceeding that is scheduled as of the date on which
17 the notice is provided under this subsection.

18 "(7) If any, the tribal affiliation of the prospec-
19 tive adoptive parents.

20 "(8) The name and address of any public or
21 private social service agency or adoption agency in-
22 volved.

23 "(9) An identification of any Indian tribe with
24 respect to which the Indian child or parent may be
25 a member.

1 “(10) A statement that each Indian tribe iden-
2 tified under paragraph (9) may have the right to in-
3 tervene in the proceeding referred to in paragraph
4 (5).

5 “(11) An inquiry concerning whether the Indian
6 tribe that receives notice under subsection (c) in-
7 tends to intervene under subsection (e) or waive any
8 such right to intervention.

9 “(12) A statement that, if the Indian tribe that
10 receives notice under subsection (c) fails to respond
11 in accordance with subsection (e) by the applicable
12 date specified in that subsection, the right of that
13 Indian tribe to intervene in the proceeding involved
14 shall be considered to have been waived by that In-
15 dian tribe.”.

16 **SEC. 8. INTERVENTION BY INDIAN TRIBE.**

17 Section 103 (25 U.S.C. 1913) is amended by adding
18 at the end the following new subsections:

19 “(e)(1) The Indian child's tribe shall have the right
20 to intervene at any time in a voluntary child custody pro-
21 ceeding in a State court only if—

22 “(A) in the case of a voluntary proceeding to
23 terminate parental rights, the Indian tribe filed a
24 notice of intent to intervene or a written objection
25 to the termination, not later than 30 days after re-

1 ceiving notice that was provided in accordance with
2 the requirements of subsections (c) and (d); or

3 “(B) in the case of a voluntary adoption pro-
4 ceeding, the Indian tribe filed a notice of intent to
5 intervene or a written objection to the adoptive
6 placement, not later than the later of—

7 “(i) 90 days after receiving notice of the
8 adoptive placement that was provided in accord-
9 ance with the requirements of subsections (c)
10 and (d); or

11 “(ii) 30 days after receiving a notice of the
12 voluntary adoption proceeding that was pro-
13 vided in accordance with the requirements of
14 subsections (c) and (d).

15 “(2)(A) Except as provided in subparagraph (B), the
16 Indian child's tribe shall have the right to intervene at
17 any time in a voluntary child custody proceeding in a State
18 court in any case in which the Indian tribe did not receive
19 written notice provided in accordance with the require-
20 ments of subsections (c) and (d).

21 “(B) An Indian tribe may not intervene in any vol-
22 untary child custody proceeding in a State court if the
23 Indian tribe gives written notice to the State court or any
24 party involved of—

1 “(i) the intent of the Indian tribe not to inter-
2 vene in the proceeding; or

3 “(ii) the determination by the Indian tribe
4 that—

5 “(I) the child involved is not a member of,
6 or is not eligible for membership in, the Indian
7 tribe; or

8 “(II) neither parent of the child is a mem-
9 ber of the Indian tribe.

10 “(3) If an Indian tribe files a motion for intervention
11 in a State court under this subsection, the Indian tribe
12 shall submit to the court, at the same time as the Indian
13 tribe files that motion, a certification that includes a state-
14 ment that documents, with respect to the Indian child in-
15 volved, the membership or eligibility for membership of
16 that Indian child in the Indian tribe under applicable trib-
17 al law.

18 “(f) Any act or failure to act of an Indian tribe under
19 subsection (e) shall not—

20 “(1) affect any placement preference or other
21 right of any individual under this Act;

22 “(2) preclude the Indian tribe of the Indian
23 child that is the subject of an action taken by the
24 Indian tribe under subsection (e) from intervening in
25 a proceeding concerning that Indian child if a pro-

1 posed adoptive placement of that Indian child is
2 changed after that action is taken; or

3 “(3) except as specifically provided in sub-
4 section (e), affect the applicability of this Act.

5 “(g) Notwithstanding any other provision of law, no
6 proceeding for a voluntary termination of parental rights
7 or adoption of an Indian child may be conducted under
8 applicable State law before the date that is 30 days after
9 the Indian child's tribe receives notice of that proceeding
10 that was provided in accordance with the requirements of
11 subsections (c) and (d).

12 “(h) Notwithstanding any other provision of law (in-
13 cluding any State law)—

14 “(1) a court may approve, if in the best inter-
15 ests of an Indian child, as part of an adoption de-
16 cree of that Indian child, an agreement that states
17 that a birth parent, an extended family member, or
18 the Indian child's tribe shall have an enforceable
19 right of visitation or continued contact with the In-
20 dian child after the entry of a final decree of adop-
21 tion; and

22 “(2) the failure to comply with any provision of
23 a court order concerning the continued visitation or
24 contact referred to in paragraph (1) shall not be

1 considered to be grounds for setting aside a final de-
2 cree of adoption.”

3 **SEC. 9. FRAUDULENT REPRESENTATION.**

4 Title I of the Indian Child Welfare Act of 1978 is
5 amended by adding at the end the following new section:

6 **“SEC. 114. FRAUDULENT REPRESENTATION.**

7 “(a) IN GENERAL.—With respect to any proceeding
8 subject to this Act involving an Indian child or a child
9 who may be considered to be an Indian child for purposes
10 of this Act, a person, other than a birth parent of the
11 child, shall, upon conviction, be subject to a criminal sanc-
12 tion under subsection (b) if that person knowingly and
13 willfully—

14 “(1) falsifies, conceals, or covers up by any
15 trick, scheme, or device, a material fact concerning
16 whether, for purposes of this Act—

17 “(A) a child is an Indian child; or

18 “(B) a parent is an Indian; or

19 “(2)(A) makes any false, fictitious, or fraudu-
20 lent statement, omission, or representation; or

21 “(B) falsifies a written document knowing that
22 the document contains a false, fictitious, or fraudu-
23 lent statement or entry relating to a material fact
24 described in paragraph (1).

1 “(b) CRIMINAL SANCTIONS.—The criminal sanctions
2 for a violation referred to in subsection (a) are as follows:

3 “(1) For an initial violation, a person shall be
4 fined in accordance with section 3571 of title 18,
5 United States Code, or imprisoned not more than 1
6 year, or both.

7 “(2) For any subsequent violation, a person
8 shall be fined in accordance with section 3571 of
9 title 18, United States Code, or imprisoned not more
10 than 5 years, or both.”

○

105TH CONGRESS
1ST SESSION

H. R. 1082

To amend the Indian Child Welfare Act of 1978, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 1997

Mr. YOUNG of Alaska (for himself and Mr. MILLER of California) introduced the following bill; which was referred to the Committee on Resources

A BILL

To amend the Indian Child Welfare Act of 1978, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. SHORT TITLE; REFERENCES.**
4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Indian Child Welfare Act Amendments of 1997”.
6 (b) **REFERENCES.**—Whenever in this Act an amend-
7 ment or repeal is expressed in terms of an amendment
8 to or repeal of a section or other provision, the reference
9 shall be considered to be made to a section or other provi-
10 sion of the Indian Child Welfare Act of 1978 (25 U.S.C.
11 1901 et seq.).

2

1 SEC. 2. EXCLUSIVE JURISDICTION.

2 Section 101(a) (25 U.S.C. 1911(a)) is amended—

3 (1) by inserting “(1)” after “(a)”; and

4 (2) by striking the last sentence and inserting
5 the following:

6 “(2) An Indian tribe shall retain exclusive jurisdiction
7 over any child custody proceeding that involves an Indian
8 child, notwithstanding any subsequent change in the resi-
9 dence or domicile of the Indian child, in any case in which
10 the Indian child—

11 “(A) resides or is domiciled within the reserva-
12 tion of the Indian tribe and is made a ward of a
13 tribal court of that Indian tribe; or

14 “(B) after a transfer of jurisdiction is carried
15 out under subsection (b), becomes a ward of a tribal
16 court of that Indian tribe.”.

17 SEC. 3. INTERVENTION IN STATE COURT PROCEEDINGS.

18 Section 101(c) (25 U.S.C. 1911(c)) is amended by
19 striking “In any State court proceeding” and inserting
20 “Except as provided in section 103(e), in any State court
21 proceeding”.

22 SEC. 4. VOLUNTARY TERMINATION OF PARENTAL RIGHTS.

23 Section 103(a) (25 U.S.C. 1913(a)) is amended—

24 (1) by inserting “(1)” before “Where”;

(2) by striking "foster care placement" and inserting "foster care or preadoptive or adoptive placement";

(3) by striking "judge's certificate that the terms" and inserting the following: "judge's certificate that—

"(A) the terms";

(4) by striking "or Indian custodian." and inserting "or Indian custodian; and";

(5) by inserting after subparagraph (A), as designated by paragraph (3) of this subsection, the following new subparagraph:

"(B) any attorney or public or private agency that facilitates the voluntary termination of parental rights or preadoptive or adoptive placement has informed the natural parents of the placement options with respect to the child involved, has informed those parents of the applicable provisions of this Act, and has certified that the natural parents will be notified within 10 days of any change in the adoptive placement.";

(6) by striking "The court shall also certify" and inserting the following:

"(2) The court shall also certify";

(7) by striking "Any consent given prior to," and inserting the following:

"(3) Any consent given prior to,"; and

(8) by adding at the end the following new paragraph:

"(4) An Indian custodian who has the legal authority to consent to an adoptive placement shall be treated as a parent for the purposes of the notice and consent to adoption provisions of this Act."

SEC. 5. WITHDRAWAL OF CONSENT.

Section 103(b) (25 U.S.C. 1913(b)) is amended—

(1) by inserting "(1)" before "Any"; and

(2) by adding at the end the following new paragraphs:

"(2) Except as provided in paragraph (4), a consent to adoption of an Indian child or voluntary termination of parental rights to an Indian child may be revoked, only if—

"(A) no final decree of adoption has been entered; and

"(B)(i) the adoptive placement specified by the parent terminates; or

"(ii) the revocation occurs before the later of the end of—

1 “(I) the 180-day period beginning on the
2 date on which the Indian child’s tribe receives
3 written notice of the adoptive placement pro-
4 vided in accordance with the requirements of
5 subsections (c) and (d); or

6 “(II) the 30-day period beginning on the
7 date on which the parent who revokes consent
8 receives notice of the commencement of the
9 adoption proceeding that includes an expla-
10 nation of the revocation period specified in this
11 subclause.

12 “(3) The Indian child with respect to whom a revoca-
13 tion under paragraph (2) is made shall be returned to the
14 parent who revokes consent immediately upon an effective
15 revocation under that paragraph.

16 “(4) Subject to paragraph (6), if, by the end of the
17 applicable period determined under subclause (I) or (II)
18 of paragraph (2)(B)(ii), a consent to adoption or voluntary
19 termination of parental rights has not been revoked, be-
20 ginning after that date, a parent may revoke such a con-
21 sent only—

22 “(A) pursuant to applicable State law; or

23 “(B) if the parent of the Indian child involved
24 petitions a court of competent jurisdiction, and the
25 court finds that the consent to adoption or voluntary

1 termination of parental rights was obtained through
2 fraud or duress.

3 “(5)(A) Subject to paragraph (6), if a consent to
4 adoption or voluntary termination of parental rights is re-
5 voked under paragraph (4)(B), with respect to the Indian
6 child involved—

7 “(i) in a manner consistent with paragraph (3),
8 the child shall be returned immediately to the parent
9 who revokes consent; and

10 “(ii) if a final decree of adoption has been en-
11 tered, that final decree shall be vacated.

12 “(6) Except as otherwise provided under applicable
13 State law, no adoption that has been in effect for a period
14 longer than or equal to 2 years may be invalidated under
15 this subsection.”.

16 **SEC. 6. NOTICE TO INDIAN TRIBES.**

17 Section 103(c) (25 U.S.C. 1913(c)) is amended to
18 read as follows:

19 “(c)(1) A party that seeks the voluntary placement
20 of an Indian child or the voluntary termination of the pa-
21 rental rights of a parent of an Indian child shall provide
22 written notice of the placement or proceeding to the Indian
23 child’s tribe. A notice under this subsection shall be sent
24 by registered mail (return receipt requested) to the Indian

1 child's tribe, not later than the applicable date specified
2 in paragraph (2) or (3).

3 "(2)(A) Except as provided in paragraph (3), notice
4 shall be provided under paragraph (1) in each of the fol-
5 lowing cases:

6 "(i) Not later than 100 days after any foster
7 care placement of an Indian child occurs.

8 "(ii) Not later than 5 days after any
9 preadoptive or adoptive placement of an Indian
10 child.

11 "(iii) Not later than 10 days after the com-
12 mencement of any proceeding for a termination of
13 parental rights to an Indian child.

14 "(iv) Not later than 10 days after the com-
15 mencement of any adoption proceeding concerning
16 an Indian child.

17 "(B) A notice described in subparagraph (A)(ii) may
18 be provided before the birth of an Indian child if a party
19 referred to in paragraph (1) contemplates a specific adop-
20 tive or preadoptive placement.

21 "(3) If, after the expiration of the applicable period
22 specified in paragraph (2), a party referred to in para-
23 graph (1) discovers that the child involved may be an In-
24 dian child—

1 "(A) the party shall provide notice under para-
2 graph (1) not later than 10 days after the discovery;
3 and

4 "(B) any applicable time limit specified in sub-
5 section (e) shall apply to the notice provided under
6 subparagraph (A) only if the party referred to in
7 paragraph (1) has, on or before commencement of
8 the placement made reasonable inquiry concerning
9 whether the child involved may be an Indian child."

10 **SEC. 7. CONTENT OF NOTICE.**

11 Section 103(d) (25 U.S.C. 1913(d)) is amended to
12 read as follows:

13 "(d) Each written notice provided under subsection
14 (c) shall contain the following:

15 "(1) The name of the Indian child involved, and
16 the actual or anticipated date and place of birth of
17 the Indian child.

18 "(2) A list containing the name, address, date
19 of birth, and (if applicable) the maiden name of each
20 Indian parent and grandparent of the Indian child,
21 if—

22 "(A) known after inquiry of—

23 "(i) the birth parent placing the child
24 or relinquishing parental rights; and

1 “(ii) the other birth parent (if avail-
2 able); or

3 “(B) otherwise ascertainable through other
4 reasonable inquiry.

5 “(3) A list containing the name and address of
6 each known extended family member (if any), that
7 has priority in placement under section 105.

8 “(4) A statement of the reasons why the child
9 involved may be an Indian child.

10 “(5) The names and addresses of the parties in-
11 volved in any applicable proceeding in a State court.

12 “(6)(A) The name and address of the State
13 court in which a proceeding referred to in paragraph
14 (5) is pending, or will be filed; and

15 “(B) the date and time of any related court
16 proceeding that is scheduled as of the date on which
17 the notice is provided under this subsection.

18 “(7) If any, the tribal affiliation of the prospec-
19 tive adoptive parents.

20 “(8) The name and address of any public or
21 private social service agency or adoption agency in-
22 volved.

23 “(9) An identification of any Indian tribe with
24 respect to which the Indian child or parent may be
25 a member.

1 “(10) A statement that each Indian tribe iden-
2 tified under paragraph (9) may have the right to in-
3 tervene in the proceeding referred to in paragraph
4 (5).

5 “(11) An inquiry concerning whether the Indian
6 tribe that receives notice under subsection (e) in-
7 tends to intervene under subsection (e) or waive any
8 such right to intervention.

9 “(12) A statement that, if the Indian tribe that
10 receives notice under subsection (e) fails to respond
11 in accordance with subsection (e) by the applicable
12 date specified in that subsection, the right of that
13 Indian tribe to intervene in the proceeding involved
14 shall be considered to have been waived by that In-
15 dian tribe.”

16 **SEC. 8. INTERVENTION BY INDIAN TRIBE.**

17 Section 103 (25 U.S.C. 1913) is amended by adding
18 at the end the following new subsections:

19 “(e)(1) The Indian child’s tribe shall have the right
20 to intervene at any time in a voluntary child custody pro-
21 ceeding in a State court only if—

22 “(A) in the case of a voluntary proceeding to
23 terminate parental rights, the Indian tribe filed a
24 notice of intent to intervene or a written objection
25 to the termination, not later than 30 days after re-

1 ceiving notice that was provided in accordance with
2 the requirements of subsections (c) and (d); or

3 “(B) in the case of a voluntary adoption pro-
4 ceeding, the Indian tribe filed a notice of intent to
5 intervene or a written objection to the adoptive
6 placement, not later than the later of—

7 “(i) 90 days after receiving notice of the
8 adoptive placement that was provided in accord-
9 ance with the requirements of subsections (c)
10 and (d); or

11 “(ii) 30 days after receiving a notice of the
12 voluntary adoption proceeding that was pro-
13 vided in accordance with the requirements of
14 subsections (c) and (d):

15 “(2)(A) Except as provided in subparagraph (B), the
16 Indian child’s tribe shall have the right to intervene at
17 any time in a voluntary child custody proceeding in a State
18 court in any case in which the Indian tribe did not receive
19 written notice provided in accordance with the require-
20 ments of subsections (c) and (d).

21 “(B) An Indian tribe may not intervene in any vol-
22 untary child custody proceeding in a State court if the
23 Indian tribe gives written notice to the State court or any
24 party involved of—

1 “(i) the intent of the Indian tribe not to inter-
2 vene in the proceeding; or

3 “(ii) the determination by the Indian tribe
4 that—

5 “(I) the child involved is not a member of,
6 or is not eligible for membership in, the Indian
7 tribe; or

8 “(II) neither parent of the child is a mem-
9 ber of the Indian tribe.

10 “(3) If an Indian tribe files a motion for intervention
11 in a State court under this subsection, the Indian tribe
12 shall submit to the court, at the same time as the Indian
13 tribe files that motion, a certification that includes a state-
14 ment that documents, with respect to the Indian child in-
15 volved, the membership or eligibility for membership of
16 that Indian child in the Indian tribe under applicable trib-
17 al law.

18 “(f) Any act or failure to act of an Indian tribe under
19 subsection (e) shall not—

20 “(1) affect any placement preference or other
21 right of any individual under this Act;

22 “(2) preclude the Indian tribe of the Indian
23 child that is the subject of an action taken by the
24 Indian tribe under subsection (e) from intervening in
25 a proceeding concerning that Indian child if a pro-

posed adoptive placement of that Indian child is changed after that action is taken; or

“(3) except as specifically provided in subsection (e), affect the applicability of this Act.

“(g) Notwithstanding any other provision of law, no proceeding for a voluntary termination of parental rights or adoption of an Indian child may be conducted under applicable State law before the date that is 30 days after the Indian child’s tribe receives notice of that proceeding that was provided in accordance with the requirements of subsections (c) and (d).

“(h) Notwithstanding any other provision of law (including any State law)—

“(1) a court may approve, if in the best interests of an Indian child, as part of an adoption decree of the Indian child, an agreement that states that a birth parent, an extended family member, or the Indian child’s tribe shall have an enforceable right of visitation or continued contact with the Indian child after the entry of a final decree of adoption; and

“(2) the failure to comply with any provision of a court order concerning the continued visitation or contact referred to in paragraph (1) shall not be

considered to be grounds for setting aside a final decree of adoption.”

SEC. 9. FRAUDULENT REPRESENTATION.

Title I of the Indian Child Welfare Act of 1978 is amended by adding at the end the following new section:

“SEC. 114. FRAUDULENT REPRESENTATION.

“(a) IN GENERAL.—With respect to any proceeding subject to this Act involving an Indian child or a child who may be considered to be an Indian child for purposes of this Act, a person, other than a birth parent of the child, shall, upon conviction, be subject to a criminal sanction under subsection (b) if that person knowingly and willfully—

“(1) falsifies, conceals, or covers up by any trick, scheme, or device, a material fact concerning whether, for purposes of this Act—

“(A) a child is an Indian child; or

“(B) a parent is an Indian; or

“(2)(A) makes any false, fictitious, or fraudulent statement, omission, or representation; or

“(B) falsifies a written document knowing that the document contains a false, fictitious, or fraudulent statement or entry relating to a material fact described in paragraph (1).

1 " (b) CRIMINAL SANCTIONS.—The criminal sanctions
2 for a violation referred to in subsection (a) are as follows:

3 " (1) For an initial violation, a person shall be
4 fined in accordance with section 3571 of title 18,
5 United States Code, or imprisoned not more than 1
6 year, or both.

7 " (2) For any subsequent violation, a person
8 shall be fined in accordance with section 3571 of
9 title 18, United States Code, or imprisoned not more
10 than 5 years, or both."

The CHAIRMAN. The decision to adopt a child is done with much love and affection. It is often a process also fraught with both emotional and financial obstacles. This bill will provide what many have complained of—finality in cases involving Indian children.

With that, I'd ask if the vice chairman, Senator Inouye, has a statement.

STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUE. I thank you very much, sir.

Last week there was a very interesting add in Roll Call, a newspaper on Capitol Hill, and it reminded us of the history of Indian country, which continues to impact current events throughout this land.

Although this ad focused upon a different challenge confronting Indian country, I believe it is relevant and appropriate that we consider just a few of the statements that were contained in this Roll Call ad, and I would like to quote from them.

It was very simple. It said,

Two hundred years of exploitation and neglect, more than 700 broken treaties, \$2 billion in tribal trust funds lost or mismanaged, \$200 million in funding cuts last year, and now politicians want to levy new taxes against tribal governments. Have not they paid enough?

That was the ad.

As the committee meets today, it is important that we be ever mindful that we are speaking of the most precious resource in Indian country, the children, and that Indian country has already paid very dearly.

The Indian Child Welfare Act is premised upon the conclusion by the Congress that Indian country had paid enough. It was enacted into law to bring an abrupt halt to an insidious process—a process initiated under the auspices of protecting those children and a process which resulted in thousands upon thousands of Indian infants and children being removed from their mothers and fathers, from their sisters and brothers, from their grandparents and their elders, and from the love in those families that bound them all together.

In contemporary times, we may be tempted to relegate the justification for this act to historical circumstances that are no longer relevant, to suggest that the protections of the Indian Child Welfare Act are no longer needed in a society that values homogeneity and seeks equal opportunities for all children, good homes, good schools, good families.

The challenge is today the same as it has always been: Who defines what is good for Indian children? Whose standards? Whose values? Whose visions? Whose dreams for the well-being of the Indian children will be allowed to define and shape their future?

Let us be certain that the amendments which we address today are considered within the context of the history, which informed the need for the passage of the Indian Child Welfare Act in 1978, and the contemporary circumstances which make the act the crucial cornerstone of the foundation upon which the future of Indian country will be built.

I thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Vice Chairman, for that very eloquent statement. There is no question throughout Indian country of your ongoing commitment to making the lives of Indian people a little better, and we do thank you.

We also welcome our friends from the other body, and would ask Representative Pat Kennedy if he has a statement.

**STATEMENT OF HON. PATRICK J. KENNEDY, U.S.
REPRESENTATIVE FROM RHODE ISLAND**

Mr. KENNEDY. Thank you, Mr. Chairman. It's an honor to be with you in this joint hearing on this very important subject that has come before both of our respective chambers, and I want to commend you for your leadership and that of Senator Inouye on this matter.

I ask for unanimous consent to enter into the record a statement by our ranking member, Mr. Miller, and also say that I want to associate myself with your own remarks and that of Senator Inouye in saying that it was very disturbing that we did pass a bill last year that I think went absolutely contrary to what—there was almost unanimity, and, in fact, there was unanimity amongst Indian country. All 557 nations said that this went against their beliefs and interests in this issue.

I think, on a government-to-government basis, we ought to have more respect for the tribal sovereignty and the wishes of Native American nations when we consider legislation that usurps their own tribal sovereignty in such a dramatic way as to do away with the protections given to Native American children for adoption proceedings.

I think the experience that gave rise to ICWA in the first place, where there was no protection for Indian children, and the fact that up to one-quarter of Indian children were separated from their tribal cultures and their families in many proceedings that did not take into account the tribe's wishes and the family's wishes, I think is more than enough evidence to why we needed ICWA. And we cannot let a few publicized failures in the adoption proceedings be the reason why we do away with ICWA altogether, and what we need to do is fix problems if they need to be fixed without taking such a dramatic approach as has been proposed in the House and, unfortunately, which passed the House.

I want to thank the Senate for having stopped that legislation from ever going forward, and hence we have checks and balances. In this case the Senate acted as a great check on the House's actions on that case.

With that, I would like to yield back the balance of my time.

The CHAIRMAN. Thank you. Without objection, Congressman Miller's opening statement will be also included in the record.

[Prepared statement of Mr. Miller appears in appendix.]

The CHAIRMAN. Chairman Young, welcome to the Senate.

**STATEMENT OF HON. DON YOUNG, U.S. REPRESENTATIVE
FROM ALASKA**

Mr. YOUNG. Thank you, Mr. Chairman. I apologize for being a little late. This modern technology of trying to get from the House to the Senate, halfway across I was on a lonely island. The thing

quit running. Very interesting experience, because you can't get out.

I want to welcome everybody, especially the Alaskans, coming down here for the Indian Child Welfare Act amendments of 1997. It has been a long process with the participation of tribal representatives, adoption attorney representatives, and both public and private adoption agencies to reach a common approach to solve existing problems with the adoptive placement of Native American children.

Since the highly-publicized California case of *Bridget R.*'s adoption proceedings in 1995, various Members of Congress have attempted to amend the Indian Child Welfare Act, ICWA. The proposed House bills were opposed by tribal representatives, and with good cause.

I believe the tribes are not consulted without litigation, which would have a major effect upon their membership. Based upon the conflicting views with regard to ICWA, in May 1996 I instructed the Tanana Chiefs Conference, TCC, the National Indian Welfare Association, and the National Congress of American Indians to meet with the American Academy of Adoption Attorneys and the Academy of California Adoption Attorneys to seek a common approach to avoid prolonged litigation over Native American adoptive placements and promote the stability of Native American adoptions.

I want to expressly thank the TCC, in particular, Frank Walleri and Jane Gorman and Mark Gradstein from the AAA, and the Academy of California Adoption Attorneys for the extensive and exhaustive work on these amendments. They have worked diligently for the past 2 years to reach this common goal to help solve existing problems with the adoption and placement of Native American children.

H.R. 1082 and S. 569 are bills that will reduce the possibility of conflict between birth parents and adoptive families. They provide for a notice to Indian tribes of involuntary adoption, termination of parental rights, and foster care proceedings. They also provide for time limitation on the intervention of adoption and set forth criminal sanctions for persons who knowingly falsify or cover up information the child may be an Indian child or a parent is an Indian.

These amendments have been endorsed by tribal representatives and by adoption attorneys and adoption advocates. I believe we have great legislation before us and urge Members to support and vote for the passage of these important bills.

Before I close, Mr. Chairman, I want to include into the two committees' records the American Indian abortion statistics from Allan Guttmacher Institute library records and archives. They are a nationally-recognized repository of abortion statistics information relied upon by U.S. Government, the Center for Disease Control in Atlanta, and I believe the National Right of Life [sic] Organizations.

I've heard rumors that there has been some concern expressed that H.R. 1082 and S. 569 may increase abortion rates among Native American women. This report shows that Native American women have, by far, the lowest rate of abortion among any ethnic group in the U.S. population. I want to dispel that because I re-

member this on the floor last year. We discussed this saying it was a pro-abortion bill. It is not.

Again, welcome. I welcome and look forward to working with the Senate, and especially you, Mr. Chairman, as a former House member sitting in my committee. I look forward to working with you to make this important legislation move forward.

Thank you, Mr. Chairman.
The CHAIRMAN. Thank you.

The Chair will recognize Representative Donna Christian-Green. Do you have a statement?

**STATEMENT OF HON. DONNA CHRISTIAN-GREEN, U.S.
DELEGATE FROM THE VIRGIN ISLANDS**

Ms. CHRISTIAN-GREEN. Thank you, Mr. Chairman, for giving me this opportunity to make brief opening remarks.

This is a very important hearing, and I commend you, Chairman Campbell and Chairman Young, for your willingness in holding this joint hearing today.

Let me begin by saying, first of all, that the issue of the welfare of Indian children is of great concern to me. Indeed, I am concerned about all of the issues that affect Native Americans.

In the last Congress, as a result of several high-profile adoption cases involving lengthy disputes under the Child Welfare Act, questions were raised about whether the Indian Child Welfare Act fairly took into account the best interests of the children, parents, and the tribes.

The ICWA, as you know, Mr. Chairman, was enacted in 1978 to address the widespread removal of Indian children from Indian families and placing them with non-Indian families or institutions.

Recognizing the need for legislation to address the concerns raised by the high-profile cases in the last Congress, both Chairman Young and Ranking Member Miller introduced legislation which is virtually identical to the bills before us today in the hopes of addressing these problems.

H.R. 1082 and S. 569 are the product of a proposal which emerged from the mid-year convention of the National Congress of American Indians in Tulsa, OK, in 1985, and which is known as the Tulsa Compromise.

Mr. Chairman, I look forward to working with you and the members of both committees represented here today in moving forward to address the issues in the bills before us, while protecting and preserving the tribal sovereignty and Native American culture and traditions.

Thank you again, Mr. Chairman, for allowing me to make this brief opening statement, and I look forward to hearing from our witnesses.

The CHAIRMAN. Thank you.

Is Representative Pryce here? If you'd come to the table there, we'll—I'd mention, too, that in going through the written testimony, some witnesses—we have eight witnesses. Some of it seems very, very extensive, and I would tell those people with very extensive testimony, all of it will be included in the record and studied copiously, but for the duration that we'll be in here today, if you could abbreviate your comments a little bit we would appreciate it.

With that, Representative Pryce, welcome to the Senate. You may proceed.

**STATEMENT OF HON. DEBORAH PRYCE, U.S.
REPRESENTATIVE FROM OHIO**

Ms. PRYCE. Thank you very much, Mr. Chairman.

I appreciate the opportunity to be here, and Chairman Young and the rest of the committee members, thank you very much.

My interest in this issue began when my constituents, the Rost family in Columbus, OH, told me the story of their fight to keep their adoptive twin daughters. When these little girls were placed for adoption by their birth parents, nobody knew of their Indian heritage. It was only after their grandmother signed them up with the Pomo Tribe that the ICWA was invoked and the adoption was put on hold.

Three years later, after taking a second mortgage on their home, accruing thousands of dollars in legal bills, and enduring a tremendous emotional toll, the Rost fight still continues.

This case is not an anomaly. Since I became involved in this issue, I have heard numerous horror stories from people all over the country who are victims of the ICWA. Much of this stems from a broad and inconsistent application of this very well-intentioned law.

I won't dwell on these horror stories today or I won't have time to continue on with my testimony and we'd be here all day.

Let me begin by saying that our Constitution protects the rights of individuals against classifications based on race, and it protects the rights of parents to control their children's upbringing. These are fundamental liberties and they are privacy issues.

The ICWA excludes all other circumstances to the sole factor of race and denies these basic Constitutional rights to parents who have a child with any Indian blood.

I feel strongly that the very good and important protections of ICWA will be lost if we don't correct some of the problems.

For example, a mother who has no Indian blood whatsoever or any ties to Indian culture who voluntarily places her child for adoption and who chooses the adoptive parents can have those decisions that she made for her child overturned by an unknown third party solely because her child has some small quantum of Indian blood.

Now, as more and more Americans become outraged by the violations of basic individual rights that had interpretations by courts of ICWA embodies, I believe we will see the demise of this law.

As a former judge and an adoptive mother, I am sorry to testify today that S. 569 and H.R. 1082 do not address the fundamental issues. Instead, these bills take a procedural approach that, in my view, is cumbersome enough to significantly discourage the adoption of Indian children and to make many lawyers rich. The complexity of these requirements almost guarantees an inability to comply.

Now, I plead, I implore the members on the committees to read this legislation and understand just how cumbersome it really, really is.

As a former judge, I can tell you that courts are going to have a very difficult time applying the provisions. Frankly, these bills'