

# MUCKLESHOOT INDIAN TRIBE

38015 172ND AVENUE S.E. - AUBURN, WASHINGTON 98002 - (206) 939-3311

## INDIAN CHILD WELFARE ACT ISSUES

1. Funding level: We would hope that the BIA would allow the Tribe to use population figures based on populations we serve to enable us to obtain funding which would allow for true preventative work with families. Our funding level at this time is more of a "holding" level. *It adds for bigger funding level to lead to more positive relationships between tribes!*
2. Grant application process: The Tribe would support a grant application process involving a three year cycle, rather than yearly as is the current process. We find that much time and energy is devoted to the annual application for ICWA funds that could be more profitably spent serving youth and families.
3. State Court issues: We are concerned about the possibility of not be notified for review hearing of children who have been in the system for many years. We are also concerned about the lack of Court rules standardizing and including ICWA requirements for State Court proceedings.
4. Private agencies: Who monitors these agencies for compliance with ICWA? Confidentiality issues are becoming more and more evident when parents request that Tribes not be notified, yet with a private agency/state agency, has there been proper attempt to work with the families concerning Tribal notification of the proceeding?
5. State agency/DSHS: Tribal-State agreements seem to be set up by the State as Tribal-Regional agreements; CPS portions of agreements fit into regional arrangements for Muckleshoot, foster care and group care issues cover larger areas. We are concerned about custody issues, especially group care. As per Substitute House Bill No. 848, RCW 74.13.080. and WAC 388-70-013, the State of Washington, DSHS must have custody of all children in Group care in order for the group care facility to receive payment. The Muckleshoot Youth Home, a group care facility, must give DSHS custody of Muckleshoot children who need group care at the Muckleshoot Youth Home. To give DSHS custody of our children in order to be eligible for group care payments seems to contradict the language and intent of the ICWA.
6. Federal agency/BIA: Is it the BIA's responsibility to monitor private agencies, state Courts? How does the regulation concerning the use of attorneys and 638 funds affect ICWA work needing attorneys?
7. Tribal Court: Our main concern here is the inability for the Tribal Court to order services for families, children, and teenage offenders. Tribal Court may request services. Tribal Court may not order a teenage offender into a State facility for juvenile offenders, which then leads to the need for the Tribe to use the state system for these offenses.

*Tribal Courts transferring - to other tribal court when child is involved - Refusing to transfer & question enrollment*

*exclusive jurisdiction and the state prohibition of state CPS workers filing petitions in Tribal Court*

## THE SUQUAMISH TRIBE PORT MADISON INDIAN RESERVATION RESOLUTION #84-002

WHEREAS, the Suquamish Tribal Council is the duly constituted governing body of the Port Madison Indian Reservation by authority of the Constitution and Bylaws for the Suquamish Tribe of the Port Madison Indian Reservation as approved July 2, 1965, by the Under-Secretary of the Interior; and,

WHEREAS, under the Constitution and Bylaws of the Tribe, the Suquamish Tribal Council is charged with the duty of protecting the health, security, and general welfare of the Suquamish Tribe and all Reservation Residents; and,

WHEREAS, the Indian Child Welfare Act of 1978 (PL 95-608) was enacted by the U.S. Congress to establish standards for the placement of Indian children in foster or adoptive homes and to prevent the break-up of Indian families; and

WHEREAS, the U.S. Congress has declared that it is the policy of the Nation to protect the best interests of Indian children and to promote the stability and security of Indian Tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which reflect the unique values of Indian culture; and,

WHEREAS, the current funding levels provided for this purpose are wholly inadequate, and further proposed reductions seriously imperil the ability of Indian Child Welfare Act programs to provide the basic services required in pursuit of the above policy goals;

THEREFORE BE IT RESOLVED, that the Suquamish Tribe requests that Governor Spellman communicate with the Washington Congressional delegation regarding the need for:

1. Restoration of the \$1 million cut from the Indian Child Welfare Act program appropriations for Fiscal Year 1984;
2. An appropriation of \$15 million for Indian Child Welfare Act programs for Fiscal Year 1985; and
3. Regional hearings to provide Congress with information necessary to ensure equitable and knowledgeable decisions regarding the future of these programs.

## C E R T I F I C A T I O N

The foregoing resolution was duly enacted by the Suquamish Tribal Council, meeting in REGULAR SESSION on this 11th day of JAN., 1983, by a vote of 4 FOR, 0 AGAINST, 0 ABSTENTIONS, at which a quorum was present.

BY:

ATTEST:

L. A. Webster  
Lawrence A. Webster  
Tribal Chairperson

Bennie J. Armstrong  
Bennie J. Armstrong  
Tribal Council Secretary

1-17-84  
Date Mailed to BIA

JR  
Initial

## R E S O L U T I O N

WHEREAS, the Colville Business Council is the governing body of the Confederated Tribes of the Colville Indian Reservation, Washington, by authority of the Constitution and By-laws of the Tribes as approved on February 26, 1938, by the Commissioner of Indian Affairs; and

WHEREAS, "The Indian Child Welfare Act of 1978 (PL 95-608) was enacted by the U.S. Congress to establish standards for the placement of Indian children in foster or adoptive homes and to prevent the breakup of Indian families;" and

WHEREAS, "the U.S. Congress has declared that it is the policy of the Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture;" and

WHEREAS, "the states, exercising Jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families;" and

WHEREAS, in order to accomplish the above goals Indian tribal governments, Indian organizations, and the Bureau of Indian Affairs must develop and implement a system for monitoring and technical assistance to state courts, state agencies, and private agencies; and

WHEREAS, the Colville Confederated Tribes obtained Exclusive Jurisdiction of Child Welfare matters on February 14, 1980.

THEREFORE, BE IT RESOLVED, that we the Colville Business Council meeting in Session this 11th day of January, 1984, at the Colville Indian Agency, Nespelem, Washington, acting for and in behalf of the Colville Confederated Tribes, do hereby recommend an appropriated amount of \$15 M for purposes of implementing the Indian Child Welfare Act.

The foregoing was duly enacted by the Colville Business Council by a vote of 4 FOR 0 AGAINST, under authority contained in Article V, Section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians on February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938.

ATTEST:

Al Aubertin, Chairman  
Colville Business Council

1945 Yale Place East  
Seattle, Washington 98102  
February 07, 1984

Mr. Don Milligan  
Indian Affairs  
Mailstop OB14  
Olympia, Wa. 98504

Dear Don:

The Indian Child Welfare Advisory Committee is an Advisory Committee to the Department of Social and Health Services - Region IV. We are a voluntary group of Indian people who have concerns about the welfare of Indian children in foster care. It is our primary goal to implement the regulations of The Indian Child Welfare Act of 1978. In our effort to do this we have some barriers to implementation, our concerns are:

- 1) Judges are insensitive and uninformed about the mandates of The Indian Child Welfare Act. Often they need to be educated on the spot.
- 2) Guardian Ad Litem's Attorney's are unaware of The Act and need to be sensitized to the significant importance of this law.
- ★ 3) Private agencies are not aware of the Act and (again) don't realize the importance. We have begun talking with private agencies, but monitoring their follow-through activities is not always possible. Often notification to Tribal Courts from private agencies is not done.
- 4) Grant process is difficult and the funding level inadequate. Tribal and Urban Indian Child Welfare Programs are in jeopardy. Funding is not sufficient to meet the overwhelming needs.
- 5) Expert witness needs to be better defined, "How do you qualify." The court does not acknowledge elders and Spiritual leaders as expert witness and these people are expert witnesses.

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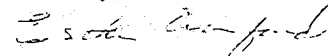
DSMS - OFFICE OF  
INDIAN AFFAIRS

- 6) Canadian Indian Children and families are not protected. Many of our children are from Canada. The Indian Child Welfare Act does not attempt to protect them. Our Washington State Administrative Code protects them but we need Federal protection for these young Canadian Indian children.

We need to amend the Indian Child welfare Act to address these concerns. We as a Committee would like to recommend that the Act be amended to address these issues; inclusion of Canadian Indian children, more clarification of "expert witness", to include elders and spiritual leaders and increased funding level.

Increased funding to train and educate private agencies and monitor them. Training to educate judges and lawyers and G.A.L.S. Lastly, continued funding for Indian Child Welfare Programs, both Urban and Tribal. We should not have to beg for money each year.

Cordially,



Esther Crawford,  
Chairwoman  
Indian Child Welfare Committee

cc: ICWAC Members  
D.S.H.S., Indian Desk Region IV

JOHN SPELLMAN  
Governor
 STATE OF WASHINGTON  
 DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
 Olympia, Washington 98504

February 14, 1983

 Greg Argel 212-689-8720  
 Association on American  
 Indian Affairs  
 432 Park Avenue South  
 New York, New York 10016

Dear Greg:

Per our discussion I am submitting some initial recommendations of issues that may need to be addressed through amendment of the Indian Child Welfare Act:

1. Canadian Indians

Due to our geographical location we have a fair number of child welfare cases involving Canadian Indians. The federal law does not protect Canadian Indian children and families. Our Washington Administrative Code attempts to protect them, but we are in need of legislative relief.

Also  
unremovable

2. Funding

The continuation of funding for both tribal and off-reservation Indian child welfare programs is a priority issue. If the funding is reduced and then eliminated as we understand the plan to be, the Indian Child Welfare effort will revert to the 1960's era and before.

Should be  
entitlement  
rather than  
discretionary

3. Monitoring

There is dire need for a legislatively established system for monitoring state courts', state agencies', and private agencies', compliance with the Indian Child Welfare Act. My recommendation is that joint monitoring/technical assistance committee composed of Indian and BIA representatives be established for each BIA Area Office jurisdiction.

## 4. A discussion with Barbara Wright from our agency's Assistant Attorney General's staff identified the following issues:

a. Voluntary Relinquishments

Currently, Indian Tribal Councils and Tribal Courts do not receive notice of voluntary relinquishments. Although, the issue

Attachment #5

of "confidentiality" is involved, we are also concerned that this perpetuates a "loophole" for inappropriate placement of Indian children into non-Indian homes. At a bare minimum, there should be a requirement for Indian-oriented counseling of parents prior to their final decision to voluntarily relinquish a child.

b. Expert Witness

There appears to be too much flexibility in respect to:

1. Who qualifies an expert witness?
2. What is an expert witness?

Our concern is that "anti-Indian" expert witnesses on Indian Child Welfare cases may be brought in for the purpose of overriding positive Indian Child Welfare planning.

c. CPS Emergency Removal/Exclusive Tribal Jurisdiction

There appears to be a questionable gap in the current legislation in situations where a tribe has exclusive tribal jurisdiction but may not have the program resources to respond rapidly to the need for a child protection services emergency removal situation. In Washington, it appears that the Assistant Attorney General's Office has continued to cite the state's responsibility to do child protection/abuse investigation on reservations where tribes have exclusive jurisdiction even though the state does not have the authority to remove a child in emergent danger nor refer the matter for court action. Perhaps, this issue should receive some attention.

I will forward any other issues brought to my attention.

Sincerely,

Don Milligan

Don Milligan  
 DSHS Indian Affairs  
 MS 08-14  
 Olympia, Washington 98504

cc: Barbara Wright  
 Evelyn Blanchard  
 Goldie Todd

JOHN SPELMAN  
Governor

STATE OF WASHINGTON  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
Olympia, Washington 98504

KAREN RAHMS  
Secretary

December 28, 1983

TO: Regional Administrators  
FROM: Bob Salema  
SUBJECT: REQUEST FOR RECOMMENDATIONS RELATED TO THE POSSIBLE AMENDMENT OF THE INDIAN CHILD WELFARE ACT

It is my understanding that the U.S. Senate will be holding hearings possibly in late February or March 1984 on potential amendment of the Indian Child Welfare Act.

I am asking each of you to obtain recommendations from your regional office staff, CSO administrators, caseworkers serving Indian cases, Indian community workers, and local Indian child welfare advisory committees. Focus on those aspects of the act that have encouraged progress and those aspects of the act which have resulted in implementation problems for DSHS, state courts, tribal courts, and Indian child welfare programs from your point of view. Your recommendations and comments will be shared with Indian representatives.

Please have the recommendations to Don Milligan, Office of Indian Affairs, Mail Stop OB 14, by January 13, 1984 because they are needed for discussion at a meeting of Indian representatives on January 19. Thank you.

cc: Don Milligan  
Barbara Wright



OFFICE OF THE  
ATTORNEY GENERAL

Inter-office Correspondence

Date: January 17, 1984

To: Don Milligan

From: Barbara Wright

Subject: The Indian Child Welfare Act, Concerns and Recommendations

The concerns and recommendations I have listed in this memo are my personal opinions rather than opinions of the Attorney General's Office, and are based upon 4 1/2 years of working with the ICWA in the Attorney General's Office.

The intent and spirit of the Indian Child Welfare Act is to have Indian children remain with Indian people. A basic concern that I have, as do others in my office who work with the ICWA, is that the lack of funding to tribes serves to undercut the tribes' (and the State's) ability to carry out the purpose of the Act. In addition, Public Law 96-272 is in direct conflict with the intent of the ICWA because it imposes continuous State supervision and control over the licensing and payment process and does not lead to tribal autonomy in the child welfare area.

The Act gives tribes that have exclusive jurisdiction over child custody proceedings, jurisdiction over "an Indian child who resides or is domiciled within the reservation." From this I assume that such tribes have jurisdiction over Indian children who are not tribal members. It is unclear whether the same applies to tribes with concurrent jurisdiction, because the Act does not address that specific issue.

Section 1912 of the ICWA requires that notice to an unknown or unavailable parent be given to the Bureau of Indian Affairs. The BIA does not seem to be very effective in finding parents and transmitting information to parents.

Section 1915 allows the placement preference of the Indian child or parent to be considered where appropriate in a foster or adoptive placement. The court or agency is also to give weight to a consenting parent's desire for anonymity in applying the placement preferences. The result is that the State caseworkers are often put in a very difficult position when trying to place a child pursuant to the placement preferences; and on many occasions the desire of the parent or child has effectively overridden the intent and the placement preferences of the ICWA.

In summary, my strongest recommendations are that tribes be given enough money to implement the Indian Child Welfare Act and that federal laws which act to undermine the Indian Child Welfare Act be changed.

I also recommend that the Indian Child Welfare Act be specific as to how much authority tribes with concurrent jurisdiction have over Indian children who are not their tribal members. All Indian children within a reservation should be covered by the authority of tribal courts regardless of exclusive or concurrent jurisdiction status of the tribe. It would then be up to the tribe to chose to assert such jurisdiction based upon their funding, court structure, and so on.

The placement preferences and desire for anonymity of the Indian parent should not be allowed to override the intent and the placement preferences of the Indian Child Welfare Act.

cc: Bruce Clausen  
Teresa Kulick

JOHN SPELLMAN  
Governor



STATE OF WASHINGTON

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

MEMORANDUM

Karen Rahm  
XXXXXXXXXX  
Secretary

TO: Don Milligan  
Office of Indian Affairs  
MS 08-14

DATE: January 12, 1984

FROM: Thomas J. Berg  
Administrator  
Spokane Base CSO

SUBJECT: RECOMMENDATIONS RELATED TO  
THE POSSIBLE AMENDMENT OF  
THE INDIAN CHILD WELFARE ACT

My staff have contacted numerous local individuals regarding assessment of helpful or detrimental aspects of the Indian Child Welfare act. These individuals included Community representatives, local Indian Child Welfare advisory committee members, the DSHS liaison to the local ICWAC and other staff members in the CSO.

The DSHS liaison to the local ICWAC plans to ask the committee as a whole to send recommendations to the Office of Indian Affairs. The liaison is aware of the January 19, 1984 statewide meeting of Indian representatives and will encourage the local ICWAC to send recommendations in prior to that date.

CSO staff recommendations relate to the application and some procedures under the law rather than the law itself. In general, caseworkers agree with the purpose and philosophy of the Act. The local ICWAC has been supportive and staff view the required staffing with ICWAC to develop a case plan as positive procedure.

The problems noted by staff center around the time needed to complete the additional required forms and staffings for Indian children. The operation of giving notice to the tribe is of particular concern because of the difficulty and the time required in determining what tribes to notify. Finally, questions have been raised about the need to have a representative from the child's particular tribe involved in the planning in addition to the local ICWAC.

In summary, the CSO staff's recommendations are to streamline the process required to comply with the Indian Child Welfare Act. Also, I would suggest contacting the Attorney General's Office for specific recommendations about the law itself.

TJB:cb

cc: Bernard O. Nelson, Regional Admin.

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JAN 16

DEPT. OF SOCIAL AND HEALTH SERVICES

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JOHN SPELLMAN  
Governor



STATE OF WASHINGTON

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

MEMORANDUM

TO: Don Milligan  
Office of Indian Affairs - 08-14

DATE: January 11, 1984

FROM: James A. Ross, Administrator  
Spokane North CSO

SUBJECT: REQUESTS FOR RECOMMENDATIONS  
RELATED TO THE POSSIBLE  
AMENDMENT OF THE INDIAN  
CHILD WELFARE ACT

This request was discussed with staff. The Indian Child Welfare Act was reviewed in relation to the areas suggested. It was determined we have not had any outstanding problems in the implementation of the Act. Therefore, we did not arrive at any changes to recommend.

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cc: Bernard O. Nelson, Regional Administrator

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JOHN SPELLMAN  
Governor



STATE OF WASHINGTON

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

MEMORANDUM

TO: Dan Milligan, Office of Indian Affairs  
Mail Stop 08-14  
Olympia, WA

DATE: January 9, 1984

FROM: Jean Dunhaver, Administrator  
Grant/Adams Administrative Unit  
Moses Lake CSO B13-2

SUBJECT: INDIAN CHILD  
WELFARE ACT

The following are concerns the Grant/Adams CSO has about the current Indian Child Welfare Act:

1. The legal process on Indian children is slow and children remain in foster care too long.
2. There are not enough Indian foster homes to meet the criteria set out in the Act.

The Act addresses a definite need and is a positive step.

JD:RET:gy

cc: Bernard O. Nelson, Regional Administrator, Region I

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JOHN SPELLMAN  
Governor

STATE OF WASHINGTON

## DEPARTMENT OF SOCIAL AND HEALTH SERVICES

## MEMORANDUM

Karen Rahn  
SecretaryTO: Don Milligan  
Office of Indian Affairs, Mail Stop OB-14

DATE: January 12, 1984

FROM: Ben Green, Administrator  
Wenatchee CSOSUBJECT: RECOMMENDATIONS RELATED TO  
AMENDMENT OF INDIAN CHILD  
WELFARE ACT - YOUR MEMO OF  
JANUARY 3, 1984

The one area in which we have had the most difficulty relates to Adoption Planning for Indian Children, Manual G 36.38. It is often difficult to ascertain eligibility for enrollment. This requires much correspondence.

The other area is that of the Unenrolled Indian, that also requires in-depth research.

It would be helpful to us if the definitions of these criteria were spelled out more fully.

BG:GE:es

cc Bernard O. Nelson  
Region 1

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JOHN SPELLMAN  
Governor

STATE OF WASHINGTON

## DEPARTMENT OF SOCIAL AND HEALTH SERVICES

## MEMORANDUM

ALAN CRIBS  
SecretaryTO: Don Milligan  
Office of Indian Affairs 08-14  
Olympia

DATE: January 11, 1984

FROM: Kathy McCracken, Administrator  
Okanogan CSOSUBJECT: REQUESTS FOR  
RECOMMENDATIONS  
RELATED TO  
THE POSSIBLE AMENDMENT  
OF THE INDIAN CHILD  
WELFARE ACT

In this area we could find no consensus nor strong opinions about recommended amendments to the Indian Child Welfare Act.

We found concern expressed on basically three aspects of the law by some individuals:

1. There are still too many Indian children being placed in non-Indian homes and perhaps it would improve if the law had a stronger way to compel that the law be followed.
2. The opinions and advice of the extended family regarding planning for the children has not always been given serious consideration.
3. There is a lack of tribal control or right to intervene in adoptions where individuals have relinquished a child directly to other individuals.

Most of the contacts with CSO staff, community representatives, and some ICWAC members indicated that they had no real criticism of the law but there was a lot of concern about the implementation of the act. It was felt that perhaps the terms of the law were not interpreted as clearly and as strictly as the law allowed and that clear guidelines and resources be provided with the law for a smoother implementation.

KM/nh

Attachment

cc: Bernard O. Nelson  
Elta Medonich

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JOHN SPELLMAN  
Governor

STATE OF WASHINGTON

## DEPARTMENT OF SOCIAL AND HEALTH SERVICES

ALAN I. CABR  
Secretary

## MEMORANDUM

TO: Don Milligan  
Office of Indian Affairs  
Mail Stop 08-14  
Olympia, WA

DATE: January 10, 1984

FROM: Elaine White, Administrator  
Colfax C.S.O., Pullman Branch Office

SUBJECT: Possible Amendments to  
Indian Child Welfare Act

We have contacted our casework staff, and Community resources in an effort to gather feedback on possible amendment to the Indian Child Welfare Act. Of course, it must be noted that our catchment area does not afford us with a great many opportunities to exercise the ICWA. Our volume of cases involving Native American children has been three children in the last two years. Therefore, each time we do encounter the need to consult the Act we basically need to relearn the process.

We were able to get some feedback that reflects a positive attitude on the part of caseworkers who work with the LICWAC in terms of having a good relationship.

Concerns that were expressed by the member of the local committee were more general in nature and scope. These concerns dealt with a perceived need to address the issue of using Guardians ad Litem who were either Native American or sensitive to Native American issues. A possible problem area, and past concern, was that courts tend to give more weight to the recommendations of the Guardian ad Litem, regardless of the recommendation of the LICWAC. It is suggested that amendments may possibly address this issue.

In addition, concerns also dealt with the issue of private organizations going onto the reservations and dealing with families for private adoption. Currently there is no check or safeguard to ensure that people who live on the reservations are not misled or exploited by religious groups or private organizations.

We hope these thoughts will be helpful to you.

EGW:DRW:cr

cc: Bernard O. Nelson  
Region 1

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JOHN SPELLMAN  
Governor

STATE OF WASHINGTON

## DEPARTMENT OF SOCIAL AND HEALTH SERVICES

ALAN I. CABR  
Secretary

## MEMORANDUM

TO: Don Milligan,  
Office of Indians Affairs 08-14  
Olympia, Washington

DATE: January 13, 1984

FROM: Janet Thomas, Administrator  
Tribal County CSO  
Olympia, Washington

SUBJECT: REQUESTS FOR RECOMMENDATIONS  
RELATED TO THE POSSIBLE  
AMENDMENT OF THE INDIAN  
CHILD WELFARE ACT

This is in response to Bernard Nelson's memorandum of January 3, 1984 on the above subject.

I would like to see safeguards for the rights of Indian children and families involved in dependency proceedings. A guardian ad litem appointed for the child would protect their rights under the state or tribal system.

Provisions of Public Law 96-272 and the protection therein should be extended to the children and families under the jurisdiction of tribal court.

JT:sk1

Attach.

cc: Bernard Nelson

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JOHN SPELLMAN  
Governor

STATE OF WASHINGTON

## DEPARTMENT OF SOCIAL AND HEALTH SERVICES

## MEMORANDUM

TO: Robert Lolcama, Deputy Assistant Secretary  
Community Services MS 08-44D DATE: January 12, 1984

FROM: Ralph E. Mackey, Regional Administrator  
Region 2 MS 839-6 SUBJECT: INDIAN CHILD WELFARE ACT

Thank you for this opportunity to comment relating to possible amendments of the Indian Child Welfare Act. We find the act to provide useful guidelines in working with Indian children and families. There are several areas, however, which are not entirely clear or about which questions have arisen in the field.

- (1) One of the most difficult barriers we find to full implementation of the intent of the Act is the shortage of funding for the Indian Child and Family Service Program as described in Section 201. As you know, although the Yakima tribe has exclusive jurisdiction, the child and family program is not fully funded. This situation leads to frustrated expectations for both tribal members and other community agencies, as well as leaving the department to provide services to a number of Indian children and families, who, given adequate funding, could be served by their tribal program instead.
- (2) There seems to be some ambiguity about jurisdiction in the case of an Indian child belonging to one tribe and domiciled on the reservation of another tribe. This comes up when the child's parent objects to the local tribal court's hearing the case, preferring it to be heard in state court. Do they have this right? Would agreements between tribes regarding assumption of jurisdiction for child welfare cases influence parents' freedom, if any, to chose the court?
- (3) Does section 301, concerning record keeping on adopted Indian children, conflict with state adoption statutes providing for confidentiality?
- (4) Is there a conflict between 95-608 (e.g., section 101 (a)) and state law which requires that the department have custody of all children placed in group care when we make payment?
- (5) Most of the Act seems to address practices in state court, rather than internal tribal court practices. Should the Act concern itself with guidelines for tribal court, especially in the area of legal counsel and notice of hearings?
- (6) The Act does not seem to address investigation of Child Protective Services complaints very fully, particularly for children domiciled on a reservation.
- (7) Expert witnesses, as referred to in section 102(e) are not defined.

cc: CSO Adm.

JAN 17

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INDIAN AFFAIRS

KAREN RAHM  
SecretaryJOHN SPELLMAN  
Governor

STATE OF WASHINGTON

## DEPARTMENT OF SOCIAL AND HEALTH SERVICES

## MEMORANDUM

TO: Don Milligan  
Office of Indian Affairs OB 14 DATE: January 13, 1984

FROM: Jane Hawkins, Acting SDC I  
Region 3 N31-7 SUBJECT: Indian Child Welfare Act  
Amendment

Following are our recommendations related to the possible amendment of the Indian Child Welfare Act:

1. More adequate and consistent funding is needed for staffing and program development to prevent personnel turnover and to ensure continuity.
2. Encouraging training, adequate staffing and a tribal support system that could accept jurisdiction and be able to deal with the notices in a timely and effective way.
3. Continue the appropriate training of state judges and the Attorney General's offices with reference to this Act.
4. Encouraging the Indian groups to assume more responsibility for continuation of major service provision.
5. Training and orientation of tribal court judges to their role in the juvenile family arena.
6. Continuation of healthy communication channels between tribes, Indian organizations and the state legal system.
7. Continue to serve and preserve the rights of bi-racial persons who would choose to be considered Indian, whether or not they are enrollable.
8. Preserve the safeguards that have been provided so that the Indian parent may reconsider and retrack earlier decisions that may not have been made with clear understanding and considered judgment.
9. The ICWA needs to spell out in more detail the necessary response required of state judicial systems to honor tribal courts and their orders without jurisdictional hang-ups.
10. Cooperative or reciprocal agreements should be negotiated across the international boundary to preserve the cultural variance when it does exist.
11. In C. Criteria and Procedures for ruling on 25 USC 1911 (b) Transfer Petitions remove "unless either parent objects to such transfer" and instead assume that if one parent wishes transfer that is sufficient reason for transfer.

JH:rb

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ALAN J. GIBBS  
Secretary

JAN 23

DEPT. OFFICE OF  
INDIAN AFFAIRS

KAHN SPELMAN  
Governor



STATE OF WASHINGTON

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

MEMORANDUM

KAREN RAHM  
Secretary

TO: Don Milligan, Chief  
Office of Indian Affairs 08-14

DATE: January 16, 1984

FROM: John Leggett, Administrator N56-1  
Central Children's Service Office

SUBJECT: Amendments to the Indian  
Child Welfare Act

In reviewing the Indian Child Welfare Act and the implementation of, our primary concern is the lack of compliance by a significant number of public and private agencies. This concern is based on situations experienced by the Region 4 Indian Children's Unit.

Several obstacles have been encountered in following the mandates of the Act, and in enforcing the policies set forth in WAC. Specifically, Judges in King County appear to lack understanding of the Act. There is a general lack of recognition for the unique political and cultural status of Indian people. Court decisions have been rendered which have gone against the intent of the Act. Bad precedents have been set for future cases (e.g. maintaining Indian children in non-Indian placements when family or Indian resources were available). It's recommended training be made mandatory for Judges who preside over Indian Child Welfare cases.

A related area of concern has been the Guardian Ad Litem (GAL) program. At times GAL's assigned to Indian cases appear to lack understanding of the Act, as well as a lack of cultural awareness. The Guardian Ad Litem program provides a valuable service, but certain recommendations in Indian cases have proven problematic when those recommendations go against the mandates of the Act.

Indian cases serviced by private agencies is another area of concern. There have been a number of instances of non-compliance by private agencies. Presently, there is not a system to monitor private agencies. Region 4 DSHS and the LICWAC have sought to establish informal agreements with the various private agencies to staff their Indian cases. Unfortunately there has been a number of problems. A legally mandated system of monitoring needs to be considered.

Specific items in the Act itself needs addressing. First, it's recommended Canadian Indians be covered under the provisions of the Act. Washington State law has some limited provisions, but federal legislation is needed to ensure the protection of Canadian children. Region 4's Indian Children's Unit services a number of Canadian families.

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In Section 105 (a) and (b) the phrase "in the absence of good cause to the contrary" refers to placement preference. This phrase has been used when the preference was not followed. The interpretation of this phrase has been the basis for non-compliance with the preference and has resulted in prolonged non-Indian placements of Indian children. The phrase should be eliminated or revised to reflect the importance of placement priorities. A related item is the need to clarify the order of placement preferences. It should be made clear the preference is to be followed in "sequence" from Item i to Item iv in Section 105 (b) and not that there exists a "choice" among the preferences.

Clarification of an agreed dependency orders are needed. It is unclear if an agreed dependency order needs to be signed in the presence of a judge. Also, there is concern about the provision allowing a voluntary relinquishment to be withdrawn prior to a termination order and/or adoption decree. Precarious situations have occurred for both the child and the prospective adoptive family. These two items have been raised for future discussion, no specific recommendations can be given at this time.

The Region 4 Indian Child Welfare Advisory Committee has received materials regarding the upcoming Senate Hearings. Members plan to present their recommendations to Indian representatives at the scheduled meeting on 1/19/84 and 1/20/84.

The Indian Child Welfare Act is vital to the preservation of Indian families and we look forward to continued coordinated efforts in assuring its implementation.

JDL:ckz

cc: Ralph Dunbar

K. HIN SPELMAN  
GovernorKAREN RAHM  
Secretary

STATE OF WASHINGTON

## DEPARTMENT OF SOCIAL AND HEALTH SERVICES

## MEMORANDUM

TO: Don Milligan  
Office of Indian Affairs  
M/S 08 14

DATE: January 12, 1984

FROM: Bernice Morehead  
Regional Administrator  
Region 5 M/S N 27-5

SUBJECT: RECOMMENDATIONS RELATED TO THE  
POSSIBLE AMENDMENT OF THE  
INDIAN CHILD WELFARE ACT

The following recommendations and comments were obtained from our local Indian Child Welfare Advisory Committee members and Indian Community Worker.

The Indian Child Welfare Act is, in and of itself, viewed as a positive move to protect the best interests of the Indian child and his/her unique culture and heritage. Certainly it has heightened awareness in our communities for both Indian and non-Indian people and has improved Department child welfare services to children and their families.

Aspects of the Act which have resulted in implementation problems include:

- 1) The act did not provide funding for education. As a result, it has taken a long time for DSHS staff and community agencies staff to familiarize themselves with the Act, relevant WAC and Manual material. The need for education is constant as new staff become involved with Indian children.
- 2) When a child is placed into out-of-home care the Tribe must be notified. There is no language in the Indian Child Welfare Act stating that the Tribe must respond to the notification. A requirement for response from the Tribe within a limited time frame would be helpful.
- 3) The Act does not delineate responsibilities to Canadian Indian children. Because this is overlooked in the Act, some Canadian Indians in the United States suffer from lack of services.
- 4) For children in the custody of Tribal Courts, the Act would be improved by including language to mandate a structure similar to the Interstate Compact. This would allow children from other States to be served more equitably. Because there is no interstate agreement, or funding, some children are stranded away from their Tribes.

Local difficulties in implementing the Indian Child Welfare Act include: A) A need for stronger representation from local native American communities on the local Indian Child Welfare Advisory Committee. B) Obtaining sufficient information to determine a child's Indianness as it is defined in the Act and the broader State definition.

If you have questions or need additional information, please contact Kristy Zoeller, Social Service Coordinator at Scan 462-2922.

cc: Robert Lolcama

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JAN 16

STATE OF WASHINGTON



## Wisconsin Winnebago Business Committee

Department of Health & Social Services  
P.O. Box 311 — Tomah, Wisconsin 54660

May 30, 1984

RECEIVED JUN 9 1984

Senator Mark Andrews, Chairman  
Select Committee on Indian Affairs  
United States Senate  
Washington, D.C. 20510

RE: Indian Child Welfare  
Oversight Hearings

Dear Senator Andrews:

The Wisconsin Winnebago Tribe need to be heard on this issue. The Tribe does not have a reservation in Wisconsin. We have scattered settlements within a fourteen (14) county area in central Wisconsin. This is the area I, as Indian Child Welfare Worker, must cover, plus the urban areas such as Milwaukee, Chicago, and Minneapolis/St. Paul. I also have cases in California and Montana. My 1984-85 Indian Child Welfare proposal was funded for \$35,770. How is one Worker supposed to effectively serve 3200+ Winnebagos in this geographical area with very little funding.

I wrote 1984-85 I.C.W. proposal for \$49,437.36 using statistics (population) from 1981 B.I.A. Labor Task Force Report, which is 1,718. A very minimal number because B.I.A. does not allow us to use the actual number which is 3200+. If we were to use the actual number, we would be eligible for up to \$150,000. Proposal I had written for \$49,437.36 was based on very minimal salaries (one I.C.W. Worker and one part-time assistant), travel, space cost, and other costs. Even then it was reduced to \$35,770. The lack of funds definitely effects delivery of service to the Winnebago Tribe. I have broken down these areas of the Indian Child Welfare Act:

## I. Intervention

## A. Court notices

1. Legal counsel
2. Travel and/or transportation
3. Follow-up; supervision
4. Counseling for parents and children
5. Locating and communicating with extended family members
6. Locating adoptive home when termination of parental rights occurs
7. Having consistent working relationship with the 14 counties (cooperation)
8. Time to locate or start resources for Indian children i.e. specialized foster homes, Indian group homes, facilities for emotionally disturbed and/or special needs children

## II. Recruitment of foster homes

- A. Going to the four (4) major areas to locate Indian foster homes

Health Management Services  
(608) 372-2667Community Health Representative/  
Maternal & Child HealthContract Health Service  
(608) 372-2647

Mental Health Program

Indian Child Welfare  
(608) 372-2647

EHC - Alcoholism Counseling Services

TRAILS Programs  
(608) 372-5819

EHC - Social Services

EHC - Community Health Nursing  
(715) 284-2367  
(608) 372-3615Foster Grandparent Program  
(608) 372-5819Work Experience Program  
(608) 372-5819Elderly Program  
(608) 372-5819

- B. Going to the counties, to work with Indian people on licensing
    - 1. Educating state, regional, and county departments of health and social services staff on Winnebago culture and values
      - a. Consultants
      - b. Workshops and seminars
  - C. Alternatives in licensing procedures that would fit the needs of our cultural values
- III. Providing supportive services in all our communities
- A. Support groups for parents and their children
    - 1. Also for foster parents
  - B. Workshops and seminars for these groups
    - 1. Cultural and/or counseling type
      - a. Involvement from tribal elders
      - b. As well as those from helping professions
- IV. Training expenses

I am really caught in a dilemma. Ashland Area Office of the Bureau of Indian Affairs keeps telling us budgets are being reduced, but it doesn't seem to effect their salaries and retirements. The Wisconsin Winnebagos need at least two(2) I.C.W. workers and one full-time secretary/assistant. The fourteen(14) county area can be divided between the two(2) I.C.W. workers and the secretary/assistant can manage the office. As it is now, one worker has to try to cover as much as possible. Many times I spread myself pretty thin. I feel hurt because I know I am not serving the people as well as I should. I hope you sincerely consider our testimonies for the sake of Indian children and their families.

If any of the points I mentioned are not clear, please contact me and I will clarify them for you.

Thank you.

Respectfully submitted,

*Faye E. Thunder*  
 Faye E. Thunder  
 Indian Child Welfare Coordinator  
 Wisconsin Winnebago Tribe



P.O. Box 248 \* Marty, South Dakota 57361 Phone No. 384-3804  
 384-5687

RECEIVED MAY 15 1984

May 10, 1984

Select Committee on Indian Affairs  
 Mr. Mark Andrews, Chairman  
 U.S. Senate  
 Washington, D.C.

Dear Sirs:

We offer our appreciation for the opportunity to provide you with our testimony regarding the deficiency's in the Indian Child Welfare Act of 1978.

Our testimony shall only address the Title II component of the Act. The remaining Title I, III and IV, we request another time and place in which to address the deficiency's in these areas.

The biggest problems we are facing, when providing an already determined needed Child Welfare Service, is that of the funding criteria.

We strongly feel, that the Title II funding component should not be a competitive grant award, but rather an entitlement to all federally recognized or urban Indian populations.

The funding criteria change, would enable a Tribe or any Indian Child Welfare Service Program to provide a consistent cultural relevant service to its children and families. This is one of the basic intents of the Act. Currently a Child Welfare Program does not have the financial security it needs, to continue providing consistent service after a year. Most Child Welfare cases require an on going service.

Further, the funding level is extremely low when considering the population served. An example of this, is that our Tribe has an enrollment of approximately 5,500 and our funding consideration is based on, on-reservation population. This is in no regard to the fact that we serve our tribal people no matter where they are. We request that the funding level be reconsidered, which would enable a Indian Child Welfare Program to provide a competent and capable program.

With these factors addressed accordingly, we feel we can provide a beneficial service to our children and people.

The remaining Title of the Act again, we request more time to prepare our testimony.

I thank-you all for your help.

Sincerely,

*Alvin R. Zecher*  
 Alvin R. Zecher  
 Y.S.T. Chairman

RECEIVED MAY 30 1984

May 21, 1984

Senator Mark Andrews, Chairman  
 Select Committee on Indian Affairs  
 United States Senate  
 Washington, D.C. 20510  
 Attn: Pete Taylor

Dear Senator Andrews and Mr. Taylor:

This letter is in reference to the Indian Child Welfare Act, Public Law 95-608. During the past two years I have served on the Omeida Child Protective Board, a board the Omeida Tribe of Indians of Wisconsin has vested with authority over child custody proceedings. Our Board acts in place of a Tribal Court reviewing cases and making recommendations to the State Court on behalf of the tribe. I have become somewhat familiar with the Indian Child Welfare Act and would like to submit the following request for changes in the Act:

title 1 - Child Custody Proceedings  
 Section 101

(b) On any State Court proceeding for the foster care placement of, or termination

of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, ... upon the petition of either parent or the Indian custodian of the Indian child's tribe: Provided, that such transfer shall be subject to declaration by the tribal court of such tribe.

Note that "absent objection by either parent" has been deleted. It has been my experience that cases arise where a parent objects to the tribe's jurisdiction. When a parent objects to this intervention by the tribe, an Omeida child can be placed in a non-Indian foster home. When the Tribe is not involved in a termination of parental rights hearing, there is no opportunity for the Tribe to locate suitable Omeida adoptive families. This does not reflect the unique value of Omeida culture and also separates the Omeida child from the extended family. I strongly recommend

"absent objection by either parent" be deleted so all state court proceedings for foster care placement and termination of parental rights are transferred to the jurisdiction of the Oneida Tribe.

Title I Section 102

- (a) ... No foster care placement or termination of parental rights proceeding shall be held until at least "twenty" days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

The change in Section 102 (a) is in the last sentence: change from ten days after receipt of notice to twenty days after receipt of notice.

Ten days does not allow the tribal case worker sufficient time to conduct a complete and thorough investigation of the case. The caseworker has to gather information from various agencies, often from other counties and

states, and ten days does not provide enough time for this.

Title I Section 106

- (a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, "a biological parent or prior Indian custodian must be notified of this proceeding by registered mail with return receipt requested and the Indian child's tribe must also be notified of this proceeding. A biological parent or prior Indian custodian may petition..."  
continue on as in the Act.

I have added the above section to insure that the biological parent or prior Indian custodian and the tribe receive notice of the proceeding. This provides the opportunity for the child to be placed with the Oneida family, or if the prior custodian or parent cannot care for the child it provides for placement in the child's

community.

Title II - Indian Child and Family Programs Section 201(a) 1.

- (1) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

I see no funds available for this subsidy program. Many Indian families have a minimal income, are willing to take another child as their own but simply do not have the income to support another child. Appropriating funds for the subsidy program can aid in keeping Oneida children in the Oneida community.

Another area of concern is the adoption process for Indian parents. The adoptive parents must pay attorney fees, court and filing fees, and an initial fee for an adoption study. The cost of an adoption study alone is around \$1500, an amount very few Indian families can pay. I urge that

section 8 be added to include:

Title II Section 201(a)

8. Adoption assistance for adoptive Indian parents including all costs involved in the adoption process for an Indian child.

The intent of the act is to protect the best interests of the Indian child and to promote the stability and security of Indian tribes and families and I urge you to work toward appropriating funds to fully implement the act.

The Indian Child Welfare Act is a great step forward for Indian people, and with your help, we can utilize the act to its intended capacity. I thank you for this opportunity to express my concerns and look forward to even more implementation of the Act.

Sincerely,

Sandra J. Hill, Chairman  
Oneida Child Protective  
Board  
Oneida, Wisconsin