

INDIAN CHILD WELFARE ACT AMENDMENTS

WEDNESDAY, MAY 11, 1988

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:07 a.m., in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, DeConcini, Evans, and Murkowski.

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

The CHAIRMAN. The committee will please come to order.

This morning, we gather to consider S. 1976, a bill to amend the Indian Child Welfare Act of 1978.

It has been ten years since this act was enacted. In oversight hearings on this act held in 1984, concerns were expressed that the full intent of the act was not being achieved. On November 10 of last year, this committee held additional oversight hearings.

From the testimony received at that hearing, it was clear that funding for programs authorized by the act has always been deemed inadequate and has grown worse over the years. Coordination between the Department of the Interior and the Department of Health and Human Services in complimentary programs under their respective jurisdictions has not been realized. Cooperative efforts between the States and the tribes have not been consistent. And divergent decisions among the State courts in implementing the provisions of the act have led to some legal uncertainties in interpretation of the act.

The committee received testimony from two witnesses in our November hearing recommending extensive amendments to the Indian Child Welfare Act. The recommended amendments represented long and hard work among persons active in the Indian child welfare field, including attorneys, Indian social service personnel, and State social service agencies.

While the proposed amendments did not have the support of all the witnesses testifying, it was clear that they represented a starting point for addressing many of the issues identified in our hearings.

On December 19, 1987, my distinguished colleague and vice chairman of the committee, Senator Evans, introduced S. 1976 along with nine co-sponsors, including myself. This is our first hearing on this bill, and I do not anticipate that this bill will move forward without amendments.

I would, however, note that there is very strong support for the basic concept of the Indian Child Welfare Act, and I believe it is important that the act be implemented as fully as possible.

We have a number of witnesses today, and our time is obviously limited. I urge each witness to summarize your statement to allow time for questions and answers. I would like to assure all that your full statements will appear in the record.

[The text of S. 1976 follows:]

100TH CONGRESS
1ST SESSION

S. 1976

FILE COPY

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 19 (legislative day, DECEMBER 15), 1987

Mr. EVANS (for himself, Mr. INOUE, Mr. MCCAIN, Mr. HARKIN, Mr. DECONCINI, Mr. DASCHLE, Mr. BINGAMAN, Mr. PRESSLER, Mr. BURDICK, and Mr. WIRTH) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

A BILL

To amend the Indian Child Welfare Act, 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.

4 That this Act may be cited as the "Indian Child Wel-
5 fare Act Amendments of 1987".

6 SEC. 2. REVISION OF INDIAN CHILD WELFARE ACT.

7 The Indian Child Welfare Act of 1978 (25 U.S.C.
8 1901, et seq.) is amended to read as follows:

9 "SHORT TITLE AND TABLE OF CONTENTS

10 "SECTION. 1. This Act may be cited as the 'Indian
11 Child Welfare Act of 1978'.

"TABLE OF CONTENTS

- "Sec. 1. Short title and table of contents.
 "Sec. 2. Congressional findings.
 "Sec. 3. Declaration of policy.
 "Sec. 4. Definitions.

"TITLE I—CHILD CUSTODY PROCEEDINGS

- "Sec. 101. Jurisdiction over Indian child custody proceedings.
 "Sec. 102. State court standards and procedures.
 "Sec. 103. Voluntary proceedings.
 "Sec. 104. Challenges based on violations of Act.
 "Sec. 105. Placement goals in State court proceedings.
 "Sec. 106. Subsequent placements or proceedings.
 "Sec. 107. Tribal and family affiliation; disclosure by court.
 "Sec. 108. Reassumption of exclusive tribal jurisdiction.
 "Sec. 109. Agreements between States and Indian tribes.
 "Sec. 110. Improper removal of child from custody.
 "Sec. 111. Higher State or Federal standards to apply.
 "Sec. 112. Emergency removal and placement of child.
 "Sec. 113. Effective date.
 "Sec. 114. Indian child welfare committees.
 "Sec. 115. Compliance by private child placement agencies.
 "Sec. 116. Aboriginal peoples of Canada.

"TITLE II—INDIAN CHILD AND FAMILY PROGRAMS

- "Sec. 201. Grants for preventive programs on or near reservations.
 "Sec. 202. Grants for off-reservation programs.
 "Sec. 203. Funds for implementation of Act.
 "Sec. 204. 'Indian' defined for certain purposes.

"TITLE III—RECORDKEEPING, INFORMATION AVAILABILITY, AND
TIMETABLES

- "Sec. 301. State reports.

"CONGRESSIONAL FINDINGS

1
2 "SEC. 2. Recognizing the special relationship between
3 the United States and the Indian tribes and their members
4 and the Federal responsibility to Indian people, the Congress
5 finds—

6 "(1) that clause 3, section 8, article I of the
7 United States Constitution provides that 'The Congress
8 shall have Power * * * To regulate Commerce * * *
9 with Indian tribes' and, through this and other consti-

1 tutional authority, Congress has plenary power over
2 Indian Affairs;

3 "(2) that Congress, through statutes, treaties and
4 the general course of dealing with Indian tribes, has
5 assumed the responsibility for the protection and pres-
6 ervation of Indian tribes and their resources;

7 "(3) that there is no resource that is more vital to
8 the continued existence and integrity of Indian tribes
9 than their children and that the United States has a
10 direct interest, as trustee, in protecting Indian children
11 who are members of or are eligible for membership in
12 an Indian tribe;

13 "(4) that an alarmingly high percentage of Indian
14 children are separated from their families and tribal
15 heritage by the interference, often unwarranted, of
16 their children from them by nontribal public and pri-
17 vate agencies, and individuals, and that an alarmingly
18 high percentage of such children are placed in non-
19 Indian foster and adoptive homes and institutions; and

20 "(5) that the States, exercising their recognized
21 jurisdiction over Indian child custody proceedings
22 through administrative and judicial bodies, have often
23 failed to recognize the essential tribal relations of
24 Indian people and the cultural and social standards
25 prevailing in Indian communities and families;

1 “(6) that the Bureau of Indian Affairs, exercising
2 federal authority over Indian affairs, has often failed to
3 fulfill its trust responsibility to Indian tribes by failing
4 to advocate rigorously the position of tribes with States
5 and nontribal public and private agencies and by failing
6 to seek funding and planning necessary for tribes to ef-
7 fectively fulfill their responsibilities to Indian children;
8 and

9 “DECLARATION OF POLICY

10 “SEC. 3. The Congress hereby declares that it is this
11 Nation’s Policy to protect the best interests of Indian chil-
12 dren and to promote the stability and security of Indian tribes
13 and families by the establishment of minimum Federal stand-
14 ards governing any interference with Indian children’s rela-
15 tionships with their parents, family or tribe; also by providing
16 for the placement of Indian children in foster or adoptive
17 homes reflecting the unique values of Indian culture, and by
18 providing for assistance to Indian tribes in the operation of
19 child and family service programs. Furthermore, the Con-
20 gress hereby declares its intent to protect the right of Indian
21 children to develop a tribal identity and to maintain ties to
22 the Indian community within a family where their Indian
23 identity will be nurtured.

24 “DEFINITIONS

25 “SEC. 4. For the purposes of this Act, except as may be
26 specifically provided otherwise, the term—

1 “(1) ‘child custody proceeding’ shall mean and in-
2 clude any proceeding referred to in this subsection in-
3 volving an Indian child regardless of whether the child
4 has previously lived in Indian country, in an Indian
5 cultural environment or with an Indian parent—

6 “(i) ‘foster care placement’ means any ad-
7 ministrative, adjudicatory or dispositional action,
8 including a voluntary proceeding under section
9 103 of this Act, which may result in the place-
10 ment of an Indian child in a foster home or insti-
11 tution, group home or the home of a guardian or
12 conservator;

13 “(ii) ‘termination of parental rights’ means
14 any adjudicatory or dispositional action, including
15 a voluntary proceeding under section 103 of this
16 Act, which may result in the termination of the
17 parent child relationship or the permanent remov-
18 al of the child from the parent’s custody;

19 “(iii) ‘preadoptive placement’ means the tem-
20 porary placement of an Indian child in a foster
21 home or institution after the termination of paren-
22 tal rights, but prior to or in lieu of adoptive place-
23 ment; and

24 “(iv) ‘adoptive placement’ means the perma-
25 nent placement of an Indian child for adoption, in-

1 including any administrative, adjudicatory or dispo-
 2 sitional action or any voluntary proceeding under
 3 section 103 of this Act, whether the placement is
 4 made by a public or private agency or by individ-
 5 uals, which may result in a final decree of
 6 adoption.

7 "The term 'child custody proceeding' shall not include a place-
 8 ment based upon an act which, if committed by an adult,
 9 would be deemed a crime. Such term shall also not include a
 10 placement based upon an award of custody to one of the par-
 11 ents in any proceeding involving a custody contest between
 12 the parents. All other child custody proceedings involving
 13 family members are covered by this Act.

14 "(2) 'domicile' shall be defined by the tribal law
 15 or custom of the Indian child's tribe, or in the absence
 16 of such law or custom by Federal common law applied
 17 in a manner which recognizes that (1) many Indian
 18 people consider their reservation to be their domicile
 19 even when absent for extended periods and (2) the
 20 intent of the Act is to defer to tribal jurisdiction when-
 21 ever possible;

22 "(3) 'family' includes extended family members
 23 and shall be as defined by the law or custom of the
 24 Indian child's tribe or, in the absence of such law or
 25 custom, includes any person who has reached the age

1 of eighteen and who, by blood or marriage, is the
 2 Indian child's grandparent, aunt or uncle, brother or
 3 sister, brother-in-law or sister-in-law, niece or nephew,
 4 first or second cousin, or stepparent;

5 "(4) 'Indian' means any person who is a member
 6 of an Indian or Alaska Native tribe (including any
 7 Alaska Native village), or who is an Alaska Native and
 8 a member of a Regional Corporation as defined in sec-
 9 tion 7 of the Alaska Native Claims Settlement Act (85
 10 Stat. 688-689), any person of Indian or Alaska Native
 11 descent who is considered by an Indian or Alaska
 12 Native tribe to be a part of its community, or for pur-
 13 poses of sections 107, any person who is seeking to de-
 14 termine eligibility for tribal membership;

15 "(5) 'Indian child' means any unmarried person
 16 who is under age eighteen and is—

17 "(a) a member of an Indian tribe, or

18 "(b) is eligible for membership in an Indian
 19 tribe, or

20 "(c) is of Indian descent and is considered by
 21 an Indian tribe to be part of its community, or,
 22 for purposes of sections 107, any person who is
 23 seeking to determine eligibility for tribal member-
 24 ship; if a child is an infant he or she is considered

1 to be part of a tribal community if either parent is
2 so considered;

3 “(6) ‘Indian child’s tribe’ means—

4 “(a) the Indian tribe in which the Indian
5 child is a member or eligible for membership, or

6 “(b) in the case of an Indian child who is a
7 member of or eligible for membership in more
8 than one tribe, the Indian tribe with which the
9 Indian child has the more significant contacts. For
10 any of the purposes of this Act, the tribe with the
11 more significant contacts may designate as the
12 Indian child’s tribe another tribe in which the
13 child is a member or eligible for membership with
14 the consent of that tribe;

15 “(7) ‘Indian custodian’ means any Indian person
16 who has custody of an Indian child under tribal law or
17 custom or legal custody under State law or to whom
18 physical care, custody, and control has been voluntarily
19 transferred by the parent of such child;

20 “(8) ‘Indian organization’ means any group, asso-
21 ciation, partnership, corporation, or other legal entity
22 owned or controlled by Indians, or a majority of whose
23 members are Indians;

24 “(9) ‘Indian Tribe’ means any Indian or Alaska
25 Native tribe, band, nation, village or other organized

1 group or community of Indians recognized as eligible
2 for the services provided to Indians or Alaska Native
3 by the Secretary because of their status as Indians or
4 Alaska Natives, including any Alaska Native village as
5 defined in section 3(c) of the Alaska Native Claims
6 Settlement Act (85 Stat. 688-689), as amended, those
7 tribes, bands, nations, or groups terminated since 1940
8 who maintain a representative organization, and for the
9 purposes of sections 101(c), 102, 103, 104, 105, 106,
10 107, 110, 111, and 112 of this Act, those tribes,
11 bands, nations or other organized groups that recog-
12 nized by the Government of Canada or any province or
13 territory thereof;

14 “(10) ‘parent’ means any biological parent or par-
15 ents of an Indian child or any Indian person who has
16 lawfully adopted an Indian child, including adoptions
17 under tribal law or custom. Except for the purposes of
18 section 103 (c) and (d), 104, 105(f), 106 (a) and (b),
19 107, 301, the term parent shall not include any person
20 whose parental rights have been terminated. It in-
21 cludes the unwed father where paternity has been es-
22 tablished under tribal or State law, or recognized in
23 accordance with tribal custom, or openly proclaimed to
24 the court, the child’s family, or a child placement or
25 adoption agency. For the purpose of section 102(a), it

1 also includes an unwed father whose paternity has not
2 been so established, recognized or proclaimed.

3 “(11) ‘qualified expert witness’ means—

4 “(a) a member of the Indian child’s tribe who
5 is recognized by the tribal community as knowl-
6 edgeable in tribal customs as they pertain to
7 family organization and childrearing practices; or

8 “(b) a person having substantial experience
9 in the delivery of child and family services to In-
10 dians, and extensive knowledge of prevailing
11 social and cultural standards and childrearing
12 practices within the Indian child’s tribe; or

13 “(c) a professional person having substantial
14 education and experience in the area of his or her
15 specialty and who has general knowledge of pre-
16 vailing Indian social and cultural standards and
17 childrearing practices;

18 “(12) ‘reservation’ means Indian country as de-
19 fined in section 1151 or title 18, United States Code
20 and any lands, not covered under such section, title to
21 which is either held by the United States in trust for
22 the benefit of any Indian tribe or individual or held by
23 any Indian tribe or individual subject to a restriction by
24 the United States against alienation;

1 “(13) ‘residence’ shall be defined by the tribal law
2 or custom of the Indian child’s tribe, or in the absence
3 of such law or custom, shall be defined as a place of
4 general abode or a principal, actual dwelling place of a
5 continuing or lasting nature;

6 “(14) ‘Secretary’ means the Secretary of the Inte-
7 rior; and

8 “(15) ‘tribal court’ means a court with jurisdiction
9 over child custody proceedings and which is either a
10 Court of Indian Offenses, a court established and oper-
11 ated under the code or custom of an Indian tribe, or
12 any other administrative body of a tribe which is
13 vested with authority over child custody proceedings.

14 “TITLE I—CHILD CUSTODY PROCEEDINGS

15 “JURISDICTION OVER INDIAN CHILD CUSTODY

16 PROCEEDINGS

17 “SEC. 101. (a) Notwithstanding any other Federal law
18 to the contrary, an Indian tribe shall have exclusive jurisdic-
19 tion over any child custody proceeding involving an Indian
20 child who resides or is domiciled within the reservation of
21 such tribe, except where concurrent jurisdiction over volun-
22 tary child custody proceedings may be otherwise vested in
23 the State by existing Federal law. Where an Indian child is a
24 ward of a tribal court, the Indian tribe shall retain exclusive

1 jurisdiction, notwithstanding the residence or domicile of the
2 child.

3 “(b) In any State court child custody proceeding involv-
4 ing an Indian child not subject to the exclusive jurisdiction of
5 a tribe, the court, shall transfer such proceeding to the juris-
6 diction of the Indian child’s tribe absent an unrevoked objec-
7 tion by either parent determined to be consistent with the
8 best interests of the child as an Indian, upon the oral or writ-
9 ten request of either parent or the Indian custodian or the
10 Indian child’s tribe: *Provided*, That the court may deny such
11 transfer of jurisdiction where the request to transfer was not
12 made within a reasonable time after receiving notice of the
13 hearing and the proceeding is at an advanced adjudicatory
14 stage: *Provided further*, That such transfer shall be subject to
15 declination by the tribal court of such tribe and that an oral
16 or written request to transfer must be expressly revoked for
17 such request to be deemed abandoned: *Provided further*, That
18 a parent whose rights have been terminated or who has con-
19 sented to an adoption may not object to transfer.

20 “(c) In any State child custody proceeding involving an
21 Indian child, and any State administrative or judicial pro-
22 ceeding to review the foster care, preadoptive or adoptive
23 placement of the child, the Indian custodian of the child, the
24 parent of the child, and the Indian child’s tribe shall have a
25 right to intervene at any point in the proceeding. The Indian

1 custodian, the parent, except as provided above, and the
2 Indian child’s tribe shall also have a right to intervene in any
3 administrative or judicial proceeding under State law to
4 review the foster care, preadoptive or adoptive placement of
5 an Indian child. The Indian child’s tribe may authorize an
6 Indian organization or other Indian tribe to intervene on its
7 behalf.

8 “(d) Whenever a non-tribal social services agency deter-
9 mines that an Indian child is in any situation that could lead
10 to a foster care placement, preadoptive placement or adoptive
11 placement and which requires the continued involvement of
12 the agency with the child for a period in excess of thirty
13 days, the agency shall send written notice of the condition
14 and of the initial steps taken to remedy it to the Indian
15 child’s tribe within seven days of the determination. The tribe
16 shall have the right to examine and copy all reports or other
17 documents involving the child. The State agency shall not be
18 liable for any harm resulting from its release of information to
19 the tribe.

20 “(e) The United States, every State, every territory or
21 possession of the United States, and every Indian tribe shall
22 give full faith and credit to the public acts, records, and judi-
23 cial proceedings of any Indian tribe applicable to Indian child
24 custody proceedings to the same extent that such entities
25 give full faith and credit to the public acts, records, and judi-

1 cial proceedings of any other entity. Differences in tribal
 2 practice and procedure that do not affect the fundamental
 3 fairness of the proceeding shall not be cause to deny full faith
 4 and credit to a tribal judicial proceeding. Full faith and credit
 5 may not be denied to a tribal proceeding without first provid-
 6 ing an opportunity for the tribe to cure any alleged defect in
 7 practice or procedure.

8 “(f) Nothing in this section shall be construed to author-
 9 ize a State to refuse to offer social services to Indians wheth-
 10 er resident or domiciled on or off the reservation to the same
 11 extent that such State makes services available to all of its
 12 citizens.

13 “STATE COURT STANDARDS AND PROCEDURES

14 “SEC. 102. (a) In any involuntary child custody pro-
 15 ceedings in a State court, where the court or the petitioner
 16 knows or has reason to know that an Indian child is involved,
 17 the party seeking the foster care, preadoptive or adoptive
 18 placement of, or termination of parental rights to, an Indian
 19 child, or who otherwise has initiated a child custody proceed-
 20 ing, shall notify the parent, Indian custodian, if any, and the
 21 Indian child's tribe, by registered mail with return receipt
 22 requested, of the pending proceedings, of their right of inter-
 23 vention, and of their right to petition or request the court to
 24 transfer the case to tribal court. Whenever an Indian child is
 25 eligible for membership in more than one tribe, each such
 26 tribe shall receive notice of the pending proceeding. If the

1 identity or location of the parent or Indian custodian and the
 2 tribe cannot be determined after reasonable inquiry of the
 3 parent, custodian and child, such notice shall be given to the
 4 Secretary in like manner, who shall have fifteen days after
 5 receipt to provide the requisite notice to the parent or Indian
 6 custodian and the tribe. No involuntary child custody pro-
 7 ceeding shall be held until at least fifteen days after receipt of
 8 notice by the parent or Indian custodian and the tribe or until
 9 at least thirty days after receipt of notice by the Secretary:
 10 *Provided*, That the parent or Indian custodian or the tribe
 11 shall, upon request, be granted up to twenty additional days
 12 to prepare for such proceeding, and adequate time to obtain
 13 counsel.

14 “(b) In any case in which the court or, in the case of an
 15 administrative proceeding, the administrator of the State
 16 agency determines indigency, the parent or Indian custodian
 17 shall have the right to court-appointed counsel in any invol-
 18 untary child custody proceeding. The court may, in its discre-
 19 tion, appoint counsel for the child upon a finding that such
 20 appointment is in the best interest of the child. Where State
 21 law makes no provision for appointment of counsel in such
 22 proceedings, the court or State agency shall promptly notify
 23 the Secretary upon appointment of counsel, and the Secre-
 24 tary, upon certification of the presiding judge or, where appli-
 25 cable, the administrator of the State agency, shall pay rea-

1 sonable fees and expenses out of funds which may be appro-
 2 priated pursuant to the Act of November 2, 1921 (42 Stat.
 3 208; 25 U.S.C. 13). The Secretary shall also pay the reason-
 4 able fees and expenses of qualified expert witnesses retained
 5 on behalf of an indigent parent or Indian custodian.

6 “(c) Each party in any child custody proceeding under
 7 State law involving an Indian child shall have the right to
 8 examine and copy all reports or other documents involving
 9 the child who is the subject of the proceeding. The State
 10 agency shall not be liable to a party for any harm resulting
 11 from its release of information to the tribe.

12 “(d) Any party seeking to effect a foster care, preadop-
 13 tive or adoptive placement of, or termination of parental
 14 rights to, an Indian child under State law shall satisfy the
 15 court that active, culturally appropriate efforts, including ef-
 16 forts to involve the Indian child’s tribe, extended family and
 17 off-reservation Indian organizations, where applicable, have
 18 been made to provide remedial services and rehabilitative
 19 programs designed to prevent such placement or termination
 20 of parental rights and that these efforts have proved unsuc-
 21 cessful. Except for emergency placements pursuant to section
 22 112 of this Act, in any case involving a non-tribal social serv-
 23 ices agency, no foster care, preadoptive or adoptive place-
 24 ment proceeding shall be commenced until the requirements
 25 of section 101(d) of this Act have been satisfied.

1 “(e) No foster care placement may be ordered in such
 2 proceeding in the absence of a determination, supported by
 3 clear and convincing evidence, including testimony of quali-
 4 fied expert witnesses, that custody of the child by the parent
 5 or Indian custodian is likely to result in serious emotional or
 6 physical damage to the child. The clear and convincing evi-
 7 dence and qualified expert witnesses requirements shall apply
 8 to any and all findings which the court makes which are rele-
 9 vant to its determination as to the need for foster care, in-
 10 cluding the finding required by subsection (d) of this section.

11 “(f) No termination of parental rights may be ordered in
 12 such proceeding in the absence of a determination, supported
 13 by evidence beyond a reasonable doubt, including testimony
 14 of qualified expert witnesses, that custody of the child by the
 15 parent or Indian custodian is likely to result in serious emo-
 16 tional or physical damage to the child. The beyond a reasona-
 17 ble doubt and qualified expert witnesses requirements shall
 18 apply to any and all findings which the court makes which
 19 are relevant to its determination as to the need to terminate
 20 parental rights, including the finding required by subsection
 21 (d) of this section.

22 “(g) Evidence that only shows the existence of commu-
 23 nity or family poverty, crowded or inadequate housing, alco-
 24 hol abuse, or non-conforming social behavior does not consti-
 25 tute clear and convincing evidence or evidence beyond a rea-

1 sonable doubt that custody by the parent or Indian custodian
 2 is likely to result in serious emotional or physical damage to
 3 the child. To meet the burden of proof, the evidence must
 4 show the direct causal relationship between particular condi-
 5 tions and the serious emotional or physical damage to the
 6 child that is likely to result from the conduct of the parent or
 7 Indian custodian.

8 “(h) Any order for the foster care placement, termina-
 9 tion of parental rights, preadoptive placement or adoptive
 10 placement shall protect the children’s future opportunity to
 11 learn their tribal identity and heritage, and to take advantage
 12 of their tribe’s cultural resources, including, to the extent
 13 possible and appropriate, provision for continued contacts be-
 14 tween the children and their parents, family, and tribe.

15 “VOLUNTARY PROCEEDINGS

16 “SEC. 103. (a)(1) Where any parent or Indian custodian
 17 voluntarily consents to a foster care placement, termination
 18 of parental rights, or adoption under State law, such consent
 19 shall not be valid unless executed in writing and recorded
 20 before a judge of a court with jurisdiction and accompanied
 21 by the presiding judge’s certificate that the terms and conse-
 22 quences of the consent and the relevant provisions of this Act
 23 were fully explained in detail and were fully understood by
 24 the parent or Indian custodian. The court shall also certify
 25 that the parent and Indian custodian, if any, fully understood
 26 the explanation in English or that it was interpreted into a

1 language that the parent or Indian custodian understood.
 2 Any consent given prior to, or within ten days after birth of
 3 the Indian child shall not be valid.

4 “(2) At least ten days prior to any State court proceed-
 5 ing to validate a voluntary consent where the State has juris-
 6 diction to validate the consent, the court shall notify the
 7 Indian child’s tribe, and the non-consenting parent, if any, by
 8 registered mail, return receipt requested, of the pending con-
 9 sent validation proceeding, of their right to intervention in
 10 the validation and any subsequent child custody proceeding,
 11 and of their right to petition or request the court to transfer
 12 the case to tribal court. A request for confidentiality shall not
 13 be reason to withhold notice from the tribe. The court shall
 14 also certify that active, culturally appropriate efforts, includ-
 15 ing efforts to involve the Indian child’s tribe, extended family
 16 and off-reservation Indian organizations, where applicable
 17 have been offered remedial services and rehabilitative pro-
 18 grams designed to prevent the break-up of the Indian family
 19 and that these efforts have proved unsuccessful.

20 “(3) Consent to a foster care placement, termination of
 21 parental rights, preadoptive placement or adoptive placement
 22 shall not be deemed abandonment of the child by the parent
 23 or Indian custodian. Such consent by a parent or Indian cus-
 24 todian shall not affect the rights of other Indian relatives to
 25 custody under tribal law or custom of this Act. Any volun-

1 tary consent pursuant to this section shall not be admissible
2 as evidence in any proceeding under section 102 of this Act.

3 “(4) The Secretary of Health and Human Services shall
4 take appropriate action to ensure that all Indian Health
5 Service personnel are informed of and comply with the provi-
6 sions of this section.

7 “(b) Any parent or Indian custodian may withdraw con-
8 sent to a foster care placement under State law at any time
9 and, upon such withdrawal, the child shall be returned imme-
10 diately to the parent or Indian custodian unless returning the
11 child to his or her parent or custodian would subject the child
12 to a substantial and immediate danger of serious physical
13 harm or threat of such harm by such parent or Indian custo-
14 dian. The pendency of an involuntary child custody proceed-
15 ing shall not be grounds to refuse to return the child to the
16 parent or Indian custodian.

17 “(c) In any voluntary proceeding for termination of pa-
18 rental rights to, or adoptive placement of, an Indian child,
19 the consent of the parent or Indian custodian may be with-
20 drawn for any reason at any time prior to the entry of a final
21 decree of adoption, and the child shall be immediately re-
22 turned to the parent or Indian custodian unless returning the
23 child to his or her parent or Indian custodian would subject
24 the child to a substantial and immediate danger of serious
25 physical harm or threat of such harm by such parent or

1 Indian custodian. The pendency of an involuntary child cus-
2 tody proceeding shall not be grounds to refuse to return the
3 child to the parent or Indian custodian.

4 “(d) After the entry of a final decree of adoption of an
5 Indian child in any State court, the parent may withdraw
6 consent thereto upon the grounds that consent was obtained
7 through fraud or duress and may petition the court to vacate
8 such decree. Upon a finding based upon a preponderance of
9 the evidence that such consent was obtained through fraud or
10 duress, the court shall vacate such decree of adoption and
11 return the child to the parent. Unless otherwise permitted
12 under State law, no adoption may be invalidated under the
13 provisions of this subsection unless the parent or Indian cus-
14 todian has petitioned the court within two years of the entry
15 of the final decree of adoption.

16 “CHALLENGES BASED ON VIOLATIONS OF ACT

17 “SEC. 104. (a) In any child custody proceeding under
18 State law, the Indian child, any parent, any Indian custodian
19 from whose custody the child was removed, or the Indian
20 child's tribe may (i) move to vacate or set aside any aspect of
21 the proceeding which may have violated this Act, or (ii) bring
22 an independent action to invalidate the proceeding in any
23 court which has jurisdiction over the parties. Any member of
24 the Indian child's family shall have the right to intervene in a
25 proceeding pursuant to this section. In case of an alleged
26 violation of section 105 of this Act, any member of the child's

1 family shall have standing under this section to bring an inde-
2 pendent action to challenge the placement.

3 “(b) Notwithstanding any law to the contrary, Federal
4 courts shall have jurisdiction to review any final decree of a
5 State court which is alleged to be in violation of this Act,
6 upon a petition for writ of habeas corpus brought under sec-
7 tion 2254 of title 28, United States Code or an independent
8 action brought by any party withstanding to pursue such an
9 action pursuant to section (a).

10 “(c) The court shall, upon request, hear any motion or
11 action brought under this section or any appeal from a deci-
12 sion in a child custody proceeding on an expedited basis.

13 “PLACEMENT GOALS IN STATE COURT PROCEEDINGS

14 “SEC. 105. (a) All placements of Indian children shall
15 seek to protect the right of Indian children as Indians and the
16 rights of the Indian community and tribe in having its chil-
17 dren in its society.

18 “(b) Any adoptive placement of an Indian child under
19 State law shall be made in accordance with the order of
20 placement established by the child’s tribe by resolution, or in
21 the absence of such resolution, with the following order of
22 placement: (1) a member of the child’s family; (2) other mem-
23 bers of the Indian child’s tribe; or (3) other Indian families,
24 except as provided in subsections (d) and (e).

25 “(c) Any child accepted for foster care or preadoptive
26 placement shall be placed (1) in the least restrictive setting

1 which most approximates a family and (2) within reasonable
2 proximity to his or her home. Except as provided in subsec-
3 tions (d) and (e) below, any foster care or preadoptive place-
4 ment shall be made in accordance with the following order of
5 placement unless the child’s tribe has established a different
6 order of placement by resolution:

7 “(i) a member of the Indian child’s family;

8 “(ii) a foster home licensed, approved, or specified
9 by the Indian child’s tribe;

10 “(iii) an Indian foster home licensed or approved
11 by an authorized non-Indian licensing authority; or

12 “(iv) an institution for children approved by an
13 Indian tribe or operated by an Indian organization
14 which has a program suitable to meet the Indian
15 child’s needs.

16 “(d) Any placement established under subsection (b) or
17 (c) of this section may be varied, so long as it remains con-
18 sistent with subsection (a) of this section, where (1) the child
19 is at least age twelve and of sufficient maturity and requests
20 a different placement; or (2) the child has extraordinary phys-
21 ical or emotional needs, as established by the testimony of
22 expert witnesses, that cannot be met through a placement
23 within the order of placement, or (3) families within such
24 order of placement are unavailable after diligent search has

1 been completed, as provided for in subsections (f) and (g), for
2 a family within the order of placement.

3 “(e) A placement preference expressed by the Indian
4 child’s parent or Indian custodian, or a request that the con-
5 sulting parent’s identity remain confidential, shall be consid-
6 ered so long as the placement is made with one of the per-
7 sons or institutions listed in subsections (b) or (c), or one of
8 the exceptions contained in subsection (d) applies. A request
9 for confidentiality shall not be grounds for withholding notice
10 from the Indian child’s tribe, provided that notice of the pro-
11 ceeding shall include a reference to the request.

12 “(f) Notwithstanding any State law to the contrary, the
13 standards to be applied in meeting the placement require-
14 ments of this section shall be the prevailing social and cultur-
15 al standards of the Indian community in which the parent or
16 family resides or with which the parent or family members
17 maintain social and cultural ties. If necessary to comply with
18 this section, a State shall promulgate, in consultation with
19 the affected tribes, separate State licensing standards for
20 foster homes servicing Indian children and shall place Indian
21 children in homes licensed or approved by the Indian child’s
22 tribe or an Indian organization.

23 “(g) A record of each such placement, under State law,
24 of an Indian child shall be maintained by the State in which
25 the placement was made, evidencing the efforts to comply

1 with the order of placement specified in this section. Such
2 efforts must include, at a minimum, contacting the tribe prior
3 to placement to determine if it can identify placements with
4 the order of placement, notice to all family members that can
5 be located through reasonable inquiry of the parent, custodi-
6 an, child and Indian child’s tribe, a search of all county or
7 State listings of available Indian homes and contact with
8 local Indian organizations, the Department of Interior’s
9 Bureau of Indian Affairs and nationally known Indian pro-
10 grams with available placement resources. The record of the
11 State’s compliance efforts shall be made available at any time
12 upon the request of the Secretary or the Indian child’s tribe.

13 “SUBSEQUENT PLACEMENTS OR PROCEEDINGS

14 “SEC. 106. (a) Notwithstanding State law to the con-
15 trary, whenever a final decree of adoption of an Indian child
16 has been vacated or set aside or the adoptive parent’s paren-
17 tal rights to the child have been terminated, the public or
18 private agency or individual seeking to place the child, in
19 accordance with the provisions of section 102(a), shall notify
20 the biological parents, prior Indian custodians and the Indian
21 child’s tribe of the pending placement proceedings, their right
22 of intervention, and their right to petition for return of cus-
23 tody. The court shall grant the petition for return of custody
24 of the parent or Indian custodian, as the case may be, unless
25 there is a showing, in a proceeding subject to subsections (e)
26 and (f) of Section 102 of this Act, that such return of custody

1 is not in the best interests of the child. Whenever an Indian
 2 child who has been adopted is later placed in foster care, the
 3 Indian child's tribe shall be notified and have the right to
 4 intervene in the proceeding.

5 “(b) In the event that the court finds that the child
 6 should not be returned to the biological parents or prior
 7 Indian custodian, placement shall be made in accordance
 8 with the order of placement in section 105. For the purposes
 9 of this section family shall include the family of the biological
 10 parents or prior Indian custodian.

11 “(c) Whenever an Indian child is removed from a foster
 12 care home or institution for the purpose of further foster care,
 13 preadoptive, or adoptive placement, or when review of any
 14 such placement is scheduled, such placement shall be in ac-
 15 cordance with the provisions of this Act, including prior
 16 notice to the child's biological parents and prior Indian custo-
 17 dian, and the Indian child's tribe, except in the case where an
 18 Indian child is being returned to the parent or Indian custodi-
 19 an from whose custody the child was originally removed.

20 “TRIBAL AND FAMILY AFFILIATION; DISCLOSURE BY

21 COURT

22 “SEC. 107. An adopted Indian individual who has
 23 reached the age of eighteen, the Indian child's tribe or the
 24 Indian child's adoptive parents, may apply to the court which
 25 entered the final decree of adoption for the release of infor-
 26 mation regarding the individual's biological parents and

1 family and their tribal affiliation, if any. Based upon court
 2 records or records subject to court order, the court shall
 3 inform the individual of the names and tribal affiliation of his
 4 or her biological parents. The court shall also provide any
 5 other information as may be necessary to protect any rights
 6 flowing from the individual's tribal relationship.

7 “REASSUMPTION OF EXCLUSIVE TRIBAL JURISDICTION

8 “SEC. 108. (a) Any Indian tribe which became subject
 9 to State concurrent jurisdiction over voluntary child custody
 10 proceedings pursuant to the provisions of the Act of August
 11 15, 1953 (67 Stat. 588), as amended by title IV of the Act of
 12 April 11, 1968 (82 Stat. 73, 78), or pursuant to any other
 13 Federal law, may reassume exclusive jurisdiction over all
 14 voluntary child custody proceedings. Before any Indian tribe
 15 may reassume jurisdiction over voluntary Indian child custo-
 16 dy proceedings, such tribe shall present to the Secretary for
 17 approval a petition to reassume such jurisdiction which in-
 18 cludes a suitable plan to exercise such jurisdiction.

19 “(b)(1) In considering the petition and feasibility of the
 20 plan of a tribe under subsection (a), the Secretary may con-
 21 sider among other things:

22 “(i) whether or not the tribe maintains a member-
 23 ship roll or alternative provision for clearly identifying
 24 the persons who will be affected by the reassumption
 25 of jurisdiction by the tribe;

1 “(ii) the size of the reservation or former reserva-
2 tion area which will be affected by retrocession or
3 reassumption of jurisdiction by the tribe;

4 “(iii) the population base of the tribe, or distribu-
5 tion of the population in homogeneous communities or
6 geographic areas; and

7 “(iv) the feasibility of the plan in cases of multi-
8 tribal occupation of a single reservation or geographic
9 area.

10 “(2) In those cases where the Secretary determines that
11 full jurisdiction is not feasible, he is authorized to accept par-
12 tial retrocession which will enable tribes to exercise exclusive
13 jurisdiction over voluntary placements in limited community
14 or geographic areas without regard for the reservation status
15 of the area affected.

16 “(c) If the Secretary approves any petition under sub-
17 section (a), the Secretary shall publish notice of such approv-
18 al in the Federal Register and shall notify the affected State
19 or States of such approval. If the Secretary disapproves any
20 petition under subsection (a), the Secretary shall provide such
21 technical assistance as may be necessary to enable the tribe
22 to correct any deficiency which the Secretary identified as a
23 cause for disapproval. The Indian tribe concerned shall reas-
24 sume exclusive jurisdiction over all voluntary placements of
25 all Indian children residing or domiciled on the reservation

1 sixty days after publication in the Federal Register of notice
2 of approval.

3 “(d) Assumption of jurisdiction under this section shall
4 not affect any action or proceeding over which a court has
5 already assumed jurisdiction, except as may be provided pur-
6 suant to any agreement under section 109 of this Act or as
7 otherwise provided in the notice of the Secretary.

8 “AGREEMENTS BETWEEN STATES AND INDIAN TRIBES

9 “SEC. 109. (a) States and Indian tribes are authorized
10 to enter into agreements with each other respecting care and
11 custody of Indian children and jurisdiction over child custody
12 proceedings, including agreements which may provide for or-
13 derly transfer of jurisdiction on a case-by-case basis and
14 agreements which provide for concurrent jurisdiction between
15 States and Indian tribes. Nothing in this section or in section
16 108 of this Act shall be construed as in any way diminishing
17 or altering the inherent powers of Indian tribes over chil-
18 dren's proceedings.

19 “(b) Such agreements may be revoked by either party
20 upon one hundred and eighty days' written notice to the
21 other party. Such revocation shall not affect any action or
22 proceeding over which a court has already assumed jurisdic-
23 tion, unless the agreement provides otherwise.

24 “IMPROPER REMOVAL OF CHILD FROM CUSTODY

25 “SEC. 110. (a) Where any petitioner in an Indian child
26 custody proceeding before a State court has improperly re-

1 moved the child from custody of the parent or Indian custodi-
 2 an or has improperly retained custody after a visit or other
 3 temporary relinquishment of custody, the court shall decline
 4 jurisdiction over such petition and shall forth-with return the
 5 child to his parent or Indian custodian unless returning the
 6 child to his parent or custodian would subject the child to a
 7 substantial and immediate danger or threat of such danger.

8 “(b) In any instance where a child has been improperly
 9 removed or retained by an individual or entity, the parent or
 10 Indian custodian from whose custody the child was removed
 11 and the child’s tribe may petition any court with jurisdiction
 12 for return of the child in accordance with this section.

13 “HIGHER STATE OR FEDERAL STANDARDS TO APPLY

14 “SEC. 111. (a) An Indian parent or custodian may not
 15 waive any of the provisions of this Act.

16 “(b) In any case where State or Federal law applicable
 17 to a child custody proceeding under State or Federal law
 18 provides a higher standard of protection to the rights of the
 19 parent or Indian custodian of an Indian child then the rights
 20 provided under this title, the State or Federal court shall
 21 apply the State or Federal standard.

22 “EMERGENCY REMOVAL AND PLACEMENT OF CHILD

23 “SEC. 112. (a) Regardless of whether a child is subject
 24 to the exclusive jurisdiction of an Indian tribe, when a child is
 25 located off the tribe’s reservation nothing in this title shall be
 26 construed to prevent the emergency removal of an Indian

1 child from his parent or Indian custodian or the emergency
 2 placement of such child in a foster home or institution, under
 3 applicable State law, in order to prevent imminent physical
 4 damage or harm to the child. The State authority, official, or
 5 agency involved shall insure that the emergency removal or
 6 placement terminates immediately when such removal or
 7 placement is no longer necessary to prevent imminent physi-
 8 cal damage or harm to the child. Wherever possible, the child
 9 shall be placed within the order of placement provided for in
 10 section 105 of this Act.

11 “(b) No later than the time permitted by State law, and
 12 in no event later than three days (excluding Saturday,
 13 Sunday and legal holidays) following the emergency removal,
 14 the State authority, agency or official must obtain a court
 15 order authorizing continued emergency physical custody. If
 16 the Indian child has not been restored to its parent or Indian
 17 custodian with ten days following the emergency removal,
 18 the State authority, agency or official, shall—

19 “(1) commence a State court proceeding for foster
 20 care placement if the child is not resident or domiciled
 21 on an Indian reservation and is not a ward of the tribal
 22 court, or

23 “(2) transfer the child to the jurisdiction of the ap-
 24 propriate Indian tribe if the child is resident or domi-

1 ciled on an Indian reservation or ward of the tribal
2 court.

3 Notwithstanding the filing of a petition for a foster care
4 placement of the child, the State agency, authority or official
5 shall continue active efforts to prevent the continued out-of-
6 home placement of the child. No emergency custody order
7 shall remain in force or in effect for more than thirty days
8 without determination by the appropriate court, in accord-
9 ance with section 102(e) of this Act in the case of a State
10 court, that foster care placement of the child is appropriate:
11 *Provided*, That in any case where the time requirements in
12 section 102(a) do not permit a child custody proceeding to be
13 held within thirty days, the emergency custody order may
14 remain in force for a period not to exceed three days after the
15 first possible date on which the proceeding may be held pur-
16 suant to section 102(a).

17 “(c) Emergency removal under this section shall not
18 impair the exclusive jurisdiction of the tribe.

19 “EFFECTIVE DATE

20 “SEC. 113. None of the provisions of this title, except
21 section 101(a), 108, and 109, shall affect a proceeding under
22 State law for foster care placement, termination of parental
23 rights, preadoptive placement, or adoptive placement which
24 was initiated or completed prior to one hundred and eighty
25 days after the enactment of this Act, but shall apply to any
26 subsequent proceeding in the same matter or subsequent pro-

1 ceedings affecting the custody or placement of the same
2 child.

3 “INDIAN CHILD WELFARE COMMITTEES

4 “SEC. 114. The Secretary shall establish Indian Child
5 Welfare committees consisting of not less than three persons
6 for each area office. The committees shall monitor compli-
7 ance with this Act on an on-going basis. Appointments to the
8 committees shall be made for a period of three years and
9 shall be chosen from a list of nominees furnished, from time
10 to time, by Indian tribes and organizations. Each committee
11 shall be broadly representative of the diverse tribes located in
12 its area.

13 “COMPLIANCE BY PRIVATE CHILD PLACEMENT AGENCIES

14 “SEC. 115. In licensing any private child placement
15 agency, any State in which either (1) a federally-recognized
16 Indian tribe is located or (2) there is an Indian population of
17 more than 10,000, shall include compliance with this Act by
18 the private agency as a condition of continued licensure and
19 shall annually audit such agencies to ensure that they are in
20 compliance. The audit report shall be made available upon
21 the request of the Secretary or any tribe.

22 “ABORIGINAL PEOPLES OF CANADA

23 “SEC. 116. (a) Except as provided by this section, the
24 provisions of sections 101(c), 102, 103, 104, 105, 106, 107,
25 110, 111, and 112 of this Act shall also apply to the aborigi-
26 nal peoples of Canada and their children.

1 “(5) the employment of professional and other
2 trained personnel to assist the tribal court in the disposi-
3 tion of domestic relations and child welfare matters;

4 “(6) education and training of Indians, including
5 tribal court judges and staff, in skills relating to child
6 and family assistance and service programs;

7 “(7) a subsidy program under which Indian adop-
8 tive child may be provided support comparable to that
9 for which they would be eligible as foster children,
10 taking into account the appropriate State standards of
11 support for maintenance and medical needs; and

12 “(8) guidance, legal representation, and advice to
13 Indian families and tribes involved in tribal, State, or
14 Federal child custody proceedings.

15 “(b) Funds appropriated for use by the Secretary in ac-
16 cordance with this section may be utilized as non-Federal
17 matching share in connection with funds provided under titles
18 IV-B and XX of the Social Security Act or under any other
19 Federal financial assistance programs which contribute to the
20 purpose for which such funds are authorized to be appropri-
21 ated for use under this Act. The provision or possibility of
22 assistance under this Act shall not be a basis for the denial or
23 reduction of any assistance otherwise authorized under titles
24 IV-B and XX of the Social Security Act of any other feder-
25 ally assisted program. Placement in foster or adoptive homes

1 or institutions licensed or approved by an Indian tribe,
2 whether the homes are located on or off the reservation, shall
3 qualify for assistance under federally assisted programs, in-
4 cluding the foster care and adoption assistance program pro-
5 vided in title IV-E of the Social Security Act (42 U.S.C.
6 670 et seq.).

7 “(c) In lieu of the requirements of subsections 10, 14
8 and 16 of section 471 of the Social Security Act (42 U.S.C.
9 671 (10), (14) and (16)), Indian tribes may develop their own
10 systems for foster care licensing, development of case plans
11 and case plan reviews consistent with tribal standards.

12 “GRANTS FOR OFF-RESERVATION PROGRAMS

13 “SEC. 202. The Secretary shall also make grants to
14 Indian organizations to establish and operate off-reservation
15 Indian child and family service programs which, in accord-
16 ance with priorities set by the Indian organizations may in-
17 clude, but are not limited to—

18 “(1) a system for regulating, maintaining, and
19 supporting Indian foster and adoptive homes, including
20 a subsidy program under which Indian adoptive chil-
21 dren may be provided support comparable to that for
22 which they would be eligible as Indian foster children,
23 taking into account the appropriate State standards of
24 support for maintenance and medical needs;

1 “(2) the operation and maintenance of facilities
2 and services for counseling and treatment of Indian
3 families and Indian foster and adoptive children;

4 “(3) family assistance, including homemaker and
5 home counselors, day care, afterschool care, and em-
6 ployment, recreational activities, and respite care; and

7 “(4) guidance, legal representation, and advice to
8 Indian families involved in child custody proceedings.

9 “FUNDS FOR IMPLEMENTATION OF ACT

10 “SEC. 203. (a) In the establishment, operation, and
11 funding of Indian child and family service programs, both on
12 and off reservation, the Secretary shall enter into agreements
13 with the Secretary of Health and Human Services, and the
14 latter Secretary is hereby authorized and directed to use
15 funds appropriated for similar programs of the Department of
16 Health and Human Services for such purpose.

17 “(b) Funds for the purposes of this Act may be appropri-
18 ated pursuant to the provisions of the Act of November 2,
19 1921 (42 Stat. 208), as amended. In addition, Congress may
20 appropriate such sums as may be necessary to provide Indian
21 child welfare training to Federal, State and Tribal judges,
22 court personnel, social workers and child welfare workers,
23 including those employed by agencies licensed by a State.

24 “(c) Indirect and administrative costs relating to a grant
25 awarded pursuant to this title shall be paid out of Indian
26 Contract Support funds. One hundred per centum of the sums

1 appropriated by Congress to carry out the provisions and
2 purposes of this Act shall be awarded to tribes or Indian
3 organizations.

4 “ ‘INDIAN’ DEFINED FOR CERTAIN PURPOSES

5 “SEC. 204. For the purposes of section 202 and 203 of
6 this title, the term ‘Indian’ shall include persons defined in
7 section 4(c) of this Indian Health Care Improvement Act of
8 1976 (90 Stat. 1400, 1402).

9 “TITLE III—RECORDKEEPING, INFORMATION
10 AVAILABILITY, AND TIMETABLES

11 “STATE REPORTS

12 “SEC. 301. (a) Any State court entering a final decree
13 or order in any Indian child adoptive placement after the date
14 of enactment of this Act shall provide the Secretary and the
15 Indian child’s tribe with a copy of such decree or order to-
16 gether with such other information as may be necessary to
17 show—

18 “(1) the name and tribal affiliation of the child;

19 “(2) the names and addresses of the biological
20 parents;

21 “(3) the names and addresses of the adoptive par-
22 ents; and

23 “(4) the identify of any agency having files or in-
24 formation relating to such adoptive placement.

25 “Not later than one hundred and twenty days after enactment
26 of this bill, the administrative body for each State court

1 system shall designate an individual or individuals who will
 2 be responsible for ensuring State court compliance with this
 3 Act. All information required by this subsection relating to
 4 decrees of adoption entered after May 8, 1979, shall be com-
 5 piled and forwarded to the Secretary and Indian child's tribe
 6 no later than January 1, 1989. Where the court records con-
 7 tain an affidavit of the biological parent or parents that their
 8 identity remain confidential, the court shall include such affi-
 9 davit with the other information. The Secretary shall insure
 10 that the confidentiality of such information is maintained and
 11 such information shall be not subject to the Freedom of Infor-
 12 mation Act (5 U.S.C. 552), as amended.

13 “(b) Upon the request of the adopted Indian child over
 14 the age of eighteen, the adoptive or foster parents of an
 15 Indian child, or any Indian tribe, the Secretary shall disclose
 16 such information as may be held by the Secretary pursuant to
 17 subsection (a) of this section. Where the documents relating
 18 to such child contain an affidavit from the biological parent or
 19 parents requesting that their identity remain confidential and
 20 the affidavit has not been revoked, the Secretary shall pro-
 21 vide to the Indian child's tribe, where the such information
 22 about the child's parentage and other circumstances of birth
 23 as required by such tribe to determine the child's eligibility
 24 for membership under the criteria established by such tribe.

1 “(c) No later than February 15 of each year, the Secre-
 2 tary shall obtain from each State a list of all Indian children
 3 in foster care, preadoptive or adoptive placement as of De-
 4 cember 31 of the previous year. The list shall include the
 5 name of the Indian child's tribe, the name and address, if
 6 known, of the child's biological parents and prior Indian cus-
 7 todian, if any, the names and addresses of the parties having
 8 legal and/or physical custody of the child and the current
 9 legal status of the child, biological parents and prior Indian
 10 custodian. Within ten days of the submission of the list to the
 11 Secretary, the State shall provide to each tribe all informa-
 12 tion on the list pertaining to the children of such tribe.

13 “RULES AND REGULATIONS

14 “SEC. 302. Within one hundred and eighty days after
 15 the enactment of this Act, the Secretary shall promulgate
 16 such rules and regulations as may be necessary to carry out
 17 the provisions of this Act. In promulgating such rules and
 18 regulations, the Secretary shall consult with national and re-
 19 gional Indian organizations and with Indian tribes.”

20 SEC. 3. CONFORMING AMENDMENTS TO RELATED ACTS.

21 (a) Section 408(a) of title IV of the Social Security Act
 22 (42 U.S.C. 608(a)) is amended—

23 (1) by striking out at the end of subsection (2)(A)
 24 the word “or”

25 (2) by adding after subsection (2)(B) the following
 26 clause “or (C) in the case of an Indian child, as defined

1 by subsection 4(4) of the Indian Child Welfare Act (25
2 U.S.C. 1903(4)), the Indian child's tribe as defined in
3 subsections 4(5) and (8) of that Act (25 U.S.C. 1903
4 (5) and (8))."

5 (b) Section 422 of Title IV of the Social Security Act
6 (42 U.S.C. 622) is amended by adding after and below clause
7 (8) the following new clause:

8 "(9) include a comprehensive plan, developed in consul-
9 tation with all tribes within the State and in-State Indian
10 organizations (with social services programs), as defined by
11 section 4(7) of the Indian Child Welfare Act (25 U.S.C.
12 1903(7)), to ensure that the State fully complies with the
13 provisions of the Indian Child Welfare Act."

14 (c) Section 471 of title IV of the Social Security Act (42
15 U.S.C. 671) is amended by adding after and below clause
16 (17) the following new clause:

17 "(18) provides for a comprehensive plan, developed in
18 consultation with all tribes within the State and in-State
19 Indian organizations (with social service programs), as de-
20 fined by section 4(7) of the Indian Welfare Act (25 U.S.C.
21 1903(7)), to ensure full compliance with the provisions of the
22 Indian Child Welfare Act. As part of the plan, the State shall
23 make active efforts to recruit and license Indian foster homes
24 and, in accordance with section 201 of the Indian Child Wel-
25 fare Act (25 U.S.C. 1931), and provide for the placement of

1 and reimbursement for Indian children in tribally licensed or
2 approved facilities."

3 **SEC. 4. EFFECTIVE DATE.**

4 The amendments made by this Act shall take effect
5 ninety days after enactment.

6 **SEC. 5. NOTICE.**

7 Within forty-five days after enactment of these amend-
8 ments, the Secretary shall send to the Governor, chief justice
9 of the highest court of appeal, the attorney general, and the
10 director of the Social Service agency of each State and tribe
11 a copy of these amendments, together with committee reports
12 and an explanation of the amendments.

13 **SEC. 6. SEVERABILITY.**

14 If any of these amendments or the applicability thereof
15 is held invalid, the remaining provisions of this Act shall not
16 be affected thereby.

○

The CHAIRMAN. Our first witness this morning is the Honorable Ross Swimmer, the Assistant Secretary for Indian Affairs of the Department of the Interior.

**STATEMENT OF HON. ROSS SWIMMER, ASSISTANT SECRETARY
FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR**

Mr. SWIMMER. Thank you, Mr. Chairman.

I appreciate the opportunity to appear today, and I appreciate the committee's and especially the chairman's concern about Indian affairs and the issues in Indian country.

I do have a statement which I will submit for the record. In lieu of summarizing the statement, however, and getting directly to questions, I would like to present to the committee a letter from the Secretary of the Interior that was given to me just this morning to read to the committee and to the witnesses here, and I think it expresses the concern of the Administration and the views. Perhaps after that, we can get into the questions and answers.

The letter is addressed to the Honorable Daniel K. Inouye:

DEAR MR. CHAIRMAN: I am extremely alarmed over the provisions of S. 1976, a bill to amend the Indian Child Welfare Act. My concerns are such that I have asked Assistant Secretary Swimmer to request permission of the chairman to incorporate this letter in the record when he testifies on the bill.

The three branches of the Government of the United States frequently are called upon to deal with the complex issues which arise when Indian tribes, States, and the Federal Government each seek to exercise sovereignty over matters of persons of interest to them. The reasonable balancing of interests between such entities, always bearing in mind what is in the best interests of the Indians as individual human beings, is not always easy.

I believe strongly that it is clear that this bill fails the test of reasonable balance. It would skew the balance in a manner which is wholly unacceptable to the Department of the Interior and should be unacceptable to any persons who are concerned about human rights issues, especially including the human rights of children.

Although there are multiple flaws in the bill, we call your attention to three fundamental objections:

First, the bill is anathema to the salutary constitutional principle that legislation cannot stand if it makes classifications and distinctions based on race. If enacted, this bill would subject certain Indian children to the claim of jurisdiction of an Indian tribe solely by reason of the children's race. For example, under section 101(b) of the bill, if a tribe seeks transfer of a child custody or adoption case from State court to the tribe, the parents' objection to such transfer will be unavailing unless the objection is "determined to be consistent with the best interests of the child as an Indian." The provision ignores all other aspects of the child's status as a human being. That, in my view, is pure racism.

The Fourteenth Amendment to the Constitution was adopted to protect the rights of the individual against classifications based on the individual's race. This bill cannot be reconciled with that guiding principle. It is not enough to say but this is Indian legislation. Indians are, and certainly should be, entitled to the basic protections of the Constitution even when those protections would be denied by Indian legislation.

Second, the bill is contrary to what I believe is sound prevailing public policy in this country. In adoption and child custody cases, it is the interests of the child which are of paramount importance. This bill subordinates the best interests of the child to that of the tribe. While we all can agree that a child's knowledge of an exposure to his or her cultural heritage can be a vital and valuable aspect of the child's personality and value system, it is wrong to elevate that concept to a point where it overrides virtually every other concern bearing on the fundamental well-being of the child.

Third, at least the current act limits the jurisdictional claim of the tribe to children of tribal members. Such membership typically is obtained by voluntary enrollment or at least can be terminated by the Indian's voluntary act, thereby creating a

situation where the tribal member arguably may be said to have consented to application of tribal law.

This bill, however, extends the jurisdictional reach of the tribe to children whose parents need not be tribal members. Indeed, the parents and other ancestors of the child may have had no connection with the tribe perhaps for years or even generations.

In such circumstances, it seems to me that the State in which the parents and child are domiciled does have a proper and overriding interest to see to it that its processes, not those of the tribe, are invoked to assure that the child custody or adoption proceeding will result in protecting the best interests of the child.

The bill does substantial violence to important constitutional principles and to sound public policy. Mr. Chairman, you may wish to inquire of Assistant Secretary Swimmer about the accusations frequently leveled against the United States for its treatment of Indians when the issue of human rights within the Soviet Union arises. Enactment of this bill in the name of Indian legislation simply will provide significant fuel to that fire. The bill should not be enacted.

Mr. Chairman, I share the concerns of the Secretary. I think that the bill strikes a racist type policy that this committee would not want part of. I believe that it is wrong that we extend jurisdiction, especially in those cases where an individual may, through happenstance, be eligible for membership in a tribe but have never had anything to do with that tribe and yet be forced onto that reservation.

I can think of numerous examples which I won't go into, but there are obvious ones involving tri-racial marriages, inter-racial marriages where an individual, by reason of Indian descent who may have features very distinctively not Indian could be forced to be placed in an Indian reservation environment where discrimination would surely affect their progress and development.

I don't believe that this bill should be made law. I believe that the work that is being done now under the Indian Child Welfare Act that was passed is progressing. We are making changes, and things are improving in Indian country.

We believe there are some changes that could be made in the act. We would like to have time to submit those to the committee for its consideration.

Thank you, Mr. Chairman.

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

[Letter from Secretary Hodel appears in appendix.]

The CHAIRMAN. I thank you very much, Mr. Secretary.

I must say that I am a bit surprised with the tone and tenor of the letter and your prepared remarks, but if you really believe in what you have said, I would like to note that a recently completed study jointly commissioned by your Bureau of Indian Affairs and the Administration for Children, Youth, and Families in HHS stated the following:

In combination, the Indian Child Welfare Act and the Adoption Assistance and Child Welfare Act provide a number of safeguards and procedures to ensure that Indian children are not separated from their families and the jurisdiction of their tribes unnecessarily and that they receive child welfare services focused on achieving permanency.

I would also note that your own budget submission for fiscal year 1989 refers to the grant program authorized under Title II as follows:

These grants are designed to maintain the integrity of Indian family life and thus avoid the unwarranted placement for adoption or foster care of Indian children.

What do you have to say about that?

Mr. SWIMMER. I fully support those principles and those objectives that are included that you just read. I think it is important that on Indian reservations where an Indian family is having trouble that may in fact lead to the removal of an Indian child from that family that we should use all of our efforts to seek, in the best interests of the child, a placement that is going to be satisfactory to that child and that in 99 times out of 100 or maybe 100 out of 100 it is going to be with an Indian family as available on the reservation where that child is now living.

This bill, though, doesn't do that. This proposed bill, these amendments, go way beyond that. That is our primary objection. It—

The CHAIRMAN. How does it go way beyond that?

Mr. SWIMMER. For instance, in my own tribe, a Cherokee family in California, an Indian and a non-Indian, an Indian father and non-Indian mother decide that they reach the point where they are unable to care for the child and the State claims that there has been neglect of the child. That child and these people have never been to the Cherokee Nation in their lives. They don't even know it exists. Yet, they are eligible for membership in the Cherokee Nation. That child would go under the jurisdiction of the Cherokee Tribe either in Oklahoma or North Carolina.

I think that is far too reaching. It then takes away the opportunity for the State courts to have anything to say about that.

That is extreme example. Another example which may be extreme or may not be is I think the case exists of an inter-racial marriage of black and Indian where the child has predominantly black features. He would be sent to a reservation although neither parent had ever been close to a reservation in their lives.

We are subjecting Indian children who may have no interest nor their parents ever have any interest in being Indian or being on or near a reservation of being sent to a reservation or sent to an Indian environment in which they did not grow up and do not want their children raised in.

It also takes away a lot of the opportunity that the courts are already infringing on of the voluntary-ness of an adoption or placement, saying that, in effect, the natural mother is not capable of determining what the best interests of the child are.

The bill tends to subject the interests of the child to the interests of the tribe. My only concern in this whole legislation—and I think that the legislation can be summed up in one phrase, and that is that it is incumbent upon the United States of America to see that the best interests of the Indian child is protected, period.

If we all reached for that goal, we would be able to accomplish what we are trying to do today under the original Indian Child Welfare Act without going into the illogical extensions of these proposed amendments under the new act. The new act very much makes it a racist type situation. It even suggests that one tribe should have the authority over another tribe's member.

We know within Indian tribes that it may be very detrimental—there are racist examples between Indian tribes—that it may be very detrimental to take one member of a tribe and place that member with another tribe rather than with, say, a non-Indian

family, because you have a situation where that kind of tension exists between the two tribes, and a child growing up in a foreign environment of another tribe's people could be very detrimental.

These amendments are just beyond everything that makes sense, in our opinion, at least, and in my opinion as far as trying to protect the best interests of the Indian child, and that is what we are all about.

The CHAIRMAN. But isn't it true that the tribal court cannot invoke its jurisdiction outside the boundaries of the reservation?

Mr. SWIMMER. As I understand it, the implication of the law is that a child outside the immediate jurisdiction of the tribe can be brought into the jurisdiction of the tribe, that the tribe can reach out for those children.

The CHAIRMAN. That is not our interpretation.

Mr. SWIMMER. Well, maybe we can make that clear that as long as that child is not under the jurisdiction of the tribe that they are not subject to the jurisdiction of the tribe.

Under the current act, children in my tribe who are out of State, out of Oklahoma and away from the tribe's jurisdiction but who are members of the tribe are brought under the jurisdiction of that act, of the existing act. They must report and notify the tribe, even if it is a Cherokee in California. They must advise the tribe that this child is being adjudicated one way or the other, and the tribe has the option of intervening.

We have seen this situation recently that got headlines from the Navajo Tribe exercising its jurisdiction in California to bring a child home that had been adopted there through a voluntary adoption by its natural mother. We have seen case after case of this happening under the current law.

So, I don't know. It is my opinion that the amendments even go further than the current law does, and I know the current law requires notice of the member's tribe, regardless of where that person lives.

The CHAIRMAN. But in the case of the Navajo, didn't the Navajo court give jurisdiction and award custody of the child to the non-Indian adoptive petitioners?

Mr. SWIMMER. I think ultimately they did. I am not sure if the outcome has been determined. I think, as I recall reading the case, it was an open—it would be classified as an open adoption, however, with visitation rights of the—

The CHAIRMAN. By your statement, one would assume that the Indians just grabbed hold of the child because the child was Indian. In both cases which were highly publicized, the child was awarded to the non-Indian adoptive parents.

Mr. SWIMMER. I think in one case, they were not allowed to adopt but only to have custody. In the recent case, I believe they are being permitted the right to adopt under an open adoption.

The CHAIRMAN. The only thing that they gave the biological parents was visitation rights.

Mr. SWIMMER. Well, that is true, and in this case, it might be appropriate. In other cases, it might not be, and I don't think that the requirement of having all open adoptions is necessarily good.

The CHAIRMAN. They can always object to the transfer, can't they, the parents? Under the law?

Mr. SWIMMER. The right of the tribal court prevails over the right of the natural parent.

The CHAIRMAN. But not in the case where the State has invoked jurisdiction.

Mr. SWIMMER. Well, the State is not going to be able to invoke jurisdiction if the tribal court takes jurisdiction of the case. If the State takes jurisdiction of the case, it has to decide the case along the lines of the Child Welfare Act.

The CHAIRMAN. I have been advised that the tribe can request jurisdiction but either parent can object. Isn't that correct?

Mr. SWIMMER. That the tribe can request jurisdiction but the parents can object?

The CHAIRMAN. Yes.

Mr. SWIMMER. It is my understanding that is possible but that the tribe would survive. The tribe's request for jurisdiction over the child is predominant and would dominate.

I will check that out with our legal people as far as that is concerned, but if that is an issue that can be resolved, that would be helpful to be sure that the natural parent has the right to object to tribal jurisdiction. If we can write that into the act, it will go a long way, at least in that provision.

There are other provisions in the act that are, I think, just as onerous. One of them is the removal of alcohol abuse and nonconforming social behavior as a reason to remove a child from a home.

I don't know what the intent of that is, but I am afraid that being in a home with an alcoholic situation that would result in a case worker recommending removal of the child and saying that can't be used as an excuse would be extremely harmful to an unprotected infant.

We see cases on a regular basis of child abuse in Indian country, and particularly those of alcoholic families. I don't think we can justify it and simply say because alcohol in certain cases is prevalent in an area that that should be removed as an excuse.

But that is just one of our objections. As I said, Mr. Chairman, I don't want to take the time of the committee. I would be happy to give you example after example of how we believe this bill can be very detrimental to the best interests of Indian children, and that is our objective here.

I have no reason to oppose any effort by this committee or this Congress or this administration to seek the best interests of the Indian children. However, I do object when it gets into this idea of creating a bureaucracy of lawyers, consultants, social workers, proposal writers, and everybody else spending money on everything but what appears to be the best interests of the Indian children. I think that is the way we are going.

I think we need to address what is going on on the reservation. We need more social workers out there. We project the possible cost just of the amendments is going to be \$7 or \$8 million. I would take that money and add social providers out there and people who could work directly with families, who could help remove some of the problems that we see out there on a regular basis with families.

We don't need to put people into courts, and we don't need to put lawyers arguing over who has custody of this or that. We need to

put people out there on the reservation where they can be working directly with families trying to build and construct a family structure on that reservation that is now in danger of being lost totally because of alcoholism and—

The CHAIRMAN. If that is the case, why doesn't the BIA recommend additional funds for just what you have described?

Mr. SWIMMER. The problem that we have in the budget generally is what I described before, Mr. Chairman. It is difficult for us to say that on top of the \$1 billion that we have, we can justifiably come up here and say, well, but we are not getting this problem done and we need some more when I cannot justify to the committee that the \$1 billion we spend is being spent well.

Yet, if I make a proposal that some of the things that we think would be much lower priority should be changed to put money into Indian child welfare, we immediately, of course, are chastised by the Indian community and the special interests that have that pot of money.

I think we do have to reach the point, though, where we begin prioritizing where our money goes, because there is not an unlimited supply. We see this in our school systems where we are spending an average of \$8200 per student. Yet, we are not getting the quality education.

Yet, when we go out and talk about changing the structure of education, we see that it is basically an employment program. We don't get support on it. We say, well, where are those people going to work if we hire teachers instead of teacher aides.

It is a complex. Oftentimes, we find that putting more money in on top of money that is being spent poorly isn't going to help the situation, and part of that is what we have here.

I think we need to redirect some of the funding that we do in the child welfare area. We are spending money now. These grants that we give out, the \$7.5 million that we give now, are given out competitively based on who can write the best proposal and who can include all of the right words in that proposal. Oftentimes, that money goes off reservation to urban Indian groups serving children who are not even on the reservation or affected by the reservation.

Yet, we see tribes coming to me regularly appealing this, because they say we are not getting the money out here on the reservation.

The CHAIRMAN. Who is making the grants now, your office?

Mr. SWIMMER. The Bureau of Indian Affairs makes the grants.

The CHAIRMAN. Aren't you supposed to see if these applications are proper?

Mr. SWIMMER. We check them with a fine toothed comb. We go over them and we give as much weight as we can to the tribe, and sometimes they just don't have as good a proposal writer.

Congress has mandated that these be competitive, that we put these out as competitive, not where the need is, but where the competition is best, who can write the best proposal. That is who gets the money.

The CHAIRMAN. Well, you can assist them to write good grant applications.

Mr. SWIMMER. We do that. We even give them help with the deadlines and the time lines, and oftentimes, we will get a late application by two or three days. Yet, everyone else has theirs in on