

INDIAN CHILD WELFARE ACT OF 1977

THURSDAY, AUGUST 4, 1977

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m., in room 457, Russell Senate Office Building, Senator James Abourezk (chairman of the committee) presiding.

Present: Senators Abourezk and Hatfield.

Staff present: Alan Parker, chief counsel, Michael Cox, minority counsel, Patricia Marks, professional staff member, and Tony Strong, professional staff member.

Chairman ABOUREZK. The hearing will come to order.

We will now take testimony on S. 1214, a bill to establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families.

The purpose of this hearing is to take testimony on a bill which would set minimum placement standards for the placement of Indian children in foster or adoptive homes and to authorize expenditures for the setting up of family development programs in Indian communities.

It appears that for decades Indian parents and their children have been at the mercy of arbitrary or abusive action of local, State, Federal and private agency officials. Unwarranted removal of children from their homes is common in Indian communities. Recent statistics show, for example, that a minimum of 25 percent of all Indian children are either in foster homes, adoptive homes, and/or boarding schools, against the best interest of families and Indian communities. Whereas most non-Indian communities can expect to have children out of their natural homes in foster or adoptive homes at a rate of 1 of every 51 children, Indian communities know that their children will be removed at rates varying from 5 to 25 times higher than that.

Because of poverty and discrimination Indian families face many difficulties, but there is no reason or justification for believing that these problems make Indian parents unfit to raise their children; nor is there any reason to believe that the Indian community itself cannot, within its own confines, deal with problems of child neglect when they do arise. Up to now, however, public and private welfare agencies seem to have operated on the premise that most Indian children would really be better off growing up non-Indian. The result of such policies has been unchecked: Abusive child removal practices, the lack of viable, practical rehabilitation and prevention programs for Indian

families facing severe problems, and a practice of ignoring the all-important demands of Indian tribes to have a say in how their children and families are dealt with.

Officials seemingly would rather place Indian children in non-Indian settings where their Indian culture, their Indian traditions and, in general, their entire Indian way of life is smothered. The Federal Government for its part has been conspicuous by its lack of action. It has chosen to allow these agencies to strike at the heart of Indian communities by literally stealing Indian children. This course can only weaken rather than strengthen the Indian child, the family, and the community. This, at a time when the Federal Government purports to be working to help strengthen Indian communities. It has been called cultural genocide.

I now place in the record a copy of S. 1214, the Indian Child Welfare Act of 1977.

[The bill referred to follows:]

CAMERA COPY—PLEASE SHOOT
(Hold Page Numbers Through!)

Calendar No. 550

95TH CONGRESS
1ST SESSION

S. 1214

[Report No. 95-597]

IN THE SENATE OF THE UNITED STATES

APRIL 1 (legislative day, FEBRUARY 21), 1977

Mr. ABOUREZK (for himself, Mr. HUMPHREY, Mr. MCGOVERN, Mr. HASKELL, and Mr. BURDICK) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

NOVEMBER 8 (legislative day, NOVEMBER 1), 1977

Reported by Mr. ABOUREZK, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, 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 ~~That this Act may be cited as the "Indian Child Welfare~~
- 4 ~~Act of 1977".~~
- 5 ~~PINDINGS~~
- 6 ~~SEC. 2. Recognizing the special relations of the United~~
- 7 ~~States with the Indian and Indian tribes and the Federal~~
- 8 ~~responsibility for the care of the Indian people, the Congress~~
- 9 ~~finds that:~~

~~(a) An alarmingly high percentage of Indian children, living within both urban communities and Indian reservations, are separated from their natural parents through the actions of nontribal government agencies or private individuals or private agencies and are placed in institutions (including boarding schools), or in foster or adoptive homes, usually with non-Indian families.~~

~~(b) The separation of Indian children from their biological families frequently occurs in situations where one or more of the following circumstances exist: (1) the natural parent does not understand the nature of the documents or proceedings involved; (2) neither the child nor the natural parents are represented by counsel or otherwise advised of their rights; (3) the Government officials involved are unfamiliar with, and often disdainful of, Indian culture and society; (4) the conditions which led to the separation are not demonstrably harmful or are remediable or transitory in character; and (5) responsible tribal authorities are not consulted about or even informed of the nontribal government actions.~~

~~(c) The separation of Indian children from their natural parents, including especially their placement in institutions or homes which do not meet their special needs, is socially and culturally undesirable. For the child, such separation can cause a loss of identity and self esteem, and contributes directly to the unreasonably high rates among~~

~~Indian children for dropouts, alcoholism and drug abuse, suicides, and crime. For the parents, such separation can cause a similar loss of self-esteem, aggravates the conditions which initially gave rise to the family breakup, and leads to a continuing cycle of poverty and despair. For Indians generally, the child placement activities of nontribal government agencies undercut the continued existence of tribes as self-governing communities and, in particular, subvert tribal jurisdiction in the sensitive field of domestic and family relations.~~

DECLARATION OF POLICY

~~SEC. 3. The Congress hereby declares that it is the policy of this Nation, in fulfillment of its special responsibilities and legal obligations to the American Indian people, to establish standards for the placement of Indian children in foster or adoptive homes which will reflect the unique values of Indian culture, to discourage unnecessary placement of Indian children in boarding schools for social rather than educational reasons, to assist Indian tribes in the operation of tribal family development programs, and generally to promote the stability and security of Indian family life.~~

DEFINITIONS

~~SEC. 4. For purposes of this Act:~~

~~(a) "Secretary", unless otherwise designated, means the Secretary of the Interior.~~

1 ~~(b) "Indian" means any person who is a member of,~~
 2 ~~or who is eligible for membership in, a federally recognized~~
 3 ~~Indian tribe, as defined in subsection (c) hereof.~~

4 ~~(c) "Indian tribe" means any Indian tribe, band,~~
 5 ~~nation, or other organized group or community of Indians,~~
 6 ~~including any Alaska Native region, village, or group as~~
 7 ~~defined in the Alaska Native Claims Settlement Act (85~~
 8 ~~Stat. 688), which is recognized as eligible for the special~~
 9 ~~programs and services provided by the United States to~~
 10 ~~Indians because of their status as Indians.~~

11 ~~(d) "Indian organization" means any group, associa-~~
 12 ~~tion, partnership, corporation, or other legal entity owned~~
 13 ~~and controlled by Indians, or a majority of whose members~~
 14 ~~are Indians.~~

15 ~~(e) "Tribal court" means the Court of Indian Offenses,~~
 16 ~~any court operated and maintained by an Indian tribe, and~~
 17 ~~any other tribunal which performs judicial functions in the~~
 18 ~~name of an Indian tribe within an Indian reservation.~~

19 ~~(f) "Nontribal government agency" means any Federal,~~
 20 ~~State or local government department, bureau, agency, or~~
 21 ~~other office, including any court, and any private agency~~
 22 ~~licensed by a State or local government, which has jurisdic-~~
 23 ~~tion or which performs functions and exercises responsibili-~~
 24 ~~ties in the fields of social services, welfare, and domestic~~
 25 ~~relations, including child placement.~~

1 ~~(g) "Child placement" means any proceedings, judicial,~~
 2 ~~quasi-judicial, or administrative, voluntary or involuntary,~~
 3 ~~and public or private, under which an Indian child is removed~~
 4 ~~from the custody of his natural parent or parents, his Indian~~
 5 ~~adoptive parent or parents, or the custody of any blood~~
 6 ~~relative in whose care he has been left by his natural parent~~
 7 ~~or parents, or his Indian adoptive parent or parents, and is~~
 8 ~~either offered for adoption or is placed in a foster home or~~
 9 ~~other institution.~~

10 ~~(h) "Natural parent" means the biological parent of a~~
 11 ~~child and also any Indian who has adopted a child.~~

12 ~~(i) "Blood relative" means any grandparent, aunt or~~
 13 ~~uncle (whether by blood or marriage), brother or sister,~~
 14 ~~brother or sister in law, niece or nephew, or stepparent,~~
 15 ~~whether by blood, marriage, or adoption, over the age of~~
 16 ~~eighteen or otherwise emancipated, or as defined by tribal~~
 17 ~~law or custom.~~

18 ~~TITLE I - CHILD PLACEMENT STANDARDS~~

19 ~~SEC. 101. (a) In the case of any Indian child who~~
 20 ~~resides within an Indian reservation, no child placement~~
 21 ~~shall be valid or given any legal force and effect, except~~
 22 ~~temporary placements after emergency removal under cir-~~
 23 ~~cumstances where the physical or emotional well-being of~~
 24 ~~the child is immediately threatened, unless made pursuant~~
 25 ~~to an order of the tribal court, where a tribal court exists~~

~~1 within such reservation which exercises jurisdiction over
2 child welfare matters and domestic relations.~~

~~3 (b) In the case of any Indian child who is domiciled
4 within an Indian reservation, or who resides within an
5 Indian reservation which does not have a tribal court, no
6 child placement shall be valid or given any legal force and
7 effect, except temporary placements under circumstances
8 where the physical or emotional well being of the child is
9 immediately threatened, unless the Indian tribe occupying
10 such reservation has been accorded thirty days' written
11 notice of, and a right to intervene as an interested party in,
12 the child placement proceedings. For the purposes of this
13 Act, an Indian child shall be deemed to be domiciled where
14 his natural parent or parents, or the blood relative in whose
15 care he may have been left by his natural parent or parents,
16 is domiciled.~~

~~17 (c) In the case of any Indian child who is not a resident
18 or domiciliary of an Indian reservation, no child placement
19 shall be valid or given any legal force and effect, except tem-
20 porary placements under circumstances where the physical
21 or emotional well-being of the child is immediately threat-
22 ened, unless the Indian tribe of which the child is a member,
23 or is eligible for membership, has been accorded thirty days'
24 written notice of, and a right to intervene as an interested
25 party in, the child placement proceedings.~~

~~1 (d) No Indian child shall be removed from the custody
2 of his natural parent or parents, Indian adoptive parent or
3 parents, or blood relative in whose custody the child has been
4 placed by the private actions of any private individual, cor-
5 poration, group, or institution for a period of more than thirty
6 days without written notice served upon the tribe of which
7 the child is a member or is eligible for membership in or upon
8 whose reservation the child resides or is domiciled. The notice
9 shall be in writing signed or acknowledged by the child's
10 natural parent or parents, Indian adoptive parent or parents,
11 or blood relative, and the child's temporary guardian,
12 notarized or signed by two witnesses, stating the names of
13 all the parties, their addresses, the expected length of re-
14 moval, the purpose of removal, and the extent to which
15 custody over the child is transferred to the temporary
16 guardian. This section shall not apply if the tribe has enacted
17 or enacts its own law governing private placements. No
18 placement shall be valid or given any legal force and effect
19 if made in violation of this section.~~

~~20 (e) It shall be the duty of the party seeking a change
21 of the custody of an Indian child to notify the relevant tribal
22 governing body by mailing written notice to the chief execu-
23 tive officer or such other person as the tribe may designate:
24 Provided further, That the judge or hearing officer at any
25 child placement proceeding shall make a good faith deter-~~

~~1 determination of whether the child involved is Indian and, if so,
2 which tribe must be notified.~~

~~3 Sec. 102. (a) No placement of an Indian child, except
4 as provided in section 101 (d) of this Act, shall be valid or
5 given any legal force and effect, except temporary place-
6 ments under circumstances where the physical or emotional
7 well-being of the child is immediately threatened, unless (1)
8 his natural parent or parents, or the blood relative in whose
9 care the child may have been left by his natural parent or
10 parents, has been accorded thirty days' written notice of the
11 child placement proceedings and a right (A) to intervene in
12 the proceedings as an interested party through counsel or,
13 alternatively, in a tribal court, through a lay advocate, (B) to
14 submit evidence and present witnesses on his or her own be-
15 half, and (C) to examine all reports or other documents and
16 files upon which any decision with respect to child place-
17 ment may be based; and (2) the nontribal government
18 agency seeking to effect the child placement affirmatively
19 shows that alternative remedial services and rehabilitative
20 programs designed to prevent the break-up of the Indian
21 family have been made available and proved unsuccessful.~~

~~22 (b) Where the natural parent or parents of an Indian
23 child, who falls within any of three classes mentioned in sec-
24 tion 101 of this Act, or the blood relative in whose care the
25 child may have been left by his natural parent or parents,~~

~~1 opposes the loss of custody, no child placement shall be valid
2 or given any legal force and effect in the absence of a deter-
3 mination, supported by an overwhelming weight of the evi-
4 dence, including testimony by qualified professional wit-
5 nesses, that the continued custody of the child by his natural
6 parent or parents, or the blood relative in whose care the
7 child has been left, will result in serious emotional damage,
8 or in the absence of a determination, supported by clear and
9 convincing evidence, including testimony by a qualified phy-
10 sician, that the continued custody of the child by his natural
11 parent or parents, or the blood relative in whose care the
12 child has been left, will result in serious physical damage.
13 In making such determinations, poverty, including inade-
14 quate or crowded housing, misconduct, and alcohol abuse on
15 the part of either natural parent, or the blood relative, shall
16 not be deemed prima facie evidence that serious physical or
17 emotional damage to the child has occurred or will occur. The
18 standard to be applied in any proceeding covered by this Act
19 shall be the standards of the Indian community in which the
20 natural parent or parents, Indian adoptive parent or parents,
21 or blood relatives reside.~~

~~22 (c) In the event that the natural parent or parents or
23 Indian adoptive parent or parents of an Indian child consent
24 to the loss of custody, whether temporary or permanent, no
25 child placement shall be valid or given any legal force and~~

~~1 effect, unless such consent is voluntary, in writing, executed~~
~~2 before a judge of a court having jurisdiction over child place-~~
~~3 ments, and accompanied by the witnessing judge's certificate~~
~~4 that the consent was explained in detail, was translated into~~
~~5 the natural parent's native language, and was fully under-~~
~~6 stood by him or her. If the consent is to a nonadoptive~~
~~7 child placement, the natural parent or parents or Indian~~
~~8 adoptive parent or parents may withdraw the consent at~~
~~9 any time for any reason, and the consent shall be deemed~~
~~10 for all purposes, except temporary custody, as having never~~
~~11 been given. If the consent is to an adoptive child placement,~~
~~12 and the child is over the age of two, the natural parent or~~
~~13 parents or Indian adoptive parent or parents may withdraw~~
~~14 the consent for any reason at any time before the final decree~~
~~15 of adoption: *Provided further,* That no final decree of~~
~~16 adoption may be entered within ninety days after the natural~~
~~17 parent or parents, Indian adoptive parent or parents, or~~
~~18 blood relative has given consent to the adoption. A final~~
~~19 decree of adoption may be set aside only upon a showing~~
~~20 that the child is again being placed for adoption, that the~~
~~21 adoption did not comply with the requirements of this Act~~
~~22 or was otherwise unlawful, or that the consent to the adoption~~
~~23 was not voluntary. Consent by the natural parent or parents~~
~~24 of an Indian child given within ninety days of the birth of~~
~~25 the child shall be presumed to be involuntary.~~

~~1 (d) No placement of an Indian child, except as pro-~~
~~2 vided by section 101 (d) of this Act, shall be valid or given~~
~~3 any legal force and effect, except temporary placements~~
~~4 under circumstances where the physical or emotional well-~~
~~5 being of the child is immediately threatened, unless the child~~
~~6 has been represented in the placement proceedings by coun-~~
~~7 sel or, alternatively, in a tribal court, by a lay advocate, and~~
~~8 unless his natural parent or parents, Indian adoptive parent~~
~~9 or parents, or the blood relative in whose care the child~~
~~10 may have been left by his natural parent or parents, or~~
~~11 Indian adoptive parent or parents, has been represented by~~
~~12 separate counsel or lay advocate.~~

~~13 SEC. 103. (a) In offering for adoption an Indian child,~~
~~14 every nontribal government agency shall grant a preference~~
~~15 to members of the child's extended Indian family, which shall~~
~~16 be defined by tribal law or custom.~~

~~17 (b) In otherwise placing an Indian child, every non-~~
~~18 tribal government agency, in the absence of good cause~~
~~19 shown to the contrary, shall grant preferences in the follow-~~
~~20 ing order: (1) to the child's extended Indian family, (2) to~~
~~21 a foster home, if any, licensed or otherwise designated by~~
~~22 the Indian tribe occupying the reservation of which the~~
~~23 child is a resident or domiciliary; (3) to a foster home, if~~
~~24 any, licensed by the Indian tribe of which the child is a~~
~~25 member or is eligible for membership; (4) to any other~~

1 ~~foster home within an Indian reservation which is recom-~~
 2 ~~mended by the Indian tribe of which the child is a member~~
 3 ~~or is eligible for membership; (5) to any foster home run by~~
 4 ~~an Indian family; and (6) to a custodial institution for chil-~~
 5 ~~dren operated by an Indian tribe, a tribal organization or~~
 6 ~~nonprofit Indian organization: *Provided, however,* That each~~
 7 ~~Indian tribe may modify or amend the foregoing order of~~
 8 ~~preferences, and may add or delete preference categories,~~
 9 ~~by resolution of its government body. Every nontribal gov-~~
 10 ~~ernment agency shall maintain a record evidencing its efforts~~
 11 ~~to comply with the order of preferences provided under this~~
 12 ~~subsection in each case of an Indian child placement.~~

13 ~~(c) Where an Indian child is placed in a foster or adop-~~
 14 ~~tive home, or in an institution, outside the reservation of~~
 15 ~~which the child is a resident, pursuant to an order of a tribal~~
 16 ~~court, the tribal court shall retain continuing jurisdiction over~~
 17 ~~such child placement until the child attains the age of~~
 18 ~~eighteen.~~

19 ~~SEC. 104. After an Indian adoptive child attains the age~~
 20 ~~of eighteen, upon his or her application to the court which~~
 21 ~~entered the final adoption decree, and in the absence of good~~
 22 ~~cause shown to the contrary, the child shall have a right to~~
 23 ~~learn the names and last known address of his natural parent~~
 24 ~~or parents and siblings who also have attained the age of~~

~~1 eight, their tribal affiliation and the grounds for the sever-~~
 2 ~~ance of their family relations.~~

3 ~~SEC. 105. In any proceeding within the jurisdiction of~~
 4 ~~this Act the United States, any Indian Reservation, State,~~
 5 ~~Commonwealth, territory, or possession thereof shall give full~~
 6 ~~faith and credit to the laws of any Indian tribe involved in a~~
 7 ~~proceeding under the Act and any Tribal Court orders~~
 8 ~~issued in such proceeding.~~

9 ~~TITLE II INDIAN FAMILY DEVELOPMENT~~

10 ~~SEC. 201. (a) The Secretary is hereby authorized, un-~~
 11 ~~der such rules and regulations as he may prescribe, to make~~
 12 ~~grants to, or enter into contracts with, Indian tribes for the~~
 13 ~~purpose of assisting such tribes in the establishment and~~
 14 ~~operation of Indian family development programs, as de-~~
 15 ~~scribed in section 202, and in the preparation and imple-~~
 16 ~~mentation of child welfare codes.~~

17 ~~(b) The Secretary is further authorized, under such~~
 18 ~~rules and regulations as he may prescribe, to carry out,~~
 19 ~~or to make grants to or contracts with Indian tribes to carry~~
 20 ~~out, a special home improvement program to upgrade: (1)~~
 21 ~~the housing conditions of Indian foster and adoptive parents,~~
 22 ~~if such housing conditions are substandard; (2) the housing~~
 23 ~~conditions of Indians who seek Indian foster or adoptive~~
 24 ~~children, where improved housing would enable such In-~~

1 ~~dians to qualify as foster or adoptive parents under tribal~~
 2 ~~law or regulations; and (3) the housing conditions of In-~~
 3 ~~dian families facing disintegration, where improved housing~~
 4 ~~would contribute significantly to family stability.~~

5 ~~(c) The Secretary is also authorized, under such rules~~
 6 ~~and regulations as he may prescribe to carry out, or to~~
 7 ~~make grants to or contracts with Indian organizations to~~
 8 ~~carry out, off-reservation Indian family development pro-~~
 9 ~~grams, as described in section 203. In the establishment,~~
 10 ~~operation, and funding of off-reservation Indian family de-~~
 11 ~~velopment programs, the Secretary may enter into agree-~~
 12 ~~ments or other cooperative arrangements with the Secre-~~
 13 ~~tary of Health, Education, and Welfare, and the latter Secre-~~
 14 ~~tary is hereby authorized for such purposes to use funds~~
 15 ~~appropriated for similar programs of the Department of~~
 16 ~~Health, Education, and Welfare.~~

17 ~~(d) There are authorized to be appropriated \$21,~~
 18 ~~792,000 during fiscal year 1978, \$23,700,000 during fiscal~~
 19 ~~year 1979, \$25,120,000 during fiscal year 1980, and such~~
 20 ~~sums as may be necessary during each subsequent fiscal year~~
 21 ~~in order to carry out the purposes of this section.~~

22 ~~Sec. 202. (a) Every Indian tribe is hereby authorized~~
 23 ~~to establish and operate an Indian family development pro-~~
 24 ~~gram, which program may include some or all of the fol-~~
 25 ~~lowing features:~~

1 ~~(1) a system for licensing or otherwise regulating~~
 2 ~~Indian foster and adoptive homes;~~
 3 ~~(2) the construction, operation, and maintenance~~
 4 ~~of family development centers, as defined in subsection~~
 5 ~~(c) (2) hereof;~~
 6 ~~(3) family assistance, including homemakers and~~
 7 ~~home counselors, day care, after school care and employ-~~
 8 ~~ment, recreational activities, and respite services;~~
 9 ~~(4) provision for counseling Indian families and~~
 10 ~~Indian children;~~
 11 ~~(5) a special home improvement program, as de-~~
 12 ~~finied in section 201 (b);~~
 13 ~~(6) the employment of professional and other~~
 14 ~~trained personnel to assist the tribal court in the disposi-~~
 15 ~~tion of domestic relations and child welfare matters;~~
 16 ~~(7) education and training of Indians, including~~
 17 ~~tribal court judges and staff, in skills relating to child-~~
 18 ~~welfare and family assistance programs, and the granting~~
 19 ~~of scholarships for such education and training; and~~
 20 ~~(8) a subsidy program under which Indian adop-~~
 21 ~~tive children are provided the same support as Indian~~
 22 ~~foster children.~~

23 ~~(b) Where an Indian tribe has implemented a~~
 24 ~~licensing or other regulatory system pursuant to subsec-~~
 25 ~~tion 202 (a) (1), any Indian foster or adoptive home so~~

1 ~~licensed or designated (1) may accept Indian child place-~~
 2 ~~ments by a nontribal government agency and State funds~~
 3 ~~in support of Indian children, (2) shall have a first pref-~~
 4 ~~erence in the placement of an Indian child who is a~~
 5 ~~resident or domiciliary of such tribe's reservation in accord-~~
 6 ~~ance with subsection 103 (b) (1) of this Act, and (3) shall~~
 7 ~~have a second preference in the placement of an Indian child~~
 8 ~~who is a member of, or eligible for membership in, such~~
 9 ~~tribe in accordance with subsection 103 (b) (2) of this Act.~~

10 ~~(c) (1) The objective of every Indian family develop-~~
 11 ~~ment program shall be to prevent the breakup of Indian~~
 12 ~~families and, in particular, to insure that the permanent re-~~
 13 ~~moval of an Indian child from the custody of his natural par-~~
 14 ~~ent or parents, or the custody of any blood relative in whose~~
 15 ~~care he has been left by his natural parent or parents, by~~
 16 ~~a tribal court or nontribal government agency shall be ef-~~
 17 ~~fective only as a last resort.~~

18 ~~(2) In furtherance of this objective, every Indian tribe~~
 19 ~~is authorized to construct, operate, and maintain a family~~
 20 ~~development center which may contain, among other~~
 21 ~~features:-~~

22 ~~(A) facilities for counseling Indian families which~~
 23 ~~face disintegration and, where appropriate, for the~~
 24 ~~treatment of individual family members;~~

25 ~~(B) facilities for the temporary custody of Indian~~

1 ~~children whose natural parent or~~
 2 ~~unable or unwilling to care~~ *their fam-*
 3 ~~are left temporarily with~~ *ily of the*
 4 ~~by a blood relative; and~~ *does*
 5 ~~(C) facilities for the temporary~~ *'s*
 6 ~~parents, where so ordered by a tribal co-~~
 7 ~~incarceration for public intoxication or the con-~~
 8 ~~of any other minor offense.~~

9 ~~Sec. 203. Off-reservation Indian family development~~
 10 ~~programs, operated either directly by the Secretary or~~
 11 ~~through grants and contracts with local Indian organiza-~~
 12 ~~tions, may include, but shall not be limited to, the follow-~~
 13 ~~ing features:~~

14 ~~(a) a system for regulating, maintaining, and sup-~~
 15 ~~porting Indian foster and adoptive homes, including a~~
 16 ~~subsidy program under which Indian adoptive children~~
 17 ~~are provided the same support as Indian foster children;~~

18 ~~(b) the construction, operation, and maintenance~~
 19 ~~of family development centers providing the facilities~~
 20 ~~and services set forth in paragraphs (2) (A) and (B)~~
 21 ~~of section 202 (c) of this Act;~~

22 ~~(c) family assistance, including homemakers and~~
 23 ~~home counselors, day care, after school care and em-~~
 24 ~~ployment, recreational activities, and respite services;~~

25 ~~(d) provision for counseling and treatment both of~~

~~Indian families which face disintegration and, where appropriate, of Indian foster and adoptive children;~~

~~(c) an Indian child defense program, as defined in section 204(b), and other representation of Indian children before the courts; and~~

~~(f) furnishing guidance, representation, and advice to Indian families involved in child placement proceedings before nontribal government agencies)~~

~~SEC. 204. (a) The Secretary is hereby authorized and directed, under such rules and regulations as he may prescribe, to undertake a study of the circumstances surrounding all child placements which have occurred during the sixteen years preceding the effective date of this Act, where the Indian child so placed still is under the age of eighteen on such date. If the Secretary has good cause to believe, on the basis of this study, that a child placement was or may be invalid or otherwise legally defective, and if either natural parent, Indian adoptive parent or the blood relative previously having custody of the Indian child so requests, the Secretary is authorized, in his discretion, to institute a habeas corpus action or other appropriate legal proceeding in the name of the United States on behalf of such parent, Indian adoptive parent or blood relative in the United States district court for the district in which the child resides for the purpose of challenging the child placement and, if it is found~~

~~invalid or legally defective, of restoring custody of the Indian child to its natural parent or parents, Indian adoptive parent or parents, or to the blood relative in whose care the child had been left.~~

~~(b) The Secretary is further authorized and directed, under such rules and regulations as he may prescribe, to operate, or to make grants or contracts with Indian tribes or Indian organizations to operate, an Indian family defense program which shall provide representation by an attorney or, alternatively, in a tribal court, by a lay advocate for any Indian child who is the subject of a child placement proceeding, or, if appropriate, for his natural parent or parents, or the blood relative in whose care the child may have been left by his natural parent or parents.~~

~~(c) The Secretary also is authorized and directed, under such rules and regulations as he may prescribe, to collect and maintain records in a single, central location of all Indian child placements which either are effected after the date of this Act or are the subject of the study required under subsection (a) hereof, which records shall show as to each such placement the name and tribal affiliation of the child, the names and addresses of his natural parents and the blood relative, if any, in whose care he may have been left by a natural parent, the names and addresses of his siblings, and the names and locations of any tribal court~~

~~1 or nontribal government agency which possesses files or
2 information concerning his placement. Such records shall not
3 be open for inspection or copying pursuant to the Freedom
4 of Information Act (80 Stat. 381), as amended, but infor-
5 mation concerning a particular child placement shall be made
6 available in whole or in part, as necessary: (1) to an
7 Indian adoptive child over the age of eighteen for the pur-
8 pose of identifying the court which entered his final adoption
9 decree and furnishing such court with the information speci-
10 fied in section 104; (2) to the adoptive parent of an Indian
11 child or to an Indian tribe for the purpose of assisting in the
12 enrollment of an Indian adoptive child in the tribe of which
13 he is eligible for membership; and (3) to the adoptive
14 parent of an Indian child for the purpose of establishing or
15 continuing his tribal affiliation or a relationship with his
16 siblings. The records collected by the Secretary pursuant to
17 this section shall be privileged and confidential and shall be
18 used only for the specific purposes set forth in this Act.~~

~~19 (d) There are authorized to be appropriated \$18,000,
20 000 during fiscal year 1979, \$20,000,000 during fiscal year
21 1980, \$22,000,000 during fiscal year 1981, and such sums
22 as may be necessary during each subsequent fiscal year in
23 order to carry out the purposes of this section, including
24 the payment of attorney fees.~~

25 ~~Sec. 205. (a) The Secretary is authorized to perform~~

~~1 any and all acts and to make such rules and regulations as
2 may be necessary and proper for the purposes of carrying out
3 the provisions of this Act.~~

~~4 (b) (1) Within six months from the date of enactment
5 of this Act, the Secretary shall consult with Indian tribes,
6 Indian organizations and Indian interest agencies in the
7 consideration and formulation of rules and regulations to
8 implement the provisions of this Act.~~

~~9 (2) Within seven months from the date of enactment
10 of this Act, the Secretary shall present the proposed rules
11 and regulations to the Select Committee on Indian Affairs
12 of the United States Senate and the Committee on Interior
13 and Insular Affairs of the United States House of Repre-
14 sentatives, respectively.~~

~~15 (3) Within eight months from the date of enactment of
16 this Act, the Secretary shall publish proposed rules and reg-
17 ulations in the Federal Register for the purpose of receiving
18 comments from interested parties.~~

~~19 (4) Within ten months from the date of enactment of
20 this Act, the Secretary shall promulgate rules and regula-
21 tions to implement the provisions of this Act.~~

~~22 (c) The Secretary is authorized to revise and amend
23 any rules or regulations promulgated pursuant to this sec-
24 tion: *Provided*, That prior to any revision or amendment to
25 such rules or regulations, the Secretary shall present the~~

~~1 proposed revision or amendment to the Select Committee
2 on Indian Affairs of the United States Senate and the
3 Committee on Interior and Insular Affairs of the United
4 States House of Representatives, respectively, and shall,
5 to the extent practicable, consult with the tribes, organiza-
6 tions, and agencies specified in subsection (b) (1) of this
7 section, and shall publish any proposed revisions in the
8 Federal Register not less than sixty days prior to the
9 effective date of such rules and regulations in order to
10 provide adequate notice to, and receive comments from,
11 other interested parties.~~

12 That this Act may be cited as the "Indian Child Welfare
13 Act of 1977".

14 FINDINGS

15 SEC. 2. Recognizing the special relations of the United
16 States with the Indian and Indian tribes and the Federal
17 responsibility for the care of the Indian people, the Congress
18 finds that:

19 (a) An alarmingly high percentage of Indian children
20 living within both urban communities and Indian reserva-
21 tions, are separated from their natural parents through the
22 actions of nontribal government agencies or private indi-
23 viduals or private agencies and are placed in institutions
24 (including boarding schools), or in foster or adoptive homes,
25 usually with non-Indian families.

1 (b) The separation of Indian children from their fam-
2 ilies frequently occurs in situations where one or more of the
3 following circumstances exist: (1) the natural parent does
4 not understand the nature of the documents or proceedings
5 involved; (2) neither the child nor the natural parents are
6 represented by counsel or otherwise advised of their rights;
7 (3) the agency officials involved are unfamiliar with, and
8 often disdainful of Indian culture and society; (4) the con-
9 ditions which led to the separation are not demonstrably
10 harmful or are remediable or transitory in character; and
11 (5) responsible tribal authorities are not consulted about or
12 even informed of the nontribal government actions.

13 (c) The separation of Indian children from their
14 natural parents, especially their placement in institutions or
15 homes which do not meet their special needs, is socially and
16 culturally undesirable. For the child, such separation can
17 cause a loss of identity and self-esteem, and contributes
18 directly to the unreasonably high rates among Indian chil-
19 dren for dropouts, alcoholism and drug abuse, suicides, and
20 crime. For the parents, such separation can cause a similar
21 loss of self-esteem, aggravates the conditions which initially
22 gave rise to the family breakup, and leads to a continuing
23 cycle of poverty and despair. For Indians generally, the
24 child placement activities of nontribal public and private
25 agencies undercut the continued existence of tribes as self-

1 governing communities and, in particular, subvert tribal
2 jurisdiction in the sensitive field of domestic and family
3 relations.

4 DECLARATION OF POLICY

5 SEC. 3. The Congress hereby declares that it is the
6 policy of this Nation, in fulfillment of its special responsi-
7 bilities and legal obligations to the American Indian people,
8 to establish standards for the placement of Indian children
9 in foster or adoptive homes which will reflect the unique
10 values of Indian culture, discourage unnecessary placement
11 of Indian children in boarding schools for social rather than
12 educational reasons, assist Indian tribes in the operation of
13 tribal family development programs, and generally promote
14 the stability and security of Indian families.

15 DEFINITIONS

16 SEC. 4. For purposes of this Act:

17 (a) "Secretary", unless otherwise designated, means the
18 Secretary of the Interior.

19 (b) "Indian" means any person who is a member of
20 or who is eligible for membership in a federally recognized
21 Indian tribe.

22 (c) "Indian tribe" means any Indian tribe, band, na-
23 tion, or other organized group or community of Indians
24 recognized as eligible for the services provided by the Bureau
25 of Indian Affairs to Indians because of their status as

1 Indians, including any Alaska Native villages, as listed in
2 section II(b)(1) of the Alaska Native Claims Settlement
3 Act (85 Stat. 688, 697).

4 (d) "Indian organization" means any group, associa-
5 tion, partnership, corporation, or other legal entity owned
6 or controlled by Indians, or a majority of whose members
7 are Indians.

8 (e) "Tribal court" means any Court of Indian Offenses,
9 any court established, operated, and maintained by an Indian
10 tribe, and any other administrative tribunal of a tribe which
11 exercise jurisdiction over child welfare matters in the name
12 of a tribe.

13 (f) "Nontribal public or private agency" means any
14 Federal, State, or local government department, bureau,
15 agency, or other office, including any court other than a tribal
16 court, and any private agency licensed by a State or local
17 government, which has jurisdiction or which performs func-
18 tions and exercises responsibilities in the fields of social serv-
19 ices, welfare, and domestic relations, including child place-
20 ment.

21 (g) "Reservation" means Indian country as defined in
22 section 1151 of title 18, United States Code and as used in
23 this Act, shall include lands within former reservations where
24 the tribes still maintain a tribal government, and lands held
25 by Alaska Native villages under the provisions of the Alaska

1 *Native Claims Settlement Act (85 Stat. 688). In a case*
 2 *where it has been judicially determined that a reservation has*
 3 *been diminished, the term "reservation" shall include lands*
 4 *within the last recognized boundaries of such diminished res-*
 5 *ervation prior to enactment of the allotment or pending*
 6 *statute which caused such diminishment.*

7 (h) "Child placement" means any proceedings, judicial,
 8 quasi-judicial, or administrative, voluntary or involuntary,
 9 and public or private action(s) under which an Indian child
 10 is removed by a nontribal public or private agency from
 11 (1) the legal custody of his parent or parents, (2) the
 12 custody of any extended family member in whose care he
 13 has been left by his parent or parents, or (3) the custody
 14 of any extended family member who otherwise has custody
 15 in accordance with Indian law or custom, or (4) under
 16 which the parental or custodial rights of any of the above
 17 mentioned persons are impaired.

18 (i) "Parent" means the natural parent of an Indian
 19 child or any person who has adopted an Indian child in ac-
 20 cordance with State, Federal, or tribal law or custom.

21 (j) "Extended family member" means any grandpar-
 22 ent, aunt, or uncle (whether by blood or marriage), brother
 23 or sister, brother or sister-in-law, niece or nephew, first or
 24 second cousin, or stepparent whether by blood, or adoption,
 25 over the age of eighteen or otherwise emancipated, or as
 26 defined by tribal law or custom.

1 *TITLE I—CHILD PLACEMENT JURISDICTION*
 2 *AND STANDARDS*

3 *SEC. 101. (a) No placement of an Indian child, except*
 4 *as provided in this Act shall be valid or given any legal*
 5 *force and effect, except temporary placement under circum-*
 6 *stances where the physical or emotional well-being of the*
 7 *child is immediately and seriously threatened, unless (1) his*
 8 *parent or parents and the extended family member in whose*
 9 *care the child may have been left by his parent or parents or*
 10 *who otherwise has custody according to tribal law or custom,*
 11 *has been accorded not less than thirty days prior written*
 12 *notice of the placement proceeding, which shall include an*
 13 *explanation of the child placement proceedings, a statement*
 14 *of the facts upon which placement is sought, and a right:*
 15 *(A) to intervene in the proceedings as an interested party;*
 16 *(B) to submit evidence and present witnesses on his or her*
 17 *own behalf; and (C) to examine all reports or other docu-*
 18 *ments and files upon which any decision with respect to child*
 19 *placement may be based; and (2) the party seeking to effect*
 20 *the child placement affirmatively shows that available reme-*
 21 *dial services and rehabilitative programs designed to prevent*
 22 *the breakup of the Indian family have been made available*
 23 *and proved unsuccessful.*

24 (b) Where the natural parent or parents of an Indian
 25 child who falls within the provisions of this Act, or the

1 extended family member in whose care the child may have
 2 been left by his parent or parents or who otherwise has
 3 custody in accordance with tribal law or custom, opposes the
 4 loss of custody, no child placement shall be valid or given
 5 any legal force and effect in the absence of a determination,
 6 supported by clear and convincing evidence, including testi-
 7 mony by qualified expert witnesses, that the continued custody
 8 of the child by his parent or parents, or the extended
 9 family member in whose care the child has been left, or other-
 10 wise has custody in accordance with tribal law or custom,
 11 will result in serious emotional or physical damage. In
 12 making such determination, poverty, crowded or inade-
 13 quate housing, alcohol abuse or other nonconforming social
 14 behaviors on the part of either parent or extended family
 15 member in whose care the child may have been left by his
 16 parent or parents or who otherwise has custody in accord-
 17 ance with tribal law or custom, shall not be deemed prima
 18 facie evidence that serious physical or emotional damage to
 19 the child has occurred or will occur. The standards to be
 20 applied in any proceeding covered by this Act shall be the
 21 prevailing social and cultural standards of the Indian
 22 community in which the parent or parents or extended
 23 family member resides or with which the parent or parents
 24 or extended family member maintains social and cultural ties.

25 (c) In the event that the parent or parents of an

1 Indian child consent to a child placement, whether tempo-
 2 rary or permanent, such placement shall not be valid or
 3 given any legal force and effect, unless such consent is
 4 voluntary, in writing, executed before a judge of a court
 5 having jurisdiction over child placements, and accompanied
 6 by the witnessing judge's certificate that the consent was
 7 explained in detail, was translated into the parent's native
 8 language, and was fully understood by him or her. If the
 9 consent is to a nonadoptive child placement, the parent or
 10 parents may withdraw the consent at any time for any
 11 reason, and the consent shall be deemed for all purposes
 12 as having never been given. If the consent is to an adoptive
 13 child placement, the parent or parents may withdraw the
 14 consent for any reason at any time before the final decree
 15 of adoption: Provided, That no final decree of adoption
 16 may be entered within ninety days after the birth of such
 17 child or within ninety days after the parent or parents have
 18 given written consent to the adoption, whichever is later.
 19 Consent by the parent or parents of an Indian child given
 20 during pregnancy or within ten days after the birth of the
 21 child shall be conclusively presumed to be involuntary. A
 22 final decree of adoption may be set aside upon a showing
 23 that the child is again being placed for adoption, that the
 24 adoption did not comply with the requirements of this Act
 25 or was otherwise unlawful, or that the consent to the adoption

1 was not voluntary. In the case of such a failed adoption,
 2 the parent or parents or the extended family member from
 3 whom custody was taken shall be afforded an opportunity
 4 to reopen the proceedings and petition for return of custody.
 5 Such prior parent or custodian shall be given thirty days
 6 notice of any proceedings to set aside or vacate a previous
 7 decree unless the prior parent or custodian waives in
 8 writing any right to such notice.

9 (d) No placement of an Indian child, except as other-
 10 wise provided by this Act, shall be valid or given any legal
 11 force and effect, except temporary placements under circum-
 12 stances where the physical or emotional well-being of the
 13 child is immediately threatened, unless his parent or parents,
 14 or the extended family member in whose care the child may
 15 have been left or who otherwise has custody in accordance
 16 with tribal law or custom, has been afforded the opportunity
 17 to be represented by counsel or lay advocate as required by
 18 the court having jurisdiction.

19 (e) Whenever an Indian child previously placed in
 20 foster care or temporary placement by any nontribal public
 21 or private agency is committed or placed, either voluntarily
 22 or involuntarily in any public or private institution, includ-
 23 ing but not limited to a correctional facility, institution for
 24 juvenile delinquents, mental hospital or halfway house, or is
 25 transferred from one foster home to another, notification

1 shall forthwith be made to the tribe with which the child has
 2 significant contacts and his parent or parents or extended
 3 family member from whom the child was taken. Such notice
 4 shall include the exact location of the child's present place-
 5 ment and the reasons for changing his placement. Notice
 6 shall be made thirty days before the legal transfer of the
 7 child effected, if possible, and in any event within ten days
 8 thereafter.

9 SEC. 102. (a) In the case of any Indian child who
 10 resides within an Indian reservation which maintains a tribal
 11 court which exercises jurisdiction over child welfare matters,
 12 no child placement shall be valid or given any legal force
 13 and effect, unless made pursuant to an order of the tribal
 14 court. In the event that a duly constituted Federal or State
 15 agency or any representation thereof has good cause to be-
 16 lieve that there exists an immediate threat to the emotional
 17 or physical well-being of an Indian child, such child may be
 18 temporarily removed from the circumstances giving rise to
 19 the danger provided that immediate notice shall be given to
 20 the tribal authorities, the parents, and the extended family
 21 member in whose care the child may have been left or who
 22 otherwise has custody according to tribal law or custom. Such
 23 notice shall include the child's exact whereabouts and the
 24 precise reasons for removal. Temporary removals beyond
 25 the boundaries of a reservation shall not affect the exclusive

1 jurisdiction of the tribal court over the placement of an
2 Indian child.

3 (b) In the case of an Indian child who resides within
4 an Indian reservation which possesses but does not exercise
5 jurisdiction over child welfare matters, no child placement,
6 by any nontribal public or private agency shall be valid or
7 given any legal force and effect, except temporary placements
8 under circumstances where the physical or emotional well-
9 being of the child is immediately and seriously threatened,
10 unless such jurisdiction is transferred to the State pursuant
11 to a mutual agreement entered into between the State and
12 the Indian tribe pursuant to subsection (j) of this section.
13 In the event that no such agreement is in effect, the Federal
14 agency or agencies servicing said reservation shall continue to
15 exercise responsibility over the welfare of such child.

16 (c) In the case of any Indian child who is not a resi-
17 dent of an Indian reservation or who is otherwise under the
18 jurisdiction of a State, if said Indian child has significant
19 contacts with an Indian tribe, no child placement shall be
20 valid or given any legal force and effect, except temporary
21 placements under circumstances where the physical or emo-
22 tional well-being of the child is immediately and seriously
23 threatened, unless the Indian tribe with which such child
24 has significant contacts has been accorded thirty days prior
25 written notice of a right to intervene as an interested party

1 in the child placement proceedings. In the event that the
2 intervening tribe maintains a tribal court which has juris-
3 diction over child welfare matters, jurisdiction shall be trans-
4 ferred to such tribe upon its request unless good cause for
5 refusal is affirmatively shown.

6 (d) In the event of a temporary placement or removal
7 as provided in subsections (a), (b), and (c) above, imme-
8 diate notice shall be given to the parent or parents, the custo-
9 dian from whom the child was taken if other than the parent
10 or parents, and the chief executive officer or such other person
11 as such tribe or tribes may designate for receipt of notice.
12 Such notice shall include the child's exact whereabouts, the
13 precise reasons for his or her removal, the proposed place-
14 ment plan, if any, and the time and place where hearings
15 will be held if a temporary custody order is to be sought. In
16 addition, where a tribally operated or licensed temporary
17 child placement facility or program is available, such facili-
18 ties shall be utilized. A temporary placement order must be
19 sought at the next regular session of the court having juris-
20 diction and in no event shall any temporary or emergency
21 placement exceed seventy-two hours without an order from
22 the court of competent jurisdiction.

23 (e) For the purposes of this Act, an Indian child shall
24 be deemed to be a resident of the reservation where his parent
25 or parents, or the extended family member in whose care he

1 may have been left by his parent or parents or who otherwise
2 has custody in accordance with tribal law or custom, is
3 resident.

4 (f) For the purposes of this Act, whether or not a non-
5 reservation resident Indian child has significant contacts
6 with an Indian tribe shall be an issue of fact to be determined
7 by the court on the basis of such considerations as: Member-
8 ship in a tribe, family ties within the tribe, prior residency
9 on the reservation for appreciable periods of time, reserva-
10 tion domicile, the statements of the child demonstrating a
11 strong sense of self-identity as an Indian, or any other ele-
12 ments which reflect a continuing tribal relationship. A finding
13 that such Indian child does not have significant contacts
14 with an Indian tribe sufficient to warrant a transfer of juris-
15 diction to a tribal court under subsection (c) of this section
16 does not waive the preference standards for placement set
17 forth in section 103 of this Act.

18 (g) It shall be the duty of the party seeking a change
19 of the legal custody of an Indian child to notify the par-
20 ent or parents, the extended family members from whom
21 custody is to be taken, and the chief executive of any tribe
22 or tribes with which such child has significant contacts by
23 mailing prior written notice by registered mail to the parent
24 or parents, or extended family member, and the chief executive
25 officer of the tribe, or such other persons as such tribe or

1 tribes may designate: Provided, That the judge or hearing
2 officer at any child placement proceeding shall make a good
3 faith determination of whether the child involved is Indian
4 and, if so, whether the tribe or tribes with which the child
5 has significant contacts were timely notified.

6 (h) Any program operated by a public or private agency
7 which removes Indian children from a reservation area and
8 places them in family homes as an incident to their attend-
9 ance in schools located in communities in off-reservation areas
10 and which are not educational exemptions as defined in the
11 Interstate Compact on the Placement of Children shall not
12 be deemed child placements for the purposes of this Act.
13 Such programs shall provide the chief executive officer of
14 said tribe with the same information now provided to send-
15 ing and receiving states which are members of the Interstate
16 Compact on the Placement of Children. This notification
17 shall be facilitated by mailing written notice by registered
18 mail to the chief executive officer or other such person as
19 the tribe may designate.

20 (i) Notwithstanding the Act of August 15, 1953 (67
21 Stat. 588), as amended, or any other Act under which a
22 State has assumed jurisdiction over child welfare of any
23 Indian tribe, upon sixty days written notice to the State in
24 which it is located, any such Indian tribe may reassume the
25 same jurisdiction over such child welfare matters as any

1 other Indian tribe not affected by such Acts: Provided, That
 2 such Indian tribe shall first establish and provide mecha-
 3 nisms for implementation of such matters which shall be sub-
 4 ject to the review and approval of the Secretary of the Interior.
 5 In the event the Secretary does not approve the mechanisms
 6 which the tribe proposes within sixty days, the Secretary
 7 shall provide such technical assistance and support as may
 8 be necessary to enable the tribe to correct any deficiencies
 9 which he has identified as a cause for disapproval. Follow-
 10 ing approval by the Secretary, such reassumption shall not
 11 take effect until sixty days after the Secretary provides
 12 notice to the State which is asserting such jurisdiction.
 13 Except as provided in section 102(c), such reassumption
 14 shall not affect any action or proceeding over which a court
 15 has already assumed jurisdiction and no such actions or
 16 proceeding shall abate by reason of such reassumption.

17 (j) States and tribes are specifically authorized to enter
 18 into mutual agreements or compacts with each other, respect-
 19 ing the care, custody, and jurisdictional authority of each
 20 party over any matter within the scope of this Act, including
 21 agreements which provide for transfer of jurisdiction on a
 22 case-by-case basis, and agreements which provide for concur-
 23 rent jurisdiction between the States and the tribes. The pro-
 24 visions of the Act of August 15, 1953 (67 Stat. 588), as
 25 amended by title IV of the Act of April 11, 1968 (82 Stat.

1 78) shall not limit the powers of States and tribes to enter
 2 into such agreements or compacts. Any such agreements shall
 3 be subject to revocation by either party upon sixty days writ-
 4 ten notice to the other. Except as provided in section 102(c),
 5 such revocation shall not affect any action or proceeding
 6 over which a court has already assumed jurisdiction and no
 7 such action or proceeding shall abate by reason of such revo-
 8 cation: And provided further, That such agreements shall not
 9 waive the rights of any tribe to notice and intervention as
 10 provided in this Act nor shall they alter the order of prefer-
 11 ence in child placement provided in this title. The Secretary
 12 of the Interior shall have sixty days after notification to
 13 review any such mutual agreements or compacts or any revo-
 14 cation thereof and in the absence of a disapproval for good
 15 cause shown, such agreement, compact, or revocation thereof
 16 shall become effective.

17 (k) Nothing in this Act shall be construed to either en-
 18 large or diminish the jurisdiction over child welfare matters
 19 which may be exercised by either State or tribal courts or
 20 agencies except as expressly provided in this Act.

21 SEC. 103. (a) In offering for adoption an Indian child,
 22 in the absence of good cause shown to the contrary, a prefer-
 23 ence shall be given in the following order: (1) to the child's
 24 extended family; (2) to an Indian home on the reservation
 25 where the child resides or has significant contacts; (3) to an

1 Indian home where the family head or heads are members of
 2 the tribe with which the child has significant contacts; and
 3 (4) to an Indian home approved by the tribe: Provided,
 4 however, That each Indian tribe may modify or amend the
 5 foregoing order of preference and may add or delete prefer-
 6 ence categories by resolution of its government.

7 (b) In any nonadoptive placement of an Indian child,
 8 every nontribal public or private agency, in the absence of
 9 good cause shown to the contrary, shall grant preferences
 10 in the following order: (1) to the child's extended family;
 11 (2) to a foster home, if any, licensed or otherwise designated
 12 by the Indian tribe occupying the reservation of which the
 13 child is a resident or with which the child has significant
 14 contacts; (3) to a foster home, if any, licensed by the Indian
 15 tribe of which the child is a member or is eligible for member-
 16 ship; (4) to any other foster home within an Indian reser-
 17 vation which is approved by the Indian tribe of which the
 18 child is a member or is eligible for membership in or with
 19 which the child has significant contacts; (5) to any foster
 20 home run by an Indian family; and (6) to a custodial insti-
 21 tution for children operated by an Indian tribe, a tribal
 22 organization, or nonprofit Indian organization: Provided,
 23 however, That each Indian tribe may modify or amend
 24 the foregoing order of preferences, and may add or delete
 25 preference categories, by resolution of its government body.

1 (c) Every nontribal public or private agency shall
 2 maintain a record evidencing its efforts to comply with the
 3 order of preference provided under subsections (a) and (b)
 4 in each case of an Indian child placement. Such records
 5 shall be made available, at any time upon request of the
 6 appropriate tribal government authorities.

7 (d) Where an Indian child is placed in a foster or
 8 adoptive home, or in an institution, outside the reservation
 9 of which the child is a resident or with which he maintains
 10 significant contacts, pursuant to an order of a tribal court,
 11 the tribal court shall retain continuing jurisdiction over such
 12 child until the child attains the age of eighteen.

13 SEC. 104. In order to protect the unique rights associ-
 14 ated with an individual's membership in an Indian tribe,
 15 after an Indian child who has been previously placed at-
 16 tains the age of eighteen, upon his or her application to
 17 the court which entered the final placement decree, and in
 18 the absence of good cause shown to the contrary, the child
 19 shall have the right to learn the tribal affiliation of his parent
 20 or parents and such other information as may be necessary
 21 to protect the child's rights flowing from the tribal relation-
 22 ship.

23 SEC. 105. In any child placement proceeding within
 24 the scope of this Act, the United States, every State, every
 25 territory or possession of the United States, and every

1 Indian tribe shall give full faith and credit to the laws of
 2 any Indian tribe applicable to a proceeding under the Act
 3 and to any tribal court orders relating to the custody of a
 4 child who is the subject of such a proceeding.

5 TITLE II—INDIAN FAMILY DEVELOPMENT

6 SEC. 201. (a) The Secretary of the Interior is hereby
 7 authorized, under such rules and regulations as he may
 8 prescribe, to carry out or make grants to Indian tribes and
 9 Indian organizations for the purpose of assisting such tribes
 10 or organizations in the establishment and operation of Indian
 11 family development programs on or near reservations, as
 12 described in this section, and in the preparation and imple-
 13 mentation of child welfare codes. The objective of every
 14 Indian family development program shall be to prevent the
 15 breakup of Indian families and, in particular, to insure
 16 that the permanent removal of an Indian child from the
 17 custody of his parent or parents, or the custody of any
 18 extended family member in whose care he has been left his
 19 parent or parents, or one who otherwise has custody accord-
 20 ing to tribal law or custom, shall be effected only as a last
 21 resort. Such family development programs may include, but
 22 are not limited to, some or all of the following features:

- 23 (1) a system for licensing or otherwise regulating
 24 Indian foster and adoptive homes;
 25 (2) the construction, operation, and maintenance

1 of family development centers, as defined in subsection
 2 (b) hereof;

3 (3) family assistance, including homemakers and
 4 home counselors, day care, after school care, and em-
 5 ployment, recreational activities, and respite services;

6 (4) provision for counseling and treatment of In-
 7 dian families and Indian children;

8 (5) home improvement programs;

9 (6) the employment of professional and other trained
 10 personnel to assist the tribal court in the disposition of
 11 domestic relations and child welfare matters;

12 (7) education and training of Indians, including
 13 tribal court judges and staff, in skills relating to child
 14 welfare and family assistance programs;

15 (8) a subsidy program under which Indian adoptive
 16 children are provided the same support as Indian foster
 17 children; and

18 (9) guidance, legal representation, and advice to
 19 Indian families involved in tribal or nontribal child
 20 placement proceedings.

21 (b) Any Indian foster or adoptive home licensed or
 22 designated by a tribe (1) may accept Indian child place-
 23 ments by a nontribal public or private agency and State
 24 funds in support of Indian children; and (2) shall be
 25 granted preference in the placement of an Indian child in

1 accordance with title I of this Act. For purposes of quali-
 2 fying for assistance under any federally assisted program,
 3 licensing by a tribe shall be deemed equivalent to licensing
 4 by a State.

5 (c) Every Indian tribe is authorized to construct,
 6 operate, and maintain a family development center which
 7 may contain, but shall not be limited to—

8 (1) facilities for counseling Indian families which
 9 face disintegration and, where appropriate, for the treat-
 10 ment of individual family members;

11 (2) facilities for the temporary custody of Indian
 12 children whose natural parent or parents, or extended
 13 family member in whose care he has been left by his
 14 parent or parents or one who otherwise has custody
 15 according to tribal law or custom, are temporarily un-
 16 able or unwilling to care for them or who otherwise are
 17 left temporarily without adequate adult supervision by
 18 an extended family member.

19 SEC. 202. (a) The Secretary is also authorized under
 20 such rules and regulations as he may prescribe to carry
 21 out, or to make grants to Indian organizations to carry out,
 22 off-reservation Indian family development programs, as
 23 described in this section.

24 (b) Off-reservation Indian family development pro-
 25 grams operated through grants with local Indian organiza-

1 tions, may include, but shall not be limited to, the following
 2 features:

3 (1) a system for regulating, maintaining, and
 4 supporting Indian foster and adoptive homes, including
 5 a subsidy program under which Indian adoptive chil-
 6 dren are provided the same support as Indian foster
 7 children;

8 (2) the construction, operation, and maintenance
 9 of family development centers providing the facilities
 10 and services set forth in section 201(d);

11 (3) family assistance, including homemakers and
 12 home counselors, day care, after school care, and em-
 13 ployment, recreational activities, and respite services;

14 (4) provision for counseling and treatment both
 15 of Indian families which face disintegration and, where
 16 appropriate, of Indian foster and adoptive children;
 17 and

18 (5) guidance, representation, and advice to Indian
 19 families involved in child placement proceedings before
 20 nontribal public and private agencies.

21 SEC. 203. (a) In the establishment, operation, and
 22 funding of Indian family development programs, both on or
 23 off reservation, the Secretary may enter into agreements or
 24 other cooperative arrangements with the Secretary of Health,
 25 Education, and Welfare, and the latter Secretary is hereby

1 authorized for such purposes to use funds appropriated
2 for similar programs of the Department of Health, Educa-
3 tion, and Welfare.

4 (b) There are authorized to be appropriated \$26,000,-
5 000 during fiscal year 1979 and such sums thereafter as may
6 be necessary during each subsequent fiscal year in order
7 to carry out the purposes of this title.

8 **TITLE III—RECORDKEEPING, INFORMATION**
9 **AVAILABILITY, AND TIMETABLES**

10 **SEC. 301.** (a) The Secretary of the Interior is author-
11 ized and directed under such rules and regulations as he
12 may prescribe, to collect and maintain records in a single,
13 central location of all Indian child placements which are
14 effected after the date of this Act which records shall show as
15 to each such placement the name and tribal affiliation of the
16 child, the names and addresses of his natural parents and
17 the extended family member, if any, in whose care he may
18 have been left, the names and addresses of his adoptive par-
19 ents, the names and addresses of his natural siblings, and
20 the names and locations of any tribal or nontribal public
21 or private agency which possess files or information concern-
22 ing his placement. Such records shall not be open for inspec-
23 tion or copying pursuant to the Freedom of Information
24 Act (80 Stat. 381), as amended, but information concern-
25 ing a particular child placement shall be made available in

1 whole or in part, as necessary to an Indian child over the
2 age of eighteen for the purpose of identifying the court which
3 entered his final placement decree and furnishing such court
4 with the information specified in section 104 or to the adoptive
5 parent or foster parent of an Indian child or to an Indian
6 tribe for the purpose of assisting in the enrollment of said
7 Indian child in the tribe of which he is eligible for member-
8 ship and for determining any rights or benefits associated with
9 such membership. The records collected by the Secretary pur-
10 suant to this section shall be privileged and confidential and
11 shall be used only for the specific purposes set forth in this
12 Act.

13 (b) A copy of any order of any nontribal public or
14 private agency which effects the placement of an Indian child
15 within the coverage of this Act shall be filed with the Secre-
16 tary of the Interior by mailing a certified copy of said order
17 within ten days from the date such order is issued. In addi-
18 tion, such public or private agency shall file with the Secre-
19 tary of the Interior any further information which the Sec-
20 retary may require by regulations in order to fulfill his
21 recordkeeping functions under this Act.

22 **SEC. 302.** (a) The Secretary is authorized to perform
23 any and all acts and to make rules and regulations as may
24 be necessary and proper for the purpose of carrying out the
25 provisions of this Act.

1 (b)(1) *Within six months from the date of this Act,*
 2 *the Secretary shall consult with Indian tribes, Indian orga-*
 3 *nizations, and Indian interest agencies in the consideration*
 4 *and formation of rules and regulations to implement the pro-*
 5 *visions of this Act.*

6 (2) *Within seven months from the date of enactment*
 7 *of this Act, the Secretary shall present the proposed rules*
 8 *and regulations to the Select Committee on Indian Affairs*
 9 *of the United States Senate and the Committee on Interior*
 10 *and Insular Affairs of the United States House of Repre-*
 11 *sentatives, respectfully.*

12 (3) *Within eight months from the date of enactment*
 13 *of this Act, the Secretary shall publish proposed rules and*
 14 *regulations in the Federal Register for the purpose of receiv-*
 15 *ing comments from interested parties.*

16 (4) *Within ten months from the date of enactment of*
 17 *this Act, the Secretary shall promulgate rules and regula-*
 18 *tions to implement the provisions of this Act.*

19 (c) *The Secretary is authorized to revise and amend*
 20 *any rules and regulations promulgated pursuant to this*
 21 *section: Provided, That prior to any revision or amendment*
 22 *to such rules or regulations, the Secretary shall present the*
 23 *proposed revision or amendment to the Select Committee on*
 24 *Indian Affairs of the United States Senate and the Com-*

1 *mittee on Interior and Insular Affairs of the United States*
 2 *House of Representatives, respectively, and shall, to the*
 3 *extent practicable, consult with the tribes, organizations, and*
 4 *agencies specified in subsection (b)(1) of this section, and*
 5 *shall publish any proposed revisions in the Federal Register*
 6 *not less than sixty days prior to the effective date of such*
 7 *rules and regulations in order to provide adequate notice to,*
 8 *and receive comments from, other interested parties.*

9 **TITLE IV—PLACEMENT PREVENTION STUDY**

10 SEC. 401. (a) *It is the sense of Congress that the*
 11 *absence of locally convenient day schools contributes to the*
 12 *breakup of Indian families and denies Indian children the*
 13 *equal protection of the law.*

14 (b) *The Secretary is authorized and directed to prepare*
 15 *and to submit to the Select Committee on Indian Affairs of*
 16 *the United States Senate and the Committee on Interior*
 17 *and Insular Affairs and Committee on Education and Labor*
 18 *of the United States House of Representatives, respectively,*
 19 *within one year from the date of enactment of this Act, a*
 20 *plan, including a cost analysis statement, for the provision to*
 21 *Indian children of schools located near the students home.*
 22 *In developing this plan, the Secretary shall give priority to*
 23 *the need for educational facilities for children in the ele-*
 24 *mentary grades.*