Chairman ABOUREZK. The administration panel is first: Nancy Amidei and Raymond Butler. We will hear from Mr. Butler first.

STATEMENT OF RAYMOND V. BUTLER, ACTING DEPUTY COMMISSIONER, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY RALPH REESER, OFFICE OF LEGISLATIVE COUNSEL

Mr. BUTLER. Thank you, Mr. Chairman.

I have a prepared statement here that was approved very, very late. I will summarize from that, Mr. Chairman.

We endorse the general concepts of S. 1214.

The placement of Indian children in foster and adoptive homes should be done within the context of their cultural environment and heritage and should insure the preservation of their identity and unique cultural values; and the stability and security of Indian family life should be promoted and fostered. However, I regret that we cannot support the enactment of S. 1214 at this time.

The quantity and quality of support services to vulnerable families generally are not always sufficient to meet the needs of such families and their individual members——

Chairman ABOUREZK. Would you repeat that, Mr. Butler?

Mr. BUTLER. The quantity and quality of support services to vulnerable families generally are not always sufficient to meet the needs of such families and their individual members.

Chairman ABOUREZK. What does that mean?

Mr. BUTLER. Mr. Chairman, this includes Indians.

What I am referring to here, Mr. Chairman, is resources that are available to the Bureau of Indian Affairs and that are available to HEW, as a whole, throughout the United States, as well as the staff support services, to provide services to keep these families intact so that we do not have the deplorable situation that confronts us here today.

Chairman ABOUREZK. And that is your reason for opposing the bill?

Mr. BUTLER. No; I am just making that as a part of the statement, Mr. Chairman.

Chairman ABOUREZK. All right.

Mr. BUTLER. This administration has recognized this general problem. On July 26 of this year, the administration's proposal, "The Child Welfare Amendments of 1977," was introduced as S. 1928. S. 1928 would amend the Society Security Act to establish standards for foster and adoptive placements, and is designed to strengthen and improve child welfare programs throughout the country.

S. 1928 could accomplish many of the objectives and goals set forth in S. 1214, and could assist Indian families in achieving such goals without the concerns found in S. 1214, provided that appropriate amendments can be worked out between HEW and Interior.

Further, HEW, as we understand, recently established the Administration on Children, Youth, and Families, which administers a spectrum of programs for child and family welfare. HEW's authority will be further expanded under S. 1928. The Bureau of Indian Affairs has very few programs in this area by comparison, Mr. Chairman; and

S. 1214 places new requirements on the Secretary of the Interior which may conflict with or duplicate current HEW authorities, as well as the HEW authorities proposed under S. 1928.

Title I of S. 1214 would impose one uniform set of Federal standards over all tribes without considering the wide cultural diversity and values of Indians throughout the country. Further, title I is far more restrictive to tribes than the present system because it increases Federal intrusion into the regulation of tribal domestic matters and sovereignty. We believe, Mr. Chairman, in the spirit of self-determination that——

Chairman ABOUREZK. Would you repeat that last phrase please?

Mr. BUTLER. Yes, Mr. Chairman.

Title I, in our judgment, would impose one set of uniform Federal standards over all tribes without considering the wide cultural diversity and values of Indians throughout the country. Further, title I is far more restrictive to tribes than the present system because it increases Federal intrusion in the regulation of tribal domestic matters and sovereignty. We believe, Mr. Chairman, in the spirit of self-determination, that a reaffirmation by the Congress of the federally recognized Indian tribes legislative and judicial powers in addition to the full faith and credit provision by the Congress would overcome the concept of Federal intrusion into the domestic affairs of the Indian tribe.

However, Mr. Chairman, I must say that although S. 1928 would reform and improve the present system of Federal and State child welfare services and meet many of the goals set out in S. 1214, it does not contain at this time any provisions that specifically deal with Indian children and tribal governments. In recognition of this, it would be our suggestion that Interior and HEW work together to develop any necessary amendments to S. 1928 to meet the special needs of Indian children and their families as is held in the unique special relationship between the Federal Government and the Indian tribes.

Mr. Chairman, that concludes the summary of my written remarks. I would be pleased to respond to any questions.

Chairman ABOUREZK. Thank you.

The next witness is Ms. Nancy Amidei of HEW.

Mr. Butler's entire written statement will be inserted into the record.

[The prepared statement of Mr. Butler follows:]

STATEMENT OF RAYMOND V. BUTLER, ACTING DEPUTY COMMISSIONER, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman, I appreciate the opportunity to appear before this committee today to testify on S. 1214, "The Indian Child Welfare Act of 1977."

We agree that the placement of Indian children in foster and adoptive homes should be done within the context of their cultural environment and heritage and should insure the preservation of their identity and unique values; and the stability and security of Indian family life should be promoted and fostered. However, we cannot support enactment of S. 1214.

The administration has recognized the problem of services to vulnerable families, and on July 26, 1977, the administration's proposal, "The Child Welfare Amendments of 1977," was introduced as S. 1928 in the Senate. S. 1928 would amend the Social Security Act to promote standards for foster and adoptive placements, and is designed to strengthen and improve child welfare programs throughout the country. S. 1928 could accomplish many of the goals set forth in S. 1214, and could assist Indian families in achieving some of these goals without

the concerns found in S. 1214. We defer to the Department of Health, Education, and Welfare as to a further discussion of S. 1928.

Further, HEW recently established the Administration on Children, Youth, and Families, which administers a spectrum of programs for child and family welfare. HEW's authority will be further expanded under S. 1928. The Bureau of Indian Affairs has very few direct child welfare programs, and S. 1214 places new requirements on the Secretary of the Interior which may conflict with or duplicate current HEW authorities, as well as the HEW authorities proposed under S. 1928.

We agree that a very high proportion of Indian children are living in foster care arrangements. However, in the case of the Bureau of Indian Affairs the children are usually placed with Indian foster parents. Information from a study done in 1972 indicates that where the BIA made payments for foster care, about two thirds of foster homes were Indian. This proportion has subsequently increased. The BIA is not an adoption agency but has secured services from the Adoption Resources Exchange of North America (ARENA) for the adoption of Indian children for whom adoptive homes are not available locally. Between Juy 1, 1977 and June 30, 1976, about 90 percent of the children referred to ARENA were placed with Indian adoptive families both on and off reservation. It is generally difficult to locate families for many older or handicapped children, regardless of race, and this problem equally applies to older or handicapped Indian children. This situation has resulted in some placements in non-Indian adoptive homes.

The use of boarding schools for foster care of Indian children is often at the choice of the parents. In the case of some other children, it is the best available placement. We agree that it is desirable that there be less need for care of children away from their parents, but in the foreseeable future, it appears that boarding school placements will continue to be needed for many children who require foster care.

S. 1214 also finds that Government officials involved with Indian child placement are unfamiliar with and disdainful of Indian culture. We would point out that the majority of BIA employees who work with Indian families involved in placement are themselves Indian. S. 1214 further finds that child placement subverts tribal jurisdiction over domestic relations if a tribe has established an Indian court. The BIA honors such jurisdiction, as have several courts, including the U.S. Supreme Court. Further, many tribes have Welfare Committees which participate in or advise BIA social services in matters of Indian child and family development and in foster care activities.

Section 105 of S. 1214 would state what has essentially been upheld by the U.S. Supreme Court and two State Supreme Courts, that is, that tribal court proceeding over areas under tribal jurisdiction should be given full faith and credit in the proceedings of other jurisdictions.

In summary, we feel that enactment of S. 1214 would be duplicative in that it would purport to confer upon tribes and tribal courts authority that they already have; that other Federal agencies already provide (or have the authority to provide) many of the family development services authorized in S. 1214; that efforts are already underway in the BIA to improve Indian child welfare placement standards; that the BIA can already assist tribes in many of the activities authorized by title II of S. 1214 under the broad general authority of the Snyder Act (25 U.S.C. 13) and through Public Law 93-638; and that enactment of the administration's major new child care legislation (S. 1928) will be of assistance to Indians as well as the general population.

However, while S. 1928 would reform and improve the present system of Federal and State child welfare services, and meet many of the goals set out in S. 1214, it does not contain any provisions that specifically deal with Indian children and tribal governments. In recognition of this, Interior and HEW will work together to develop any necessary amendments to S. 1928 for special needs of Indian children and families.

This concludes my prepared statement. I will be glad to respond to any questions that the committee may have.

STATEMENT OF NANCY AMIDEI, DEPUTY ASSISTANT SECRETARY FOR LEGISLATION/WELFARE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, ACCOMPANIED BY FRANK FERRO, OFFICE FOR CHILD DEVELOPMENT

Ms. AMIDEI. Thank you, Mr. Chairman.

I am very glad to be here this morning. I realize that your proposal would create a new child welfare program in Interior rather than HEW, so we are particularly glad that you were willing to take HEW's views into account.

I think that you should know that your request for testimony from HEW came at a particularly timely moment. Just 1 week ago, a bill reflecting a massive review of foster care adoptions and other child welfare services was introduced by Senator Alan Cranston. The number of that bill is S. 1928. Having your proposal before us—S. 1214—has prompted some soul searching with respect to that proposal, and a new look at our initiatives and their value to Indian children in need of protective or other child welfare services.

In my statement this morning, I would like to take up two things briefly. First, for the committee's information, I would like to report on several of the department's activities with relevance to service for Indian children, that were prompted in large part by hearings that this committee conducted in 1974. And then I would like to take up the subject of child welfare, particularly as it relates to S. 1214.

Since the 1974 hearings, the Department of HEW has conducted and reported on the findings of a state-of-the-field survey of Indian child welfare needs and service delivery. The survey examined the activities and policies of 21 States and tried as well to review the training and employment opportunities for Indian professionals in child welfare.

In reporting on the policy implications of its findings, that survey pointed to several of the factors that remain of concern to members of this committee as well as others interested in the field:

First, the need to support increased involvement by tribal governments and other Indian organizations in the planning and delivery of child welfare-related services;

Second, the need to encourage States to deliver services to Indians without discrimination and with respect for tribal culture;

Third, the need for trained Indian child welfare personnel;

Fourth, the need to resolve jurisdictional confusion on terms that will eliminate both the most serious gaps in service and the conflicts between State, Federal, and tribal governments that leave too many children without needed care;

Fifth, the need to find ways to insure adequate funding for services; and

Sixth, the need to assure that insensitivity to tribal customs and cultures is not permitted to result in practices where the delivery of services weaken rather than strengthen Indian family life.

In addition, negotiations are now underway with the National Tribal Chairman's Association for a project that would explore the desirability of amending the Social Security Act to more effectively operate title XX social services programs for Indians. That project is being funded at more than a quarter of a million dollars, and is being conducted because we believe that further documentation of the need for services is of less importance at this point than the development of programmatic alternatives.

At the same time, we are reviewing proposals for a technical assistance contract designed to aid the governing bodies of recognized Indian groups in the development and implementation of tribal codes and court procedures with relevance for child abuse and neglect.

In the current fiscal year, the Secretary has exercised his authority to conduct research and demonstration projects on terms that will provide for a test of alternative methods to improve the ways in which State agencies deliver social services to Indians.

Similar efforts will focus specifically on the delivery of child welfare services in Public Law 280 States, the design of day care standards appropriate to Indian children living on reservations, and the designation of reservations as State planning areas for purposes of the title XX program.

All of these activities, including some that are still being put into operation, are intended to reflect the Department's belief that Indian child welfare services must be based not only on the best interests of the child and support for the family unit—however, that may be defined—but also on a recognition of the need to involve Indians themselves in the provision of services.

But individual projects, however sensitively designed, cannot ever take the place of the support for an adequately financed, official backed, ongoing system that would address the needs of children and support the rights of their families.

As the Secretary of HEW pointed out in announcing the Department's recent child welfare initiatives, none of those desirable features could be said to characterize the present situation in child welfare for children of whatever race or ethnic group.

Until now, the Federal Government has not done enough in the areas of foster care and adoption, providing only minimal support for the efforts of individuals across the States who care about children and who have been willing to fight the battles against outmoded and sometimes conflicting laws. The situation across the country is not a pretty one. Too many children have been taken from their homes, when supportive and preventive services might have allowed them to remain with their families.

Some children who have been appropriately placed in others' homes may be assigned to families too far away to make regular contact a possibility. Too little has been done to work with natural parents after a temporary placement in foster care, thus almost insuring that the children will never be able to come home.

For many children, the decision whether to return the child to the natural family or, when appropriate, free the child for adoption has not been made in a reasonable amount of time. Some children simply float in a kind of legal limbo because their foster parents cannot afford to lose the financial support that unfortunately ends where legal adoption begins.

We have learned that parents and children alike have suffered from the lack of adequate protection against the inappropriate removal of children from their homes, against the sometimes uninformed decisions that determine their placement outside their home, and the nature of the judicial proceedings that may determine the fate of children who come into the orbit of the juvenile courts.

We have seen that there are too few trained workers available, too little guidance for overworked staff, and even some perverse incentives that would seem to encourage social agencies to favor foster care over more permanent, more child-focused situations.

It was for reasons such as these that the administration proposed 2 weeks ago to reorganize this Nation's system of child welfare services in ways that would provide more adequate funding and a better integrated, more rational approach to the kinds of problems that have plagued the families of children in need of temporary or permanent care.

Everything we found in relation to child welfare services generally could be said about services for Indian children—only more so. This committee has remarked on the higher-than-normal rate of foster care and other out-of-home placement experienced by Indian children, the services that are provided in culturally insensitive ways, the placement of Indian children in settings that do not meet their special needs, the failure of public policies to recognize the unique character of Indian family lives.

Thus, while we recognize the concerns which have prompted you to propose a separate program exclusively devoted to the provision of Indian child welfare services, it is precisely because we also recognize the need for a better service system for all children that we would want to urge you to consider, together with us, how we might make that larger system serve their needs as well.

As I mentioned when I began my remarks, your request for testimony from the administration was a particularly timely one. It caused us over at HEW to consider whether the bill that we sent up to Congress, as drafted, would respond to the kinds of concerns that this committee and S. 1214 have raised. You will probably not be surprised to learn that we found some gaps that had not been so apparent before. However, we now believe that we may be able to accomplish some of what you would want to see achieved, but within the context of S. 1928.

We will want to be careful not to further duplicate either funding sources or administrative mechanisms, but we think it might be possible to do better for Indian children through S. 1928 than we have been doing.

The bill that we sent up to Congress would, for example:

State a clearer test for involuntary removal of children from their families and provide greater protections for those families during the course of proceedings;

Create financial incentives in the form of child welfare funds to provide due process protections for child, birth parents, and foster parents, including legal counsel and the payment of legal fees;

Provide services that would enable children to remain home or to return home;

Require a review of all children in foster care for 6 months;

Create in each State an information system that would aid in case management and provide ongoing oversight of children placed outside the homes and make that information available to the public.

It would also establish a new program of federally supported adoption subsidies to enable children with special needs to be adopted, and it would try to create financial disincentives for the inappropriate use of foster care as a holding action for children.

Many of these provisions are not so very different from the objectives behind the provisions set out in S. 1214, particularly in title I, which speaks most directly to matters surrounding the procedures that have led in the past to the arbitrary and sometimes inappropriate removal of children from their homes. But we believe that in S. 1928 we have a useful vehicle for serving the needs of Indian children as well as the needs of other children.

We may want to make some changes in our proposal, but with changes, what we hope will be a more adequately funded, more comprehensive system of child welfare services will also be made more responsive to the needs of Indian children.

I do not have any legislative language with me to propose this morning—we have not settled on any details. But we would like to work together with the staff of this committee, with people from the BIA, with people you might recommend to be involved with us, and try to work out some of the most serious concerns you have within the context of S. 1928.

For example, we share your objectives concerning the need for better safeguards and procedures to protect Indian children and their families. To provide those safeguards, we might consider conforming language in the administration's bill that would take into account the role of tribal courts and tribal governments in the procedures that surround the placement of children outside their homes.

And, we are persuaded that the moneys available for child welfare services have in the past been uncertain, with gaps resulting from the mix of Federal, State, and county systems. We believe we could rethink that as well so that, where appropriate, the new moneys that will become available under the administration's proposal would also become available for Indian children.

We intend to work closely with the BIA and the staff of this committee to determine what changes in S. 1928 might be needed to assure the full participation of, and safeguards for, Indian children under the administration's proposal.

With my prepared testimony, I am submitting for the record a section-by-section analysis of the administration bill so that you can see parallels where they occur.

Chairman ABOUREZK. Your prepared statement and the section-by-section summary of the administration bill will be made a part of the record.

[The material follows:]

STATEMENT OF NANCY AMIDEI, DEPUTY ASSISTANT SECRETARY FOR LEGISLATION/WELFARE

Senator Abourezk, members of the Committee, I am pleased to be able to be here this morning to testify on the subject of Indian child welfare, and your Bill, S. 1214. We realize that your proposal does not directly involve HEW, and we appreciate your taking our views into account.

Your request for testimony from the Department of Health, Education, and Welfare, came at a particularly timely moment. As you no doubt know, the Administration has recently undertaken a major review of foster care, adoptions, and other child welfare services, and just last week a Bill reflecting the results of that review, S. 1928, was introduced by Senator Alan Cranston. Having your proposal before us, S. 1214, has prompted some soul-searching with respect to that proposal, and a new look at our own initiatives from the perspective of their value to Indian children in need of protective or other child welfare services.

In my statement this morning, I would like to deal with two things. First, for the Committee's information, I would like to report on several of the Department's activities with relevance to services for Indian children, that were prompted in large part by hearings that this Committee conducted in 1974. And then I should like to take up the subject of child welfare--particularly as it relates to S. 1214.

Recent HEW Activities Related to Indian Child Welfare Services

Since the 1974 hearings, the Department has conducted and reported on the findings of, a State-of-the-Field survey of Indian Child Welfare needs and service delivery. The survey examined the activities and policies of 21 states, and tried as well to review the training and employment opportunities for Indian professionals in child welfare.

In reporting on the policy implications of its findings, that survey pointed to several of the factors that remain of concern to members of this Committee as well as others interested in the field:

-- the need to support increased involvement by tribal governments and other Indian organizations in the planning and delivery of child welfare-related services;

-- the need to encourage states to deliver services to Indians without discrimination and with respect for tribal culture;

-- the need for trained Indian child welfare personnel;

-- the need to resolve jurisdictional confusion on terms that will eliminate both the most serious gaps in service and the conflicts between State, Federal, and tribal governments that leave too many children without needed care;

-- the need to find ways to ensure adequate funding for services;

-- the need to assure that insensitivity to tribal customs and cultures is not permitted to result in practices where the delivery of services weaken rather than strengthen Indian family life.

Negotiations are underway now with the National Tribal Chairman's Association for a project that would explore the desirability of amending the Social Security Act--to more effectively operate Title XX social services programs for Indians. That project is being funded at more than a quarter of a million dollars, and is being conducted because we believe that further documentation of the need for services is of less importance at this point than the development of programmatic alternatives.

At the same time, we are reviewing proposals for a technical assistance contract designed to aid the governing bodies of recognized Indian groups in the development and implementation of tribal codes and court procedures with relevance for child abuse and neglect.

In the current fiscal year, the Secretary has exercised his authority to conduct research and demonstration projects on terms that will provide for a test of alternative methods to improve the ways in which state agencies deliver social services to Indians.

Similar efforts will forcus specifically on the delivery of child welfare services in P.L. 280 States, the design of day care standards appropriate to Indian children living on reservations, and the designation of reservations as State planning areas for purposes of the Title XX program.

All of these activities, including those that are still being put into operation, are intended to reflect the Department's belief that Indian child welfare services must be based not only on the best interests of the child and support for the family unit -- however that may be defined -- but also on a recognition of the need to involve Indians themselves in the provision of services.

Child Welfare Initiatives

But individual projects, however sensitively designed, cannot take the place of support for an adequately financed, officially backed, on-going system to address the needs of children, and to support the rights of their families.

As the Secretary pointed out in announcing the Department's recent child welfare initiatives, none of those desirable features could be said to characterize the present situation in child welfare, for children of whatever race or ethnic group. Until now, the Federal government has not done enough in the areas of foster care and adoption--providing minimal support for the efforts of individuals throughout the States who care about children, and who have been willing to fight the battles against out-moded and sometimes conflicting laws.

The situation across the country is not a pretty one. Too many children have been taken from their homes when

supportive and preventive services might have allowed them to remain with their families. Those children who have been appropriately placed in others' homes, may be assigned to families too far away to make regular contact a possibility. Too little has been done to work with natural parents after a temporary placement in foster care -- thus almost ensuring that the children will never be able to come home. For many children, the decision whether to return the children to their natural families, or, when appropriate, free them for adoption, is not made in a reasonable amount of time. Some children simply float in a kind of legal limbo because their foster parents cannot afford to lose the financial support that ends where legal adoption begins.

We have learned that parents and children alike have suffered from the lack of adequate protection against the inappropriate removal of children from their homes, against the sometimes uninformed decisions that determine the placement outside their homes, and the nature of the judicial proceedings that may determine the fate of children who come into the orbit of the juvenile courts.

We have seen that there are too few trained workers available, too little guidance for over-worked staff, and even some perverse incentives that would seem to encourage social agencies to favor foster care over more permanent, more child-focused solutions.

It was for reasons such as these that the Administration proposed two weeks ago to reorganize this nation's system of child welfare services in ways that would provide more adequate funding and a better-integrated, more rational approach to the kinds of problems that have plagued the families of children in need of temporary or permanent care.

Everything we found in relation to child welfare services could be said about services for Indian children -- and more. This Committee has remarked on the higher-than-normal rate of foster care and other placement outside the home experienced by Indian children, the services that are provided in culturally insensitive ways, the placement of Indian children in settings that do not meet their special needs, the failure of public policies to recognize the unique character of many Indian families' lives.

Thus, while we recognize the concerns which have prompted you to propose a separate program exclusively devoted to the provision of Indian child welfare services, it is precisely because we also recognize the need for a better service system for <u>all</u> children that we would urge you to consider, together with us, how we might make that larger system serve their needs.

As I mentioned earlier in my remarks, your request for Administration testimony was a timely one. It has caused us to consider whether the Bill that we sent up to Congress, as drafted, would respond to the kinds of concerns that this Committee, and S. 1214, have raised. You will perhaps not be surprised to learn that we found some gaps that had not been so apparent before. However, we now believe that we may be able to accomplish some of what you would want to see achieved.

We will want to be careful not to further duplicate either funding sources or administrative structures, but we think it may be possible to help Indian children through S. 1928.

The Bill that we sent up to Congress would, for example,

-- state a clearer test for involuntary removal of children from their families;

-- create financial incentives (in the form of extra child welfare funds) to:

  * provide due process protections for child, birth parents, and foster parents;

  * provide services that would enable children to remain home or to return home;

  * call for a one-time review of all children in foster care for six months;

  * create in each State an information system that will aid in case management and provide on-going oversight of children placed outside their homes;

-- establish a new program of federally-supported adoption subsidies to enable children with special needs to be adopted;

-- create financial disincentives for the inappropriate use of foster care as a "holding action" for children.

Many of these provisions are not so very different from the provisions set out in S. 1214, particularly in Title I, which speaks most directly to matters surrounding the procedures that have led in the past to the arbitrary and sometimes inappropriate removal of children from their homes. But we believe that in S. 1928 we have a suitable vehicle for serving the needs of Indian children as well as the needs of others.

We may have to make some changes in our proposal, but with changes, what we hope will be a more adequately funded, more comprehensive system of child welfare services will also be more responsive to the needs of Indian children.

I don't have any legislative language with me to propose this morning; we have not settled on any details. But we would like to work together with the staff of this Committee and individuals whom you might recommend to try and meet some of your most serious concerns within the context of S. 1928. For example:

We share your objectives concerning the need for better safeguards and procedures to protect Indian children and their families. To provide those safeguards we might consider conforming language in the Administration's bill

that would take into account the role of tribal courts and tribal governments in the procedures that surround the placement of children outside their natural homes.

And, we are persuaded that the monies available for child welfare services have in the past been uncertain, with gaps resulting from the Federal, State, and County systems. We believe we could re-think that as well so that, where appropriate, the new monies that will become available under the Administration's proposal would also become available for Indian children.

We intend to work closely with the BIA and the staff of this Committee to determine what changes in S. 1928 might be needed to assure the full participation of, and safeguards for, Indians, under the Administration's proposal.

With my testimony this morning, I am submitting a section-by-section analysis of the Administration's child welfare proposals so that you can see the parallels where they occur.

I will, of course, be pleased to try and answer any questions that the Committee may have.

Thank you.

SECTION-BY-SECTION SUMMARY

The first section of the draft bill would provide the short title of the Act—the "Child Welfare Amendments of 1977".

Section 2 of the draft bill would amend title IV of the Social Security Act by adding at the end of that title a new part which would authorize a program of Federal financial assistance to States for foster care and adoption assistance. Currently, State foster care programs are assisted with Federal funds available under the aid to families with dependent children (AFDC) program, and there is no Federal program designed specifically to help States encourage adoptions. Following is a summary of each section which would be contained in the new part E.

Section 470(a) of the part would provide the State plan requirements which must be satisfied for participation in the foster care and adoption assistance programs. Most of the provisions parallel requirements currently applicable to foster care programs under the State plan provisions for AFDC. They include requirements pertaining to "statewideness" (the programs must be in effect throughout the State), personnel standards based on merit, State reports to the Secretary, periodic evaluations of the programs, and confidentiality of individual records.

There are also several new provisions. They include the requirements (1) that the State agency which is responsible for the child welfare service program (authorized by title IV–B of the Social Security Act) and the social services program (authorized by title XX of the Social Security Act) also administer the new part E programs; (2) that the State will assure appropriate coordination between the new programs and other related programs; (3) that the State agency will bring to the attention of the appropriate court or law enforcement agency conditions which would endanger any child assisted under the part E programs; (4) that the title XX standards which apply to child-care institutions and foster care homes would also apply to such entities when assisted under part E; (5) that an individual denied benefits offered under the programs will be informed of the reason for the denial; and (6) that the State will arrange for periodic independent audits of its programs under part E.

Section 470(b) of that part would require the Secretary to approve a State plan which met the statutory conditions. In the case of a State which later fell out of compliance with the statutory requirements, the Secretary would have the flexibility to reduce the Federal payment to the State under part E by an appropriate amount, or cease making the payments entirely, until the State corrected its failure.

Section 471 of part E would describe the foster care maintenance program which a State must provide under its State plan. In many respects, the program would not differ from the one currently authorized as part of the AFDC program under section 408 of the Social Security Act. Following are the major innovations which would characterize the revised program: (1) Federal reimbursement would be provided with respect to children voluntarily placed in foster care or placed initially on an emergency basis; (2) findings to be included in judicial determinations which serve as the basis for placement in foster care would be specified; (3) the requirements for the individual case plan for each child in foster care would be strengthened; and (4) federal reimbursement would be permitted with respect to foster care provided by public institutions, so long as any such institution accommodated no more than 25 children. As under current law, children receiving foster care under part E would retain their Medicaid eligibility.

Section 472 of part E would describe the adoption assistance program which a State must provide under its State plan. Under the program, a State would be responsible for determining which children in the State in foster care would be eligible for adoption assistance because of special needs which have discouraged their adoption. The State would have to find that any child would have been receiving AFDC but for the child's removal from the home of his relatives; that the child cannot or should not be returned to that home; and that, after making a reasonable effort consistent with the child's needs, the child was not adopted without the offering of financial assistance. In the case of any such child, the State would be able to offer adoption assistance to parents who adopt the child, so long as their income does not exceed 115 percent of the median income of a family of four in the State, adjusted to reflect family size.

The agency administering the program could make exceptions to the income limit where special circumstances in the family (as defined by regulation) warrant adoption assistance. The amount of the adoption assistance would be agreed upon between the parents and the agency, could not exceed the foster care maintenance payment that would be paid if the child were in a foster family home, could be readjusted by agreement of the parents and the local agency to reflect any changed circumstances, and could initially include an additional payment to cover the non-recurring expenses associated with the adoption of the child. Adoption assistance payments would not be paid after the child reached maturity, or for any period when the family income rose above the specified limits. Finally, a child who the State determines has a medical condition, which contributed to the finding that he is a child with special needs, would retain his Medicaid eligibility until he reached maturity. It should be noted that, as is the case with other Medicaid recipients under current law, if there is a family insurance contract that covers the child, Medicaid would only provide coverage in excess of what is covered by the insurance policy. Furthermore, the Administration continues to favor the provision in H.R. 3 that would prohibit discrimination against insured medicaid recipients by their insurance providers.

Secton 473(a) of part E would authorize appropriations for carrying out the programs authorized by part E. In the first two fiscal years of the program, 1978 and 1979, there would be authorized an appropriation of a sum necessary to pay each State the Federal share of whatever expenses are incurred in establishing and maintaining the part E programs.

During the five succeeding fiscal years, the authorization level would go up by ten percent each year, and beginning in fiscal year 1985 would be maintained at the fiscal year 1948 level.

Section 473(b) of part E would provide for the allotment to States of the funds appropriated. For the first two fiscal years of the program, there would be no limitation to the allotment—a State would be paid the Federal share of its expenditures under its State plan approved under part E. For the next five succeeding fiscal years a State would be entitled to an allotment each year which would be ten percent higher than the previous year's allotment. Beginning with fiscal year 1985, there would be no automatic annual increase in allotments.

Section 474 of part E would provide for payments to the States. For the first two fiscal years of the program, a State with an approved plan under part E would be paid the Federal share (as determined for purposes of the Medicaid program) of the cost of the program. For each fiscal year thereafter, the payment to a State would be limited by the amount of its allotment. Two other modifications would become effective beginning in fiscal year 1980—the Federal payment with respect to expenditures for child-care institutions which accommodate more than 25 children would be reduced to eighty percent of the payment as calculated in the first two fiscal years, and sums allotted to a State for purposes of part E which the State does not claim under part E could be claimed by the State under part B. As is currently the case under AFDC foster care, the Federal government would provide 75 percent reimbursement for training State employees to administer the plan, and 50 percent reimbursement for other administrative expenses.

Section 475 of part E would provide the definitions of certain terms used in part E or part B of title IV. Terms which are defined include "administrative review", "case plan," "voluntary placement agreement," "adoption assistance agreement," and "foster care maintenance payment."

Section 476 of part E would authorize an appropriation of $1.5 million annually to permit the Secretary to provide technical assistance to States to assist them in developing the programs called for in part E; to make grants to, or enter contracts with, the State agencies to develop interstate systems for the exchange of information pertaining to foster care and adoptions; and to evaluate the programs authorized under part B and part E of title IV. The Secretary, pursuant to this section, would publish periodically data pertaining to foster care and adoptions.

Section 477 of part E would limit the time period for the filing of claims for reimbursement by the Federal Government to two fiscal years following the fiscal year in which the expenditure was made.

Section 2 of the draft bill would also repeal section 408 of the Social Security Act, the provision of law which currently authorizes Federal reimbursement for State foster care programs.

Section 3 of the draft bill would amend part B of title IV of the Social Security Act—the part which authorizes Federal reimbursement for State child welfare services programs. The amendment would limit the amount of a State's payment under part B which the State could spend for foster care maintenance

payments, adoption assistance payments, and employment related day care services to the amount which the State was actually paid under part B for expenditures in fiscal year 1977.

Section 4 of the draft bill would amend part B to convert the child welfare services program under that part to a State "entitlement" program, based upon the current annual appropriations authorization level of $266 million (but limited by certain conditions specified in section 6 of the draft bill). During this fiscal year, $56.5 million will be paid to the States pursuant to part B.

Section 5 of the draft bill would amend part B to modify the Federal share of State costs under the child welfare services program. Currently, the rate of federal reimbursement is related to the per capita income in each State, and generally ranges between about 40 percent and 60 percent. Under the amendment which would be made by section 5, Federal reimbursement would be 75 percent of expenditures for each State.

Section 6 of the draft bill would amend part B to specify the conditions under which States would be paid the additional sums, which would be authorized by the draft bill, beyond the amounts available for fiscal year 1977. Thirty percent of the additional sums would be available beginning in fiscal year 1978. States would be able to use that money for any purposes permitted under part B. However, the intent is to provide increased sums to the States to enable them to give priority to establishing certain systems and procedures—including information systems, case review systems, service programs to help children stay with, or return to, their families, and procedural safeguards to protect the rights of parents, children, and foster parents. States would also be expected to conduct a one time inventory of children in foster care.

Once these steps have been accomplished, but not before fiscal year 1979, a State would be eligible for the full amount of its allotment under part B, based on an appropriation of $266 million. A State eligible for its full payment would be required to meet two conditions: (1) an amount equal to at least 40 percent of the money it is paid in excess of the amount it received for fiscal year 1977 would need to be spent for services designed to help children stay with, or be returned to, their families, and (2) in any fiscal year, a State may not be paid in excess of the amount it was paid in fiscal year 1977 if the State spends less from State sources in that year for child welfare services than it spent from State sources in fiscal year 1977.

Section 7 of the draft bill would make two conforming changes to the State plan requirements for part B. It would require (1) that once a State had met the conditions for receipt of its full allotment under part B, the State would maintain the systems and procedures it had developed, and (2) that any requirements applicable to foster care maintenance payments or adoption assistance payments under part E would also be applicable to payments under part B which are used for those purposes. The purpose of the latter amendment is to assure that children in foster care, or who are adopted, with assistance under part B will be treated the same as children in foster care, or who are adopted, with assistance under part E.

Section 8 of the draft bill would repeal the reallotment provision currently in part B of title IV.

Section 9 of the draft bill contains some technical conforming changes. For example, whereas current law requires a State to have a foster care program under section 408 of the Social Security Act as a condition for participation in AFDC, under the draft bill the reference in the State plan for AFDC would be to foster care and adoption assistance payments in accordance with part E.

Section 9 of the draft bill would also require the Secretary to submit a report on the implementation of the amendments contained in the draft bill by March 1, 1980, and would provide an effective date for the draft bill of October 1, 1977. Finally, section 9 would provide that funds appropriated and allotted to States under part B for fiscal year 1978 would remain available for expenditure by the States through fiscal year 1979.

Ms. AMIDEI. I would, of course, be glad to answer any questions.

Thank you.

Chairman ABOUREZK. Thank you very much for your testimony.

I assume, and correct me if I am wrong, that OMB cleared both statements.

Ms. AMIDEI. Yes, Senator.

Chairman ABOUREZK. So, the administration position is set out in both statements by the BIA and by HEW?

Ms. AMIDEI. Yes.

Chairman ABOUREZK. Perhaps, then, you can explain to me why the Bureau of Indian Affairs has testified this morning that the Federal Government is becoming concerned that Indian child welfare is an intrusion when BIA says it, and it is not an intrusion when HEW says it.

It is an inconsistency to me. Perhaps you could explain that.

Ms. AMIDEI. I think I would have to ask the BIA to explain that.

Chairman ABOUREZK. I would like to hear both of you speak to that, if you would.

Mr. BUTLER. Mr. Chairman, what we had in mind was that, in title I, there are certain sets of standards that are imposed uniformly throughout. They may well be very appropriate standards.

What we are suggesting, Mr. Chairman, is the conceptualization of that in terms of a Federal intrusion. I have no quarrel whatsoever professionally, Mr. Chairman, with the standards that are enunciated there. It is my judgment that, in our era of self-determination, these should be established, both legislatively and judicially, by the respective Indian tribes themselves.

I feel that it would be a great deal more meaningful to the Indian people for members of that particular tribe to have such standards established by their own tribal council or through their own judicial process.

We have, Mr. Chairman, I think once and for all adjudicated all the way to the Supreme Court the issue of according full faith and credit to tribal judicial and legislative actions. I would be reluctant or remiss if I did not say that, in certain instances, this will probably be challenged from time to time; but, in my professional judgment, this has been established judicially.

The full faith and credit provisions, however, Mr. Chairman, for example, of those tribes that reside in Public Law 280 States, that Ms. Amidei referred to in her remarks, would need to be applied to the legislative process, similar to that full faith and credit provision that States now afford to their sister States relative to their legislative process.

Let me give you an example. If the Warm Springs Tribe in Oregon sets forth legislative standards for the provision of child welfare services to the members of their tribe, any action that would take place by a county or State child welfare program in the State of Oregon would be required to give full faith and credit to those legislative standards established by the Warm Springs Tribe.

Chairman ABOUREZK. Section 1, title I, which you say is an intrusion, states that, except for temporary placements and emergency situations, no child placement shall be valid or given any legal force and effect unless made pursuant to an order of the tribal court.

Are you prepared to say that someone besides the tribe or its legal institutions knows better what to do with Indian children than that particular institution or tribe?

Mr. BUTLER. Mr. Chairman, the actions of a tribal court are taken into conformity with those types of ordinances or codes that are estab-

lished by the legislative process of that tribal council. And the tribal court operates within that context.

I have no question, Mr. Chairman, in that instance, that is the very best approach.

Chairman ABOUREZK. Then how is that a Federal instrusion?

I really fail to understand why you call it a Federal intrusion.

Mr. BUTLER. In that instance, Mr. Chairman, if the tribe acts themselves—I am not saying I do not think per se that it is necessarily a Federal intrusion. It is viewed in some instances as a Federal intrusion.

Chairman ABOUREZK. By whom?

Mr. BUTLER. By some of the Indian community.

They want the opportunity to establish those themselves.

Chairman ABOUREZK. You mean the tribe?

Mr. BUTLER. The tribe.

Chairman ABOUREZK. Well, that is precisely what this says.

Mr. BUTLER. That is right.

Chairman ABOUREZK. And you just said that the tribal court would not necessarily follow the legislative mandates of the tribal council or whatever legislature it might have.

Mr. BUTLER. That is correct.

Chairman ABOUREZK. You are dancing all around it, but you are not getting to it.

What is wrong with the tribal council and the tribal court enforcing a tribal council ordinance?

Mr. BUTLER. If the tribal council has the ordinance.

Chairman ABOUREZK. If the tribal council passes the ordinance?

Mr. BUTLER. Yes.

Chairman ABOUREZK. How else would the tribal court act, except by ordinance?

Mr. BUTLER. Mr. Chairman, section 101(a) merely gives full faith and credit recognition. I think the comments relative to the view of Federal intrusion is relative to sections 101(b) and 101(c), where the tribes can establish those being accorded, the intervening parties, and so on.

Chairman ABOUREZK. Are you saying that the requirement that the tribe have 30 days' notice of any kind of placement of an Indian child and that the tribe be given that notice is a Federal intrusion?

Mr. BUTLER. That would require the 30 days. The tribe may wish to set 10 days. The tribe may wish to set 20 days. They may wish to set 60 days.

Chairman ABOUREZK. But are you saying that is a Federal intrusion—setting the number of days during which the tribe can intervene?

Mr. BUTLER. It is viewed in the Indian community, Mr. Chairman, by some of those as a Federal intrusion into the domestic affairs.

I think it is a conceptual thing rather than a factual thing, Mr. Chairman.

Chairman ABOUREZK. And in section 101(c): What do you see as the intrusion there?

Mr. BUTLER. Mr. Chairman, you have the 30-day, the eligibility for membership, et cetera. In certain instances, in my professional experience, Mr. Chairman, I have had some unwed mothers who have not

wished to go for a tribal membership because of the problems that it might create in terms of confidentiality. There are some instances of this kind.

Chairman ABOUREZK. Then you are saying that, by establishing this minimal procedure, it is a Federal intrusion and that you are, in effect, favoring an alternative. That alternative is that the tribes will have no voice whatsoever in how Indian children are placed.

Now, that is the only conclusion that I can draw from your statement.

Mr. BUTLER. No, Mr. Chairman.

What I am saying is that the tribes should have this exclusively. But the problem that has belied us is in giving full faith and credit to those tribal provisions. Absolutely, the tribes should have this exclusively.

Chairman ABOUREZK. Do you have a problem in giving full faith and credit to the tribal court order?

Mr. BUTLER. Indeed I do not, Mr. Chairman. But, as I say, it has been challenged. We have had court decisions on it. Judicially, I think that is now resolved. It has gone all the way to the Supreme Court.

As I said, I would be remiss if I did not say to the committee that I would expect in the future we will continue to have certain challenges. But, in my judgment, judicially, that has definitely been resolved.

Chairman ABOUREZK. Is that a reason for not passing legislation—that there might be a challenge in court to the legislation?

Mr. BUTLER. Not judicially, Mr. Chairman.

The lack of full faith and credit comes about, Mr. Chairman, in the legislative process, in recognizing the standards that are established through the legislative process by a tribal council who may not have a tribal court.

Chairman ABOUREZK. Would you answer the question?

Is that a reason? Is the prospect of a challenge to the legislation, or to the effect of it, a reason not to pass the legislation?

Mr. BUTLER. No, sir; it is not.

Chairman ABOUREZK. What do you estimate the cost of S. 1214 to be?

Mr. BUTLER. Mr. Chairman, we work with staff to estimate costs which are identified in title II of S. 1214. In the authorization of the program, there is $21.8 million in fiscal 1978, $23.7 million in 1979, and $25.1 million in 1980. And in the defense section, there is $18 million in fiscal year 1979, $20 million in 1980, and $22 million in fiscal year 1981.

We did not estimate any costs in title I, which in my judgment for the Bureau of Indian Affairs would be negligible. However, relative to 101(b) and 101(c), I would need to defer to HEW in terms of estimating any additional staff costs they may have in the States on that.

Ms. AMIDEI. I am sorry, but I do not have estimates. We could try and get some for you, if you would like.

Chairman ABOUREZK. As far as S. 1928 is concerned—the administration bill—what would be the cost of the Indian portion of that proposal?

Ms. AMIDEI. Senator, I do not think there has been any attempt to break out what price or what cost there would be for individual

groups. We have total costs, and we know what kind of new money we are going to put in, but it has not been broken down that way.

Chairman ABOUREZK. I have not read your proposal because I just found out about it this morning.

What does it contain with regard to the placement and adoption of Indian children?

Ms. AMIDEI. It does not refer specifically to any particular ethnic group. But it does provide a number of protections that I think get to some of the same kinds of concerns you are raising in your title I.

Chairman ABOUREZK. What are those?

Ms. AMIDEI. Incidentally, if I can go back for a second. You had asked about the issue of whether or not there has sometimes been intrusive Federal action when children are removed from their homes. I cannot answer on the same kinds of terms, but the Department of Interior can. I cannot speak for them, of course.

When HEW conducted its review of child welfare, foster care, adoption kinds of activities generally, I think they probably would be able to say that the ways in which some public moneys have been used have been intrusive in family lives. It is simply because we did not provide for protections for those families and for their children in the kinds of terms that we would like to see them.

It was because of some of those kinds of concerns that we made our proposal in the first place. Some of the things that would be growing out of our proposal that would relate to protections in particular are, first of all, in the instance in which there would be a voluntary foster care placement outside the home, there could only be Federal support for those voluntary foster care placements if all the parties had a binding, written, clearly expressed, and mutually understood agreement. Second, within 180 days, a judicial or administrative determination would have to be made whether or not that placement should continue.

We would require that any child placed outside their home be placed in the least restrictive, most familylike setting and in close proximity to their natural parents' home, if possible. We would make available for the first time Federal support for the placement of children in foster care in the homes of relatives. In the past, many States have not recognized that. Now we would be prepared to recognize that.

We would increase the Federal match to 75 percent, which would help some areas that have not been able to get into foster care and adoption in a big way because of the excessive cost at the local match.

In addition, to be eligible for new money under this program, the States would be required to conduct an inventory of all the children in foster care under State responsibility within 6 months. They would have to determine whether those placements are appropriate, whether they should be ended, or whether they should be changed.

That inventory, including demographic information—the background of the children, their age, the placement in terms of race, ethnic, religious, whatever—would have to be made public. Other groups could take advantage of it.

They would have to establish a statewide information system, including information about all the children in placement.

They would have to review the status of each child no less frequently than every 6 months.

They would have to establish a service plan to prevent the removal of children from their families, or to reunite families wherever that is appropriate.

They would have to see that children who cannot be returned home are not made to linger in foster care indefinitely.

They would require that the States establish due process procedures that would include the right to a hearing within 18 months of placement, would provide parents and other interested parties with notice of proceedings, the nature of the proceedings, and, if necessary, with counsel that would be paid for. Legal services would be paid for if there were going to be an adoption process undertaken.

All the parties involved must be informed of every step along the way.

Finally, there was a provision that was aimed at trying to be sure that families would not lose adoptive or foster care rights simply because they did not have a lot of money, and that other families that did have more money should not automatically get preference in the case of finding adoptive homes.

Chairman ABOUREZK. We conducted extensive hearings on this question in 1974. We did oversight hearings at the time because we did not have a bill introduced at that point.

The major abuse in regard to Indian children on which we received testimony was that social welfare agencies—non-Indian agencies—totally failed to understand what it was like for an Indian child to grow up in an Indian home. They consistently thought that it was better for the child to be out of the Indian home whenever possible.

There was count after count of abuse in that regard.

The bill, S. 1214, seeks to redress that abuse. Do you agree or disagree that that abuse ought to be ended?

Ms. AMIDEI. As a matter of fact, that is something I raised with some of the lawyers back at HEW. Although they did not give me anything official, they said that they would like to look at the civil rights statutes to be sure that we were not somehow creating problems in terms of civil rights law because we could not, for example, require the placement of white children only with white families or black children only with black families. They were going to look into that for me.

If you like, I will supply that for the record.

Chairman ABOUREZK. You mean with regard to S. 1214?

Ms. AMIDEI. I simply raised the question of whether or not we would support the notion of requiring in law—for example, in our proposal, the requirement that children of particular ethnic groups or racial groups be placed in similar families. They said they would look into it.

Chairman ABOUREZK. Would you answer the question then, after having said that?

Do you agree or disagree that that abuse ought to be ended so far as Indian families are concerned?

Ms. AMIDEI. I cannot answer that at the moment, Senator. I do not know whether or not we can say that in terms of our requirements under the Civil Rights Act. But I can supply that for the record, if you would like.

Chairman ABOUREZK. Mr. Butler?

Mr. BUTLER. Mr. Chairman, I would like to comment. Ms. Amidei can correct me if I am wrong; but, as I read the analysis of S. 1928, one of the provisions would provide the foster care rate of payment to a number of those child placements made in settings with relatives. This is one of the very strong recommendations and one of the very positive parts of S. 1928, that I see, in that the extended family is still very, very much alive in the Indian community. There are a number of grandmothers, aunts, uncles, and brothers or sisters, Mr. Chairman, that are providing care for Indian children.

Is that not correct—in the proposed provision?

Ms. AMIDEI. Yes; that is true.

In the past, there has not been Federal support for children who have been placed in foster care settings in the home of a relative. Under S. 1928, that would be possible for the first time.

Mr. BUTLER. Mr. Chairman, if I may, I would like to comment that historically I have found over the years that a number of the other Federal agencies are utilizing the domestic systems of delivering services. For example, about a year and a half ago, when we were discussing certain Indian provisions of title XX, the comment was made that, if we provide this type of service for the Indian people, we will be compelled to provide it for the blacks, for the Spanish, for the Mexican-Americans.

One comment that I would like to leave with you, Mr. Chairman, is that I think we must, once and for all, give full recognition to the unique Federal relationship to Indian people and remove the special programs for Indian people from the concept that it is on an ethnic or a racial basis. It is not, Mr. Chairman.

Chairman ABOUREZK. I appreciate that statement. I think you are absolutely right.

I do not think that the civil rights laws would apply in this instance because of the modified sovereignty concept that Indian tribes are in possession of at this time.

Ms. AMIDEI. That might be. I know that the lawyers that I asked said that they did not know off the top of their heads, and they had not gotten back to me by this morning.

Chairman ABOUREZK. You indicated that you would like to adopt some of the provisions of S. 1214 to the administration bill (S. 1928). I do not know how you intend to do that. Your bill amends the Social Security Act and goes into the Finance Committee. The Indian Affairs Committee has sole jurisdiction over Indian matters in the Senate.

I do not know how you propose to do that and allow the Finance Committee, which has had no experience dealing in Indian affairs and, in fact, has no jurisdiction over it, to operate on a bill dealing with the Indian tribes and Indian families.

Ms. AMIDEI. It would work a little differently, Senator. I do not propose to take wholesale sections out of one bill nor would I propose to do anything that would suggest that we would be taking over responsibilities from the BIA or things that you would want to see handled by the BIA.

But I think it would be possible—without knowing exactly how it would work out—to take our proposal and make it more responsive to the needs of Indian children in ways that involve the recognition of tribal governments or tribal courts in these legal proceedings and

the protective elements of placing children outside the home, for example, or in trying to work out more creative ways to insure that the moneys available generally would also be available on behalf of Indian children in ways that they are not now.

Chairman ABOUREZK. I will take you up on your offer to work together. I think we can work out something so that the procedures will remain intact and, yet, allow the incentives that you are talking about for adoption and child placement to be worked out through your bill.

Ms. AMIDEI. Obviously, you may still choose to pursue other kinds of things. I realize that just because we have said something, you don't necessarily accept it.

I cannot emphasize too strongly what a healthy thing it was that we were confronted with the fact that we had to deal with your proposal at the same time we were dealing with ours. We had to take a new look. We did find that we had not been careful enough to make sure that the kinds of things we were proposing generally were going to be as helpful as they ought to be particularly. So, we obviously cannot do everything that you would want to do; but we can do a better job of what we were going to do.

I think we are certainly prepared to work with you in trying to do that.

Chairman ABOUREZK. I have one more question for the Department of Health, Education, and Welfare.

Before I ask that, the Indian witnesses have requested that all the administration people remain to hear their testimony. I think it would be very valuable for you to hear them. Much better than me preaching to you about abuses of child welfare. So, I would hope that you would be able to do that and stay here.

Ms. AMIDEI. I may have to leave for about 10 minutes, but I will come back.

Chairman ABOUREZK. Fine.

During the hearings in 1974, HEW testified that at that time the Department did not have any real planning or programing designed to address the special needs of Indian communities. At that time, I specifically asked the Department that they develop such policies and programing and said that I would be interested in knowing what the Department has done.

I would like to know if you have developed anything during the past 3 years since that promise from HEW. Has anything been developed at all?

Ms. AMIDEI. Senator, I do not know any detail. Again, that is something I could check back at the Department about.

The kinds of things that have been put into effect are to establish moneys for training professional Indian child welfare people, for example, or to try to do what the Department likes to call "capacity building"—which I think covers a multitude of sins—or to do the kinds of things that would help provide for involvement of Indian groups in the planning and design of social welfare services, which at this point are in the nature of demonstration projects, research projects, and that sort of thing.

But I suspect that that would be the answer to your question.

Chairman ABOUREZK. Well, if you want to let us know later on——

Ms. AMIDEI. Yes.

Chairman ABOUREZK. Thank you very much for your appearance.

The next panel will be some of the Indian witnesses. We have two or three panels of Indian witnesses. I hope you can stay and hear those witnesses.

Thank you.

The next panel is Ms. Goldie Denny, director of social service of the Quinault Nation; Dr. Marlene Echohawk of the National Congress of American Indians; Ms. Virginia Bausch, executive director, American Academy of Child Psychiatry; and Mr. Bertram Hirsch of the Association on American Indian Affairs.

Welcome.

STATEMENT OF GOLDIE DENNY, DIRECTOR OF SOCIAL SERVICES, QUINAULT NATION AND NATIONAL CONGRESS OF AMERICAN INDIANS, ACCOMPANIED BY BERTRAM HIRSCH, ASSOCIATION ON AMERICAN INDIAN AFFAIRS

Ms. DENNY. Thank you, Mr. Chairman.

My name is Goldie Denny. I am director of social services for the Quinault Tribe. I will be giving testimony on behalf of the National Congress of American Indians as well as the Quinault Tribe.

First of all, I would like to start out by saying I am appalled at what I have just heard from our trustee, the Bureau of Indian Affairs. But I don't know why I am surprised because this has been typical of the BIA's lack of response to Indian problems for a good number of years.

I think it is a gross neglect of responsibility that they made these comments here today. I say this because these comments do not reflect the thinking of people in Indian country, the people who live on the reservations, the people who deal with Indian child welfare problems on a day-to-day basis.

At the 1976 33d annual convention of the National Congress of American Indians a resolution was passed supporting the then draft Senate bill 3777. It was passed unanimously by 130 Indian tribes in the United States supporting the basic concepts that are contained within this bill.

The BIA is supposed to represent the Indian views. But when 130 Indian tribes say, "This is what we want," the BIA says, "We don't want this for the Indians."

I cannot understand that thinking at all.

In addition, at that same convention, a policy resolution, No. 5, was adopted by the National Congress of American Indians Convention. The title of that resolution was the "International Intertribal Child Welfare Compact." Indians were attempting on their own to establish some type of system for identifying where their lost children were and how to get them back.

In addition to that, policy resolution No. 10 was passed. This was addressing the interstate placement of Indian children, whether for cultural, educational, or whatever reasons. Indian people are entitled to know where their children are and what is going to happen to them. They are entitled to have complete control of their children.

The failure of the BIA and the State and county welfare services' practices has been clearly evidenced in the 1974 hearings. I will not burden you with the many horror stories of things that have happened to Indian children because——

Chairman ABOUREZK. Ms. Denny, I think you ought to tell a couple of horror stories while the administration witnesses are here.

Ms. DENNY. I will tell my own.

When I was approximately 4 years old, I was one of five children. Our mother was deceased. We lived with our father. My grandmother came in to help take care of us.

My sister and I were removed by the welfare department because we were caught out in the street barefoot, wading in mud puddles. I don't see anything wrong with being barefoot, wading in mud puddles. I had a good time. I might have been a little dirty, but dirt washes off. But what's up in the head does not wash off.

There was no reason for that type of removal. I was returned home, but that is one instance.

Chairman ABOUREZK. For the record, is that the kind of thing that goes on around the country, around Indian reservations when the non-Indian social welfare agencies decide that they know what is best for the Indian kids?

Ms. DENNY. Absolutely.

Chairman ABOUREZK. I recall the testimony in 1974. I believe it was a psychiatrist who testified that, most of the time, the Indian children are even better off if their mother happens to be an alcoholic.

Mr. HIRSCH. That was Dr. Joseph Westermeier who gave that testimony.

Chairman ABOUREZK. Do you recall exactly what he said at the time?

Mr. HIRSCH. My recollection is that he said that the trauma that is caused to the children—Indian children, in particular—in light of the studies that he has done and the patients that he has had, is far worse in that they spend many years growing up in non-Indian homes and then have to struggle for identity when they reach late adolescence and early adulthood. He says many of these people end up on skid rows in cities like Minneapolis-St. Paul and Los Angeles. Generally speaking, children are better off growing up in their own homes, even with alcoholic parents. It is not a fact that alcoholic parents necessarily create a situation that is so harmful to a child that they must be taken out of that home.

Chairman ABOUREZK. I think there was testimony at the time that children grew up much healthier with their parents irrespective of the physical or mental condition of the parents—within reasonable bounds. They were much happier there than if they were dragged out of the home and an attempt was made to bring them up in a non-Indian home.

There was another aspect. I am sorry that I cannot remember exactly what it is right now.

Mr. HIRSCH. I think what he was saying, Senator Abourezk, is that Indian children grow up in their own communities and with their own families and at least know that they are Indian. Regardless of the kinds of problems that they may have during that growing up

period, they do not have to start with the process of learning who they are. If they grow up in non-Indian homes, they grow up thinking that they are white and expect to be treated as other white people. They are treated that way when they are little kids. But then, when they reach late adolescence and early adulthood, the entire community looks at them and says, "You're Indian; you can't date our children. You can't be employed in our businesses," and so on.

So, these kids who have grown up perhaps in healthful environments and have had an integrating psychological growth period begin to disintegrate psychologically; while the children who have grown up in somewhat difficult economic and social circumstances, but who know they are Indian, can begin to integrate psychologically and develop whole personalities when they are in late adolescence and early adulthood.

I think that was the essence of Dr. Westmeier's testimony; and Dr. Bob Bergman, who testified at that time, gave similar testimony.

Chairman ABOUREZK. I apologize for interrupting you, but I wanted to try to bring that out.

Ms. DENNY. That is quite right, Senator.

One of the things that the BIA seems to think will help us is S. 1928, while criticizing S. 1214 for imposing standards on Indian people. That is not true. The intent of the bill is to impose standards upon the State, county, and Federal agencies who are now imposing their materialistic standards on Indian people.

So, the BIA statement is simply not a true statement; and does not describe the intent of this bill at all.

It is not interfering with any Indian tribe or any individual's right because the bill is purely asking for the notification to tribes so that they can respond within 30 days. The tribe has the option not to respond. They do not have to respond to this at all. So, I do not see that that is detracting from any tribal rights or any Indian individual's rights.

These standards set forth in this document are long overdue. The Quinault Tribe is located in the State of Washington which is a Public Law 280 State. The Quinault people have suffered the same injustice that any other Indian tribe has. We have lost a great number of children through foster care and adoption by non-Indian caseworkers who come upon the reservation and remove children for stupid reasons: You don't have enough bedrooms in your house; you don't have this; and you don't have that. It is all based upon materialistic possessions.

Indian people have successfully raised many, many happy children and were providing good parenthood for many, many years before we had middle class American standards imposed upon us as to how we are supposed to be caring for our children.

I cannot understand why the BIA is not going along. As Mr. Butler says, Indian people are now beginning to speak out, learning, and trying to take care of some of their own problems. This is what Indian people are saying: The Federal, State, and county governments have messed up Indian child welfare matters ever since they started meddling around in them. So why not let Indian people run their own show for a change? They can do it a lot better than any other agency can.

The Indian people understand the problems better, and they are better equipped to do it. And they will say, "Well, we've got to take care of these Indians because they don't have enough education; they don't have the skills." I heard a very skilled lady up here this morning who could not make a commitment as to whether this abuse toward Indian children should be halted or not. She could not answer that question. I do not understand that. If that is an educated opinion—well, I am glad I don't have that education.

I maintain that any Indian person can provide social services on an Indian reservation if they do not even have an eighth grade education. They understand the problems better. They have lived there. They can relate to their own people better than a non-Indian person who has a Ph. D. who might come in and try to tell them how they should be operating.

I would like to cite the Quinault Tribe as an example of how Indian people can develop successful programs on their own.

Quinault Tribe has developed on its own, with no help from the Bureau of Indian Affairs, no help from the State, no help from the county, a human resource delivery system consisting of the provision of 34 different types of services on the reservation. The social service department is just one portion of that human resource delivery system. I am the director. I have trained five paraprofessional Quinault caseworkers.

We have been in operation approximately 5 years. In that period of time, I have been able to train the staff so that they have been able to assume all the child welfare responsibilities that were at one time administered by the State and county officials. We handle all child welfare cases such as foster care, adoption, the child protective services, and juvenile delinquincy services. We offer many services.

It took a while to establish our credibility within the State court system. It was not easy; but, after being in operation and providing services for over a year the State began recognizing that Quinault Social Services Department was a legitimate organization. It set a precedent. All courts give Quinault Social Services Department joint supervision on any child custody case in the Grace Harbor and Jefferson County area along with the department of social and health services, which has the legal jurisdiction. That is a major breakthrough.

We have more credibility in the courts than the department of social and health services does in our area.

These are some of the advantages of a tribe operating its own social services delivery system. You can be innovative. You do not have to be restricted by the old ways of doing things that the non-Indian people have taught you to do. The foster care program in the entire United States, not only for Indians but for every child, is a total disgrace.

The average length of foster care in the State of Washington for any child is 4.5 years. I think that is a disgrace.

Quinault has developed its own foster care system, thereby limiting the length of stay in foster care to less than a year.

I want to continue on with the advantages of a tribe being able to implement Senate bill 1214.

The tribe is not restricted by agency rules and regulations and meaningless forms.

All Quinault children are now placed in Quinault foster homes. Foster home recruitment has increased licensed foster homes on the reservation from 7 to 31.

Fifty-two Quinault children have been returned from foster care to their natural parents. All Quinault juvenile cases are referred to the Quinault Social Services Department by the Grace Harbor Juvenile Department.

The Washington Administrative Code was amended October 27, 1976, to address Indian child welfare placement standards in the State of Washington. The Washington Administrative Code contains the same standards that are set forth in Senate bill 1214.

I think you might look at the State of Washington as a model of how it is being implemented. I strongly support and recommend passage of Senate bill 1214.

NCAI has submitted their narrative comments on the bill in support of it. In addition to that, we have some specific recommendations on Senate bill 1214 to strengthen the bill. We are submitting those for the record.

Chairman ABOUREZK. That material as well as your entire prepared statement will be inserted in the record.

[Material follows:]

STATEMENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS REGARDING S.1214 THE INDIAN CHILD WELFARE ACT OF 1977 BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS - 8-4-77

At the 33rd Annual Convention of the National Congress of American Indians held in Salt Lake City, Utah in 1976, the 130 member tribes of NCAI voted to support S. 3777, now S. 1214. We are submitting copies of NCAI Policy Resolution #6, and Policy Resolutions #5 and #10 which are concerned with issues in S. 1214 involving the interstate placement of Indian children.

The failure of past and current Bureau of Indian Affairs and state child welfare services is evidenced in the 1974 Congressional hearings and current documentation submitted since 1974, (especially the recent report of the American Indian Policy Review Commission established under P.L. 93-580), substantiates the continuing problems to date.

Indians have a unique legal trust status relationship with the federal government that sets them apart from other racial groups.

Child welfare services to Indians have historically been the responsibility of the BIA. More recently, the services of state, county and private agencies have been thrust upon Indian tribes and people. Statistics show that these services have resulted in a high rate of child removal from the natural parents and extended family and destructive effects in Indian family and tribal life.

This bill evidences and addresses remedies to the fact that the BIA has grossly neglected their responsibility in the field of child welfare and family preservation. State and county involvement, especially in P.L. 83-280 states has further perpetrated negative and socially undesirable damage to Indian family and tribal life. Indian tribes and people have not been consulted or involved in the social planning for their children with the obvious results. The basis of placements of Indian children are being made on material standards of the non-Indian culture rather than what is in the best interest of the Indian child.

Political theory which has dominated Indian policy has been one of negative acculturation and assimilation of the Indian into the dominant society. This philosophy has been a dismal failure for over two hundred years. Indians still survive and maintain their legal tribal sovereignty.

Child placement standards need to be developed by Indians in keeping with their own unique culture. In addition, Indians can better provide these services to their own people. The failure to involve Indian people in the placement of their children has helped to produce the tragic results such as the high rate of alcoholism, drug abuse and suicide. S.1214 can overcome the failure to include Indian people in the planning for and the care and protection of their own children.

The present-day trend in Indian legislation is Indian self-determination. S.1214 reflects this policy and assures Indians the opportunity to nurture and develop their most important resource, their children.

Before highlighting some of the specific recommended modifications NCAI is submitting, we are submitting three drafts of material which we, with much offense, understand were prepared by BIA Social Service staff and OMB related to S. 1214 and request that this Committee review these drafts because of the attitudes and administrative problems contained within which are adverse to Indian self-determiniation and the status of tribal governments and Indian people.

We want to draw specific attention to ARENA which is mentioned in that draft material. We are questioning the statistical coverage in respect to the total number of adoptive placements referred to, and the criteria used to identify Indian adoptive home, and whether Canadian Indians were included in the total. We are submitting copies of ARENA statistics from 1974 which show 120 Indian children adopted; 14 went to Indian homes and 106 of the 120 were Canadian Indians, and from 1975 showing 63 Indians adopted through ARENA with the statement that 70 per cent were placed in Indian homes with no proof of the definition of Indian adoptive home used.

NCAI continues to go on record as strongly recommending that the current BIA contract to Adoption Resource Exchange of North America (ARENA) be given to an Indian adoption exchange to insure practices complimentaty to the stated federal Indian self-determination policy.

In conclusion we wish to highlight some of the specific modifications to S. 1214 NCAI is recommending:

SPECIFIC RECOMMENDATIONS S.1214

1. Definition Sec. D P. 4, line 13
   Omit all words after "Indians"
2. P. 5 Sec. (9) line 1 insert after the word "means" the phrase "any public or private relinquishment of the custody of a child or"
3. P. 5 (i) add "cousins"
4. P. 5 Sec. 101 (a) add "or is domiciled" after the word "resides" on line 20
5. P. 7 make sections (d) and (e) a separate section
6. P. 8 A separate section should be added to require that 30 days prior notice be given to the tribe when an Indian child residing or domiciled on the reservation will be absent from the reservation for more than 60 days for social service or educational purposes.
7. P. 8 line 10 add the word "prior" in front of the word "written".
8. P.10 line 12 change "age of two" to "from birth"
9. P.10 line 23 strike out the last sentence
10. P.11 lines 5 & 6 It should be added that Indian guardian - ad litems or non-Indian guardian - ad letems who have received approval of an Indian tribe or tribes must be appointed to represent Indian children
11. P.11 line 13 change "offering" to "placing"
12. Hirsch should speak to justify section (c) P.12
13. P.11 line 23 strike "last known address" and add "birthplace" and "birthdate"

14. P.12-13 Sec. 104 This section should direct the Secretary to establish a data bank to contain the adoption records of Indian children. County courts, state archives and state, county, and private agencies are to supply the Secretary with copies of their files pertaining to the adoptions of all Indian children.

15. P.13 line 10 add the words "and directed"

16. P.13 line 17 add the words "and directed"

17. P.14 line 5 add the words "and directed"

18. P.15 line 9 add the word "treatment" after "counseling"

19. P.18 line 17 after the word "defective" add "and upon a finding that the best interest of the child may be served thereby"

20. P.19 line 4 add the line that was struck from S.3777

21. P.20 line 17
    1. After "seconds" add "from Dec. 31, 1929 forward"
    2. There also needs to be added a statement requiring county courts, state archives and state, county, and private agencies to supply the necessary records to the Secretary.

22. P.20 line 7 add after "child" the phrase "or the sibling of an Indian adopted child for the purpose of establishing or continuing their sibling relationship providing both are 18 or over"

23. P.21 line 21
    1. A separate section should be added to direct the Secretary to establish an Indian Policy Committee of representatives of Indian tribes and organizations which will assist the Secretary in the implementation and monitoring of the Act and provide a vehicle for accountability.
    2. Another section should be added to direct the Secretary to establish a special monitoring team with the authority and responsibility to monitor the implementation of this Act by the Department of Interior, county courts, state archives, and state, county, and private agencies. The team will make direct reports to the Secretary and Indian Policy Committee and have direct access to the Secretary and Indian Policy Committee.
    3. The diversity of tribes warrants the establishment of a national child protection team composed of American Indian professionals, outside of the governmental agencies, to monitor and give direction to tribal child development programs. This team will also assist and advise the Secretary in such sensitive areas as described in Sec. 204.

REPORT ON S. 1214

S. 1214 is composed of a statement of findings and a declaration of policy; two programs; authorizations for appropriations and for promulgating rules and regulations. The two programs are Title I - Child Placement Standards, and Title II - Indian Family Development.

The general intent of this Bill to establish standards for the placement of Indian children in foster care or adoptive homes, to prevent the breakup of Indian families, and for other purposes, is commendable.

While endorsing and supporting this general intent we must advise that we cannot support the Bill in its present version because of many of the specific provisions therein.

Following is an analysis and discussion of various parts of the Bill about which we have question. These should be read alongside a copy of the Bill to have their meaning fully understood.

Sec. 2(a). We agree that a very high proportion of Indian children are living in foster care arrangements. However, in the case of the BIA, the children are usually placed with Indian foster parents. Preliminary information from a study done in 1972 indicates that about two thirds of foster homes were Indian where the BIA made payments for foster care. We have a strong impression that this proportion has increased in the intervening years. The BIA is not an adoption agency but has secured services from the Adoption Resource Exchange of North America (ARENA) for the adoption of Indian children for whom adoptive homes are not available locally. In the period July 1, 1975, through June 30, 1976, about 90% of the children referred to the ARENA were placed with Indian adoptive families on-and off-reservation. Generally, it is difficult to locate families for older and handicapped children, regardless of race, country-wide, and this condition prevails for the older and handicapped Indian child. This has resulted in some placements in non-Indian adoptive homes.

The use of a boarding school for foster care of an Indian child often results from the parent's choice. For other children, it is the best available placement. We agree that it is desirable that there be less need for care of children away from their parents, but in the foreseeable future, boarding school placements will continue to be needed for many children who require foster care.

Sec. 2(b). Any of these conditions may well exist in some cases, but they do not prevail generally.

With regard to Government officials unfamiliar with, and often disdainful of Indian culture /2(b)(3)/ we note that the majority of BIA employees who work with Indian children and families involved in placement, are themselves Indian. The numbers are increasing, stimulated by the policy of Indian preference in employment with the Bureau. Indian officials generally direct the work of the Bureau, so have the authority to require respect for Indian culture by the rare employee who may not demonstrate it.

With regard to the absence of consultation with tribal authorities /2(b)(5)/ it should be noted that administrative agencies are provided with certain authorities by law or specific Court Order and Government officials exercise over-all authority rather than on a case by case decision.

Sec. (2)(c). The last sentence is not applicable to the BIA as where there is a tribe which has established an Indian Court, its jurisdication is honored. Further, many tribes have Welfare Committees which participate or advise BIA Social Services in matters of Indian child and family development and in foster care activities. In some other cases, there is an Advisory Committee composed of local Indian residents.

Note: The comments with regard to Sec. 2 of the Bill are not intended to deny the obvious - Society and its governments have nowhere made the investment necessary to provide a sufficient quantity or quality of support services needed by all vulnerable families, nor of foster care services. Indians do have great needs for such services.

Sec. 3. The declaration of policy seems an instance of Federal-government imposed standards on Indian tribes. It also seems to assume that a single set of standards is applicable to all Indian tribes. Rather, there is great variation among the tribes as to desirable standards. A primary concern among Indian tribes is to set their own standards.

The objective of promoting the stability and security of family life is, of course, most commendable.

Sec. 4(b). The definition of "Indian" differs in wording but perhaps not substance from that used in administering the Indian Self-Determination Act.

(d) This definition expands the BIA's present authority for contracting and grant activities by adding as eligible, an organization with a majority of Indian members (apparently without regard to the control of the organization). The proposed definition appears to be incompatible with Indian control of Indian programs. Under the proposed definition, organizations controlled by non-Indians would be competitive with tribes and Indian organizations for available funds.

(e) We are not certain as to the meaning of the phrase ... "any other tribunal which performs judicial functions in the name of an Indian tribe within an Indian reservation."

(g) Of greatest concern is the apparent inclusion in the scope of the Act of child placement by parents. Intervention in child placement by a Court or other government body, in the absence of established child abuse, neglect, abandonment, or delinquent acts by the child is generally considered an invasion of family privacy.

TITLE I - CHILD PLACEMENT STANDARDS

Note: Title I establishes three categories of Indian children: (a) Indian children living on an Indian reservation where a tribal court exercises jurisdiction over child welfare matters and domestic relations; (b) Indian children domiciled or living on an Indian reservation which does not have a tribal court; and (c) Indian children not domiciled or living on an Indian reservation. For children in each category, certain procedures are required before placement is valid and in legal force. These include 30 days written notice to the parents, and that a non-tribal government agency must show that alternative services to prevent the family breakup have been available and have been proved unsuccessful. Further, when the parent opposes loss of custody, the placement must be supported by an overwhelming weight of evidence; and when the parent consents to the loss of custody, consent must be executed before a Judge of a Court having jurisdiction over child placements. The latter also must certify that the consent was explained in detail, was translated into the parent's native language and was fully understood by the parent.

The Bill further requires that non-tribal government agencies shall grant certain ranked preferences in the placement of the children which include members of the child's extended Indian family, and to Indian foster homes and to Indian operated custodial institutions.

Sec. 101(a). This provision denies parents' rights to make placements of their children, without the intervention of a Court. Practical problems related to such a provision relate to the current workload of many courts, including tribal courts, which deal with matters leading to child placement. Tribal courts are generally understaffed. This provision would require new activities as it seems to provide for a Court to have jurisdiction which they do not now have, to intervene in family matters in the absence of child abuse and neglect and delinquency. Further, problems arise as many Indian Courts are not Courts of record, nor are appellate procedures always readily available.

(b). "Domiciled" has not applied to matters pertaining to children needing the protection of a Court and it is considered in the child's best interest to have protections of the Court having jurisdiction where he is "found."

The preceding section, 101 (a), refers to "Indian Courts which have jurisdiction over child welfare matters and domestic relations." Section 101 (b) refers only to "tribal courts." Among the latter are courts of limited jurisdiction (e.g. fishing rights). A number of children would be left in "limbo" by the apparent gap between (a) and (b).

The requirement of a 30-day notice to a tribe as part of validating a placement, delays the authority of an agency to pay costs of foster care. The requirement of 30 days notice offers another problem. It is an unusually long period of time for notice in a child abuse, neglect, or delinquency hearing. Ordinarily, it is considered that the child's well-being and the community's interest requires a more prompt action by the Court.

It would be a rare State Juvenile Code which defines "the tribe" as an interested party in proceedings before its Courts, and which provides for a 30-day period for notice to parents or interested parties. Where there is no such provision in the State Codes, an impasse may well occur.

(c). Same comments as in (a) and (b) with regard to problems resulting from a delay in establishing the validity and legal force of a placement, with establishing the tribe as an interested party, and with the 30-day period of notice of proceedings.

There are many practical problems of identifying a child's tribal membership when the child is at a considerable distance - perhaps 2 or 3,000 miles. Membership may be difficult to document, as a Court should require. Not all tribes maintain current rolls and establishing membership in such tribes may be very time consuming. The time consumed in these efforts when added to the required 30-days notice if membership is established, adds to the burdens of providing child protection. If such a search does not establish membership, much valuable time has been lost.

The circumstances of some of the children in the category established under (c) present additional problems. One example is the children who are eligible for membership in an Indian tribe and who have never lived on a reservation or in an Indian community and, so far as can be seen, are themselves identified with their non-Indian heritage. Delays in establishing tribal membership and possible intervention by a tribe to which they have no ties, could be of great disservice to these children. Much valuable time has been lost.

Sec. 102(a)(1). This would seem to require of Tribal and non-Tribal Courts, and any other non-Tribal government agency to give 30 days written notice to parents of any original or later placement of a child. This provision is inimical to the child's welfare, when the parents are living, but their current whereabouts are not known, or when a child is an orphan, even if he has a legal guardian. Again, the problem of 30 days notice.

102(a)(1)(A). The parents are a party to a Court Proceeding (unless their rights have been terminated) and their presence would not be an intervention. State laws are consistent in this regard.

The application of the requirement of representation through legal counsel to administrative agencies raises serious practical considerations. There is real question as to whether there are sufficient lawyers and funds to hire them for each placement and replacement of an Indian child. Further, many administratively made placements are not always adversary in nature. (For example, a placement which is made is at the request of the parent).

It should be recognized that the legal counsel's expertness is in the matters of the parent's and children's rights and that legal training does not qualify a person to provide expert judgements based on the social sciences.

Relative to the right to counsel in abuse and neglect cases, it should be noted that establishing the right would require that the Court appoint counsel when the parent cannot afford it. There is no consensus among the States as to whether Courts must appoint counsel in child abuse and neglect proceedings, but there is agreement that parents have the right to employ counsel.

Sec. 102(a)(1)(B) appears to consider that all placements are of an adversary nature.

(C). The Privacy Act may impose restrictions on the availability of some records of administrative agencies. Placement-related records of administrative agencies containing personal information about foster parents or adoptive parents would presumably be protected under the Privacy Act. There are probably other examples, but this illustration comes to mind readily and indicates that not all records should be available. Also, a parent's rights may be limited by Court actions that limit or restrict their rights and perhaps restrict the parent's rights to information.

Sec. 102(a)(2). This is a good goal for any child placing agency, including the tribe, but some emergency placements and some short terms are suitably effected without such evidence.

Sec. 102(b). Either "clear and convincing" or "preponderance" is the usual standard of proof of evidence in child abuse and neglect cases; "beyond a reasonable doubt" in delinquency cases. Overwhelming weight of evidence" as a standard does not appear appropriate. As a practical matter, the most abusive parents may be the most resistive to child placement.

Determinations as to whether or not social problems are evidence of child abuse and neglect should be left to the determination of the Court.

Sec. 102(c). This would require every placement by a parent to be executed by a Judge. Many parents are capable of making placements of their children without the invasion of their privacy by a Court. In States where adoptive agreements may be made by natural parent and adoptive parent before filing the adoption petition, this provision would require treatment for Indian parents, to be different from that of others and raises questions of discrimination. The above described adoptive agreements are often used in step-parent adoptions, though that is not their exclusive use. Further, the "replacement" of an adopted child might be with a parent and step-parent.

Sec. 103(a). Family members, whether extended or nuclear-family, may not always be the placement of preference. Many relatives do not wish to take on additional child rearing responsibilities, some do not wish to have the interference by the natural parents which almost always results. The child's "best interest" should be the compelling reason for the selection of a placement.

(b) Aside from the appropriateness of including such restrictions in Federal legislation, there are certain problems about some of the preferences as stated. In 103(b)(5) "Any foster home run by an Indian family" does not provide any safeguards as to the character and stability of the family and their standing in the community, two characteristics that are extremely important to a foster child's development.

As to 103(b)(6), "custodial" should be defined further. An Indian operated group home on a reservation might be considered "custodial" but not be intended to provide for the needs of adolescent delinquents. If "custodial" refers to secure custody, there are insufficient Indian operated resources. To our knowledge, there are no Indian operated facilities which provide secure custody other than adult jails and jails are totally unsuitable as placements for children.

Sec. 103(c). In adoption cases, the Court's jurisdiction is ended with the adoption decree as its jurisdiction in the case is for the purpose of adoption. As long as a Court has continuing jurisdiction, adoptive parents cannot have the full status of parents. Their rights under this provision would have to be defined.

Sec. 104. Courts with extensive adoption experience have not settled this question so simply. For example, Courts have entered adoption decrees where anonymity was promised to the natural parents. The opening of all records would result in a breach of promise in these cases. Also, the Privacy Act may affect the availability of some records.

Again, it should be noted that the State Codes may not have such provisions and this Bill would set up a conflict that might be difficult to resolve.

TITLE II - INDIAN FAMILY DEVELOPMENT

This Title provides for the funding of Indian tribes by the Secretary of the Interior, who may be joined by the Secretary of Health, Education, and Welfare, in funding Indian organizations in off-reservation communities, to establish and operate Indian family development programs. The components of a family development program are described.

The Secretary is further authorized to fund Indian tribes for a special home improvement program to upgrade housing when (1) the housing of Indian foster and adoptive homes is substandard, (2) improvements would enable Indian persons to qualify as foster or adoptive parents under tribal law and regulation, and (3) where improved housing of a disintegrating family would significantly contribute to the family's stability.

An appropriation is authorized for these two programs.

The Title further authorizes Indian tribes to establish and operate an Indian family development program and sets forth the rights of Indian foster homes under a tribally implemented licensing or regulatory system. Tribes are also authorized to construct a family development center. Purposes for which grants or contracts may be awarded for off-reservation locations are described.

The Title also authorizes and directs the Secretary to undertake a study of the circumstances surrounding all child placements which have occurred in the last 16 years where the children so placed are still under 18. If a placement is found invalid, or otherwise legally defective, when the parents or qualified blood relative request it, the Secretary is authorized to undertake certain actions in the U.S. District Court. Further, grants or contracts are authorized with Indian tribes or Indian organizations to operate a legal defense fund to provide representation by an attorney for every Indian child or its parents, as appropriate, who is the subject of a child placement proceeding. An appropriation on authorization is established for these activities.

Further provisions of the title refer to rule making.

Sec. 201(a). The Secretary now has the authority to enter into contracts and grants with tribes for the services described.

(b). The provision is silent as to relationships with the Department of Housing and Urban Development programs with some similar purposes, and with Tribal Housing Authorities, and with the BIA home improvement program. The provisions in new legislation should reflect the experience gained with similar Indian programs for Indians by existing organizations, but do not.

(c). This provision duplicates authority now held by the Secretary of Health, Education, and Welfare, under Title XX of the Social Security Act.

Sec. 202(a). Authority now exists for such programs. However, tribal court judges and staff /202.(a)(7)/ do not require training in child welfare and family assistance programs, but in the judicial process relate to family law matters.

Sec. 202(b)(1). This is the right of an Indian family now and it is an unnecessary and possibly unwarranted legislation in the area of family privacy.

(2) This would seem to imply that all Indian-licensed foster homes would have first preference for any child - how would competing claims be settled? Would one have to be selected even if demonstrably unsuitable and it were the only one available?

Sec. 202(2)(B) and (C). Temporary care of Indian children should not be provided in the same facility that provides for the detoxification of adults.

Sec. 203. Again, the problem of "Indian organization," and the duplication of Title XX authoritizations to the Secretary of Health, Education, and Welfare, except for 203(b) (Indian legal defense fund).

Sec. 204(a). The study of all placements made in the last 16 years of children who are still under 18, whether foster care of adoption placements, would in many situations inflict great hardship unnecessarily, and raise questions of the invasion of privacy by the Federal government, and of interference in State child placement activities.

A placement may be "invalid or legally defective" yet its continuance could be essential for the child's well-being. A parent's wish, particularly if only a whim, should not be the sole controlling element in the breaking of a placement. Because a placement is invalid or legally defective, it does not follow that return t- the parent or designated blood relative is to the child's advantage, even if his foster care placement is broken.

Why is the U.S. District Court involved when other Courts have jurisdiction? There has been considerable publicity as to the unavailability of services from the District Attorney Offices relative to criminal matters. Would this suggest that these Offices might also be unable to respond to cases added to their workload under this Bill? Also, there would be cases where solutions could be effected without Court action.

(b). Employment of counsel for a child and a parent in every child placement proceeding, whether judicial or administrative, is perhaps impossible to achieve, if only because of the limited number of attorneys practicing in this field, particularly in rural or isolated areas. Further, the desirability of employment of counsel is questionable where the relationship is not adversarial.

The comparability between the proposed appropriation for family development program 201(d) and the programs related to legal issues 204(c) appear disproportionate. In fact, in the third year, authorizations related to legal issues in child placement exceeds that for family life development. The latter program would require a comparatively larger appropriation if it were to be effective.

We consider the questions and issues referred to above the basis for our inability to support the Bill in its present form.

In addition to and in further elaboration of our basic position in this matter we provide the following comments:

1. Constructive legislation to protect the general welfare and well-being of Indian children is always most certainly desirable. Subsequent drafts, if any, of this particular legislation hopefully will address the questions and issues referred to above.

2. Aside from operational statistical data pertaining to BIA child welfare assistance the most comprehensive date available as pertains to this legislation is contained in "Report on Federal, State, and Tribal Jurisdiction-Task Force Four: Federal, State and Tribal Jurisdiction - Final Report to the American Indian Policy Review Commission," pp. 179-242. We have no resources available to verify the validity and reliability of any of this data which did not originate within this Bureau.

3. Any laws resulting from this proposed legislation or any similar subsequent legislation will be better served and enforced through administration by D/HEW. This is particularly true in view of the national scope and the Federal-State interrelationships involved. In this regard, D/HEW administrative expertise, funding source, interstate placement of children, and program review authority over States are all factors to be considered. Interior Department administration would be extremely difficult, if possible at all, and would require at the minimum the addition of 100 professional child welfare workers.

Honorable James Abourezk
Chairman, Select Committee
on Indian Affairs
United States Senate
Washington, D. C. 20510

Draft

Dear Mr. Chairman:

This responds to your request for our views 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, and for other purposes."

We endorse the general concepts of S. 1214, namely that the placement of Indian children in foster and adoptive homes should be done within the context of their cultural environment and heritage and should insure the preservation of their identity and unique cultural values; and the stability and security of Indian family life should be promoted and fostered. However, we cannot support enactment of S. 1214 for the reasons discussed herein.

Title I of the bill contains provisions governing Indian child placement. Title II would authorize the Secretary to make grants or enter into contracts with Indian tribes and organizations for Indian family development programs, including off reservation families, and special home improvement programs. For this purpose, Title II authorizes $21,792,000 for fiscal year 1978, $23,700,000 for fiscal year 1979 and $25,120,000 for fiscal year 1980.

Title II also: directs the Secretary to study all Indian child placement made sixteen years preceeding enactment for all children placed still under age 18; to make grants to or contract with Indian tribes or organizations for an Indian family defense program; and to collect and maintain a central record file on child placements. For these purposes section 204(d) authorizes $18 million for fiscal year 1979, $20 million for fiscal year 1980 and $22 million for fiscal year 1981.

The quantity and quality of support services to vulnerable families generally are not always sufficient to meet the needs of such families and their individual members, and this includes Indians. The Administration has recognized this problem, and on July 26, 1977, the Administration's proposal, "The Child Welfare Amendments of 1977", was introduced as S. 1928 in the Senate. S. 1928 would amend the Social Security Act to establish standards for foster and adoptive placements, and is designed to strengthen and improve child welfare programs throughout the country. S. 1928 would accomplish many of the goals set forth in S. 1214, and would assist Indian families in achieving such goals without the concerns found in S. 1214, provided that certain technical amendments are

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considered; such as, Federally Recognized Indian Tribes be given the option equal to the status as States to be funded to administer their own child welfare services programs; and Indian tribes are given full faith and credit to their legislative and judicial sovereign powers in standards set forth by them in child welfare services programs. We defer to the Department of Health, Education, and Welfare as to a further discussion of S. 1928.

Further, HEW recently established the Administration on Children, Youth and Families, which administers a spectrum of programs for child and family welfare. HEW's authority will be further expanded under S. 1928. The Bureau of Indian Affairs has very few programs in this area, and S. 1214 places new requirements on the Secretary of the Interior which may conflict with or duplicate current HEW authorities, as well as the HEW authorities under S. 1928.

Finding

We agree that a very high proportion of Indian children are living in foster care arrangements. However, in the case of the Bureau of Indian Affairs the children are usually placed with Indian foster parents. Information from a study done in 1972 indicates that where the BIA made payments for foster care, about two-thirds of foster homes were Indian. This proportion has subsequently increased. The BIA is not an adoption agency but has secured services from the Adoption Resources Exchange of North America (ARENA) for the adoption of Indian children for whom adoptive homes are not available locally. Between July 1, 1975, and June 30, 1976, about 90% of the children referred to ARENA were placed with Indian adoptive families both on and off reservation. It is generally difficult to locate families for many older or handicapped children, regardless of race, and this problem equally applies to older or handicapped Indian children. This situation has resulted in some placements in non-Indian adoptive homes.

The use of boarding school for foster care of an Indian child is often at the choice of the parents. For other children, it is the best available placement. We agree that it is desirable that there be less need for care of children away from their parents, but in the foreseeable future, boarding school placements will continue to be needed for many children who require foster care.

S. 1214 also finds that Government officials involved with Indian child placement are unfamiliar with and distainful of Indian culture. We would point out that the majority of BIA employees who work with Indian families involved in placement are themselves Indian. S. 1214 further finds that child placement subverts tribal jurisdiction over domestic relations if a tribe has established an Indian court. The BIA honors such jurisdiction, as have several courts, including the U. S. Supreme Court. Further many tribes have Welfare Committees which participate in or advise BIA social services in matters of Indian child and family development and in foster care activities. In some cases, there exists Tribal Council and/or Advisory Committees composed of local Indian residents.

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Definitions

The definition of "Indian organization" in section 4(d) would expand the BIA's present P.L. 93-638 authority for contracting and grant activities by adding as eligible organizations with a "majority" of Indian members (apparently without regard to the control of the organization). The definition appears to be incompatible with Indian control of Indian programs. Thus, organizations controlled by non-Indians might be competitive with tribes and Indian organizations for available funds.

Title I

Title I establishes three categories of Indian children: (1) Indian children living on a Indian reservation where a tribal court exercises jurisdiction over child welfare matters and domestic relations; (2) Indian children domiciled or living on an Indian reservation which does not have a tribal court; and (3) Indian children not domiciled or living on an Indian reservation. For children in each category, certain procedures are required before placement is legally valid.

Section 101(b) requires that where a child resides or is domiciled on a reservation without a tribal court, the tribe must be given 30 days notice of any placement proceedings so that it may intervene as an interested party.

Section 101(c) governs the placement of Indian children who reside away from a reservation. Before any valid placement can occur (except for temporary placement when life or health is threatened) tribal membership must be established and then 30 days notice given to the tribe to intervene in the placement proceedings.

Under section 102(b) the requirement that child placement can only be made upon a finding of "an overwhelming weight of evidence" is at varience with the prevailing standards of proof for such proceedings. Either "clear and convincing" or "preponderance" is the usual standard of proof of evidence in child abuse and neglect cases; "beyond a reasonable doubt" in deliquency cases.

Section 103(c) requires that a tribal court retain jurisdiction over a child placed in an off-reservation foster or adoptive home or an institution until that child is eighteen.

In adoption cases, the court's jurisdiction ends with the adoption decree as its jurisdiction in the case is for the purpose of adoption. As long as a court has continuing jurisdiction, adoptive parents cannot have the full status of parents, nor can a family be assured that an adopted child will be permitted to remain with the family. Such a provision is not in the best interest of the child.

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Section 104 mandates that an adopted child reaching age 18 may, upon application to the court which entered the final adoption decree, learn the name of his or her natural parents, their last known address, their tribal affiliation and grounds for severing the family relationship.

This issue of the adopted child's right to learn of his or her background has been the subject of debate generally. Without taking any position on the merits of this debate, we would point out that section 104 is in direct conflict with many State Codes as they now stand. Further, courts usually enter adoption decrees with the promise of anonymity to the natural parents. The opening of records would breach confidentially, and may be done against the express wishes of the natural parents. Also, in most adoption proceedings, the records of administrative agencies containing personal information about the natural parents are sealed to protect all the parties.

Section 105 requires that the laws of any Indian tribe in any proceeding under the bill and any tribal court order issued in such proceedings shall be given full faith and credit in proceedings in all other jurisdictions.

We agree that tribal court proceedings over areas under tribal jurisdiction should be given full faith and credit in the proceedings of other jurisdictions, and in the child welfare area, inter alia, this has been upheld by the U. S. Supreme Court as well as by two State Supreme Courts.

In Fisher v. District Court, (47 L. Ed. 2d 106, 1976), the U. S. Supreme Court affirmed exclusive jurisdiction of the Northern Cheyenne Tribal Court over adoption proceedings in which all parties were members of the Tribe and residents of the reservation in Montana, and held that "State court jurisdiction plainly would interfere with the powers conferred upon the Northern Cheyenne Tribe and exercised through the tribal court." (47 L. Ed. 2d 112)

In Duckhead v. Anderson (No. 44120, 1976) the Washington State Supreme Court ruled that Washington Courts have no jurisdiction to determine the custody of a Blackfeet child placed in temporary foster care in Seattle by the Blackfeet Tribal Court, Montana. The Court rejected the argument that Public Law 83-280 and Washington law applied to matters arising on reservations outside the State, and that the child's presence in Washington gave State courts jurisdiction.

In Wakefield v. Littlelight (347 A. 2d 228, 1975), the Maryland Supreme Court held that an Indian child domiciled on an Indan reservation is subject to tribal court jurisdiction, and that tribal court jurisdiction continues even after the child is removed from the reservation and from the State where the reservation is located.

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Tribes already have authority to ~~legislative~~ legislate and establish standards for child welfare proceedings in tribal courts, hence we endorse the conferral of full faith and credit on tribal proceedings.

Title I would also impose one uniform set of Federal standards over all tribes, without considering the wide cultural diversity and values of Indians throughout the country. Further, Title I is far more restrictive to tribes than the present system because it increases Federal intrusion in a regulation of tribal domestic matters and sovereignty. In the spirit of self-determination, we believe that a reaffirmation of the Federally Recognized Indian Tribe's legislative and judicial powers, in addition to the full faith and credit provision, by the Congress, would over come the concept of Federal intrusion into the domestic affairs of the Indian tribes.

Title II

Under the broad general authority of the Snyder Act (25 U.S.C. 13), the BIA can assist tribes in activities such as establishing and operating family tribal development programs. Further, the Secretary can already contract with tribes pursuant to Public Law 93-638 for some of the services described in Title II.

With regard to the home improvement program under section 201(b), tribal housing authorities already have authority to designate certain projects for foster homes. Further, section 201(b) may duplicate programs of the Department of Housing and Urban Development for similar purposes, as well as duplicating the BIA home improvement program.

Section 201(c) and 203 concerns the establishment of off-reservation family development programs by the Secretary through grants to or contracts with Indian organizations.

Enactment of section 201(c) and 203 could significantly increase our service population off-reservation, and decrease our resources for and services to reservation Indians in this entire area. Further, section 201(c) and 203 duplicate authority that HEW has under Title XX of the Social Security Act.

Section 204(a) requires the Secretary to study all Indian child placements, whether foster or adoptive, made within 16 years prior to enactment where the child is still a minor. If the Secretary finds any such placement invalid or legally defective, and a blood relative with previous custody so requests, the Secretary may institute legal proceedings in U. S. District Court to restore custody to such relative.

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This provision raises serious legal and policy questions, and in most cases would not be in the best interest of the child, particularly when adopted, and could seriously disrupt a child's life. Legally, section 204(a) conflicts, with Tribal and State placement laws and procedures, and raises the issue of invasion of privacy by the Federal government as well as that of Federal interference in State placement proceedings. Further, the conferring of jurisdiction on the U. S. District Court for actions by the Secretary to overturn such placements is an inappropriate forum since child placement is a Tribal and State court matter.

A placement may be "invalid or legally defective" yet its continuance could be essential for the child's well-being. A parent's wish should not be the sole controlling element in the overturning of a placement. Because a placement is technically invalid or legally defective, it does not follow that return to the parent or designated blood relative is to the child's advantage. Again, the paramount standard must be the child's best interest, and section 204(a) would not insure that.

Section 204(b) requires the Secretary to make grants to or contracts with Indian tribes and organizations for an Indian family legal defense program.

While we recognize that legal counsel may not always be available to parents or other blood relations in child placement proceedings in our judgment, section 204(b) is not necessary.

S. 1928 will provide increased Federal assistance to States for, among other things, adoption assistance, Under section 472(b) of S. 1928, adoption assistance by the State could include non-recurring expenses such as legal expenses.

Further, section 204(b) would appear to duplicate existing legal aid programs particularly those under the auspices of the Legal Services Corporation. We question the need for a comprehensive legal defense program in light of existing alternatives. Tribes and the BIA can explore the best ways to utilize these existing alternatives.

The Office of Management and Budget ~~had~~ has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,