S. 1214
Indian Child Welfare Act of 1977

OMB Questions

1. Why is legislation of this type needed?

2. What is the problem and what has caused it? Is it the result of well meaning but misdirected state and/or local social service agencies and workers who think they are serving the best interests of the children but simply do not understand the problem from an Indian perspective? Or, are public welfare agencies consciously trying to break down Indian family units, traditions, customs, etc? Or, do tribes feel that they are being left out of an important process which impacts upon their lives, customs and traditions and thus desire a greater say in what transpires?

3. Is quantifiable data available which will give some idea of the scope of the problem - i.e., number of cases per year (on and off reservation); specific states, counties, tribes or reservations where the problem seems to be more severe than others; comparative data on the numbers and types of Indian child placements as compared to the general population?

4. Do the provisions of the bill adequately protect the health and welfare of Indian children? Do the procedural delays of tribal notification, especially in cases involving children who do not live on reservations, create the potential for greater harm than good to the children involved?

5. What reasons are there for providing legislation such as this for Indians and not for other ethnic or minority groups who may feel that they also need special assistance in the area of family development and special recognition of their unique culture and traditions?

6. If Interior becomes involved in implementing the provisions of this bill, what other special social service programs for Indians are likely to be demanded of the Department over the next few years?

7. Is this legislation likely to cause more or less friction between Indians and state and local governments? Explain.

8. How many new FTP's will Interior need to administer the provisions of this bill?

9. What other Federal programs are now available which can or do provide services to Indians in the following areas:

   - home improvements;
   - family development services similar to those identified in Sec. 202(a);
   - facilities construction programs which could be used to build family development centers; and
   - legal services?

10. Would it not be more appropriate for a bill such as this to be administered by another Federal agency such as the Department of Health, Education and Welfare? If not, why?

11. What justification is there for the retroactive provisions of the bill contained in Sec. 204(a)?

Quinault Indian Nation
POST OFFICE BOX 1118 ☐ TAHOLAH, WASHINGTON 98587 ☐ TELEPHONE (206) 276-4445

QUINAULT NATION STATEMENT

The Quinault reservation, located on the west coast of the state of Washington has approximately 1600 residents. The larger village, Taholah, is located in Grays Harbor county. The smaller village Queets is located in Jefferson county. The village Taholah is located 45 miles from the Grays Harbor Department of Social and Health services. Queets is located 90 miles from the Jefferson county Department of Social and Health services. The one BIA social worker is limited to administrative duties 45 miles away and provides no direct social services.

Due to the geographic isolation, and the impractical, unrealistic services provided Quinault Indians, by non-Indian caseworkers the Quinault tribe has suffered the loss of many children. I will not burdon you with the many heart-breaking stories that testify to the feelings of bitterness and dispair suffered by Quinault Indians.

These facts were testified to in April 1974. Senate Bill 1214 is the first attempt being made to correct this injustice.

The negative assimulation oriented services provided by distant obscure government state and county agencies must cease. Social services for Indians can best be provided by Indians.

One may argue that Indians are not qualified or do not have enough education. I maintain that any Indian can provide more relavent service than any non-Indian with a P.H.D. The Quinault Nation is a present day example.

The Quinault Nation developed a tribal social service department approximately five years ago. All caseworkers are paraprofessionals. They started out with the most important ingrediant required by any social worker to deal with Indian Child Welfare problems. They are Indian and they know what the problems are because they have lived with them all their lives.

Staff consists of a director (myself) and 5 caseworkers that I have trained. They have had additional workshops and are provided on-going staff development.

Quinault Indian social service staff provides all child welfare services to Quinault people or any other persons requesting such service.

Washington is a PL 280, and you are probably wondering, how this coordinates with state and county services. It wasn't easy. We just did it. The state caseworker accused us of stealing "our Indians" even though they

didn't really want to be bothered, and didn't like to have to travel to the reservation.

I let the court know that Quinault social services was operational. It took approximately 1 year, but we established our credibility with the court, primarily (Grays Harbor and Jefferson) The Courts gave Quinault social service joint supervision with D.S.H.S. of all cases because we were doing a better job. This is automatic now.

Advantages

1. Can be innovative
2. Not restricted by agency rules, regulations and meaningless forms.
3. All Quinault children are placed in Quinault foster homes.
4. Foster home recruitment has increased licensed foster homes from 7 to 31.
5. 52 Quinault children have been returned from foster care to the natural parent.
6. All juvenile cases are referred back to Quinault social services for disposition.
7. General over-all attitude change of community.
8. Washington Administrative Code (W.A.C.) was ammended October 27, 1976 to address Indian child welfare standards in Washington state.
9. There have been no Quinault children adopted during the past four years.

Disadvantages

1. Jurisdictional problems ~~PL 280~~ (P.L. 83-280).
2. Much energy is spent explaining and arguing Indian values with state employees.
3. No assurance of money to keep program operating on a continuing basis.

Thank you for this opportunity to testify.

Goldie M. Denney

STATEMENT OF VIRGINIA Q. BAUSCH, EXECUTIVE DIRECTOR, AMERICAN ACADEMY OF CHILD PSYCHIATRY

Ms. BAUSCH. Thank you, Mr. Chairman.

My name is Virginia Q. Bausch. I am executive director of the American Academy of Child Psychiatry.

I realize the time this morning is limited. I would ask that my entire prepared statement be included in the record. The statement contains a number of very specific recommendations.

We applaud the overall thrust of the child placement standards in title I. These establish clear guidelines safeguarding the interests of children and their families, while respecting the very great importance of cultural ties. Our concerns about such matters were expressed in the hearings before this committee in April 1974, and later in an official position statement of the American Academy of Child Psychiatry. Copies of this statement have also been submitted.

We are extremely pleased with the general intentions in title II of setting up family development programs. We are delighted to see the emphasis on encouraging tribal groups themselves to establish such programs. Our academy, along with several other national groups, recently sponsored a conference in Bottle Hollow, Utah, on child welfare issues. The conference addressed itself to the unique developmental needs of American Indian children and how many programs have adapted themselves to meet these needs.

We all came away enthused about the competence, wisdom, and creative innovativeness of certain programs established by tribes throughout the country. But we were also made more aware of the need for fiscal encouragement of and technical assistance to tribal groups less advanced in the development of these programs.

Chairman ABOUREZK. May I interrupt you at this point? I have to go to a markup session in the Judiciary Committee on a bill that I am sponsoring. I have to be there or it is going to fail.

Senator Hatfield will be here in about 2 minutes. I want to recess the hearings for just 5 minutes until he gets here to continue them. Then, when I am finished, I will come back.

I am very sorry to have to do this. This spring we reorganized the Senate so that Senators would not have to be in two places at once. This is the logical result of that great reorganization effort.

I want to apologize for interupting you, but I have to be there. If I am not there, the bill is not going to pass. Excuse me.

[Recess taken.]

Senator HATFIELD [acting chairman]. The hearings will be in order.

May I suggest that no one read their statement, but, rather, highlight and summarize the statements. We will include the statement as you present it in full in the record. We have a number of other people to be heard this morning. In order to conserve time, I would ask you to please summarize your prepared statements or highlight them as you wish. We will then include the full prepared statement in the record.

Please continue, Ms. Bausch.

Ms. BAUSCH. Thank you, Mr. Chairman.

The major concern of the American Academy of Child Psychiatry with this bill is in the implementation of the act. It is the impression of our committee—which consists of many Indian consultants as well as child psychiatrists with experience in working with Indian families—that the track record of the Bureau of Indian Affairs in matters of child welfare and child mental health is not sparkling. This morning's discussion highlights their lack of concern.

It is, therefore, with mixed feelings that we sense a recent awakening of interest in this matter with the Bureau. Such interest may be wonderful. But we question the Bureau's ability to accept and carry out Congress' mandate. We realize the reasons are complex; but the well-known placement rates of Indian children, as compared with non-Indian children, says something very significant.

Indian children are placed at a rate 20 times that of Anglo children. It seems to us that there has been a lack of leadership and sensitivity within the Bureau to matters of child development and children welfare. We realize that the Bureau is not alone here. But we do wonder if there might be more viable alternatives for the implementation of the spirit of this bill.

The American Academy of Child Psychiatry stands ready to assist the Congress and the Bureau in promoting the welfare of Indian children.

If you have any questions, I would be happy to answer them.

Senator HATFIELD. Thank you, Ms. Bausch.

The committee will reserve the right to submit questions at a later time in writing that may arise in the course of the hearings.

We appreciate the opportunity to hear from you today.

Ms. BAUSCH. Thank you, Mr. Chairman.

Senator HATFIELD. Your entire prepared statement and the statement from the American Academy of Child Psychiatry, to which you referred, will be inserted in the record, without objection.

[Material follows:]

American Academy of Child Psychiatry

August 4, 1977

TESTIMONY OF THE AMERICAN ACADEMY OF CHILD PSYCHIATRY
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. Chairman and Members of the Select Committee on Indian Affairs, I am Virginia Q. Bausch, Executive Director of the American Academy of Child Psychiatry.

The AACP applauds the concerns of the Senate Select Committee on Indian Affairs about problems effecting the welfare of Indian children and we congratulate the drafters of this particular bill in attempting to provide the framework by which significant changes could come about for Indian families. The over-all intentions and recommendations of Senate Bill 1214 are commendable.

We would, however, like to share some comments and suggestions with you. We will first enumerate specific recommendations and later focus on our major concern about the administration of the program.

NATURAL PARENTS....On page 5, in the section on definitions, we believe the term "natural parents" is confusing. The general clinical use of this term usually implies biological parents. We suggest the use of the terms "biological parents, adoptive parents, or foster parents" would clarify intentions.

RESERVATION DEVELOPMENT PROGRAM....On page 14, section 202,

lists specific services included within Indian families development programs, implying that only those services constitute such programs. There is a need to allow for the diversity and creative ingenuity of Indian groups in devising programs most useful within their own culture. Thus, we suggest that the wording on lines 24 and 25 be changed to: "may include, but not be limited to, some or all of the following features."

TREATMENT ADDED....On page 15, of the same section, we'd like to add "and treatment of" in section 4, line 9, as the term "counselling" is vague, and may not include specific therapy.

ALREADY PLACED CHILDREN....On page 19, there is the potential questioning and possible disruption of long established relationships with adoptive or foster parents when the Secretary is in power to review all placements made up to 16 years prior to the effective date of this act. Considerable clinical discretion is needed in such reviews so that a second wrong is not brought about. For example, the original grounds for placement may have been inadequate or even unlawfully carried out. But any further change must consider what is to the best interest of the child. While we have been reassured about this matter, we nevertheless want to emphasize the need for careful study by an appropriate group.

We applaud the overall thrust of the child placement standards in Title I. These establish clear guidelines safeguarding the interests of children and their families, while respecting the very great importance of cultural ties. Our concerns about such matters were expressed in

the hearings of this Committee in April, 1974 and later in an official position statement of the American Academy of Child Psychiatry issued in January, 1975. Copies of this statement are attached.

We are extremely pleased with the general intentions in Title II of setting up family development programs. We are delighted to see the emphasis on encouraging tribal groups themselves to establish such programs. Our Academy, along with several other national groups, recently sponsored a conference in Bottle Hollow, Utah, on child welfare issues. The conference addressed itself to the unique developmental needs of American Indian children and how many programs have adapted themselves to meet these needs. We all came away enthused about the competence, wisdom and creative innovativeness of certain programs established by tribes throughout the country. But we were also made more aware of the need for fiscal encouragement of and technical assistance to tribal groups less advanced in the development of such programs.

In regard to the need for technical assistance we would hope that provision be made for establishing a consulting group made up of Indian people experienced with programs and who could be called upon to assist tribes and urban groups in establishing their own family development programs. This bill gives much responsibility to tribes but it must be recognized that technical assistance should be available if a tribe desires it.

Our major concern, however, is the implementation of this act.

It is the impression of our committee (which consists of many Indian consultants as well as child psychiatrists with experience in working with Indian families) that the track record of the Bureau of Indian Affairs in matters of child welfare and child mental health is not sparkling! It is, therefore, with mixed feelings that we sense a recent awakening of interests in this matter within the Bureau. Such interests may be wonderful. But we question the Bureau's ability to accept and carry out Congress' mandate. We realize the reasons are complex but the well-known placement rates of Indian children, as compared with non-Indian children, says something very significant. Indian children are placed at a rate 20 times that of Anglo children. It seems to us that there has been a lack of leadership and sensitivity within the Bureau to matters of child development and child welfare. We realize that the Bureau is not alone here. But we do wonder if there might be more viable alternatives for the implementation of the spirit of this bill.

The AACP stands ready to assist the Congress and the Bureau in promoting the welfare of Indian children.

American Academy of Child Psychiatry

THE PLACEMENT OF AMERICAN INDIAN CHILDREN---THE NEED FOR CHANGE

AMERICAN ACADEMY OF CHILD PSYCHIATRY

1800 R Street, N.W., Suite 904

Washington, D.C. 20009

Carl E. Mindell, M.D.
Alan Gurwitt, M.D.

Adopted on January 25, 1975 by American Academy of Child Psychiatry

THE PLACEMENT OF AMERICAN INDIAN CHILDREN -- THE NEED FOR CHANGE

Each state in the United States has a statute which allows its agent (usually the juvenile or family court) to intrude into the privacy of a family and to consider separating the child from his/her family. Ordinarily this might occur when:

1) the child has been involved in delinquent acts;

2) the child is dependent or abandoned, i.e. has no recognized or legally appointed guardian;

3) the child is neglected, i.e., his needs are not being met by the family;

4) or the child is abused, i.e., is being hurt in his/her family.

The professed principle which governs in such cases has generally been the quest for "the best interests of the child". This principle has few standards or criteria associated with it to guide its interpretation. As a consequence there are wide variations in the way individual state's agents or courts put it into practice.[1] This, in turn, allows and perhaps encourages society's agent to fall back on his personal values and moral system in evaluating the child rearing of any particular family who comes before him. Thus, the judge (social worker, probation officer) makes some determination of the child's needs and family's ability to meet those needs. This estimate, however, may be based on his own individual class values which can differ radically from the culture of the child and the values of his family. Moreover,

the less powerful the family, the greater the likelihood of the state's 'benevolent' intrusion (especially when there are few standards and no systematic review of judgments).

For a long time state and federal government agents have intruded regularly into the families of American Indians, particularly those living on reservations.* This intrusion occurs in four areas:

1) where a child is held to be dependent-abandoned;
2) where a child is considered to be neglected;
3) when a child is considered delinquent;
4) and for another reason altogether: to meet the child's "educational" needs.

In regard to the last mentioned, on some reservations, the Bureau of Indian Affairs (B.I.A., part of the Department of the Interior) has made it policy to send children as young as six years to a distant boarding school. This had formerly been widespread practice, with the overt aim of "helping" Indian children enter the mainstream of American life. Now, supposedly, the practice is confined to regions where other educational opportunities have not developed, where there are difficult home situations, or where behavior has been deviant. In the past, this educational practice has had a devastating effect on several generations of Indian children.[2] It has affected their family life, their native culture, their sense of identity, and their parenting abilities. It

*There are approximately 800,000 American Indians -- about 500,000 live on a reservation.

is quite likely that the continuation of these practices today will have the same destructive impact. Ultimately the message is the same: It is better for Indian children to be reared by others than by their parents or their own people.[3] The complex issues relating to the B.I.A. boarding schools have recently been addressed by the American Psychiatric Associations's Task Force on Indian Affairs. Their views are expressed in an editorial in the American Journal of Psychiatry.[4]

We would like to focus here on the fact that today American Indian children are regularly removed from their families and communities. This action is being taken by government and voluntary agencies and some religious groups, ostensibly, for reasons of dependency-abandonment or neglect.

The Association on American Indian Affairs asserts that these practices have resulted in the wholesale, and often unwarranted, removal of Indian children from their homes, reservations and people.[5,6] The figures are alarming. In the state of South Dakota, on a per capita basis, approximately 16 times as many Indian children as white children are living in foster homes. In Montana, the rate is 13 times the national foster home placement rate. In Minnesota, among the Indian children, the rate of foster home placement is 5 times greater than for non-Indian children.[7]

In the United States, one in every 200 children lives outside of his home of origin. In North Dakota, South Dakota and Nebraska one in every nine Indian children are in foster homes, adoptive homes, institutions or boarding facilities. Indian children in these states are withdrawn from their homes at a rate of 20 times the national average.[5] In Minnesota during 1971-1972, one in every

seven Indian children was in placement outside of their own homes (there were about 1,413 Indian children under 18 in adoptive placement while there were 241 Indian children under 18 in foster care). Ninety-one per cent of the adoptions were in non-Indian homes. In a survey of 16 states, "approximately 85% of all Indian children in foster care are placed in non-Indian homes."[7]

There are, then, two trends which are both obvious and alarming: 1) American Indian children are being placed outside of their natural homes at an enormous rate, and 2) they are being given over to the care of non-Indians in very considerable numbers.

There is much clinical evidence to suggest that these Native American children placed in off-reservation non-Indian homes are at risk in their later development. Often enough they are cared for by devoted and well-intentioned foster or adoptive parents. Nonetheless, particularly in adolescense, they are subject to ethnic confusion and a pervasive sense of abandonment with its attendant multiple ramifications. Consequently, these problems combined with their untoward early childhood preplacement experiences adversely affect their young adulthood and their own potential capacities as parents.

The two trends noted above appear to be final common pathways reflecting:

1. The professed policy of the Bureau of Indian Affairs, state welfare agencies, and of voluntary and religious groups had been to admit Indians into the mainstream of America. While this policy has changes at higher levels of the Bureau, the change is unevenly applied at the lower levels. It is not so clear that the policy has changed among the other groups,

particularly, on actively proselytizing religious groups, such as the Mormon Church.

2. Alternatives to placement are either not available, not thought of, or are inaccessible for varied reasons. Families which have become disorganized or have had difficulties in providing for the needs of their children are usually well known to various agencies. The decision to place the child often assumes that other options have been tried and have failed. All too often, however, neither tribe, state nor federal agencies has made any real effort at early intervention and support for the child and his family. As a result, when things get bad enough, the only clear option appears to be placement.
3. The decision to remove a child from his parents is often made by federal and state agency personnel who are poorly trained and who have limited understanding of Indian culture or by Indian personnel with little clinical and developmental training.
4. The parents may have no understanding of their rights, e.g., they may be induced to waive their parental rights voluntarily without understanding the implications. Furthermore, the child, and in most cases his parents, do not have an advocate in court to represent his and their respective interests even if there is a court procedure.
5. The decision to place the child is often made by a state court. This procedure typically fails to utilize the rich information about potential support and care readily available from the

child's extended family and neighboring community. (While there has been some growth of tribal courts with greater understanding of cultural and community resources, there have been procedural and jurisdictional problems).

6. The standards used in non-Indian courts in making the placement reflect the majority culture's criteria for suitability (e.g., so many square feet of space available per foster child in the home) and do not take into sufficient account what may be characteristic of the child's socio-cultural milieu. Thus Indian families are discriminated against as potential foster families.[5,7]
7. The tribes generally have been given little or no responsibility for controlling or monitoring the flow of monies available for child care and family welfare.[7]
8. There is no systematic review of placement judgments to insure that the child's placement offers him the least detrimental alternative.[9]
9. There is no person or agency charged with focusing on the needs of Indian children that would compile information and develop comprehensive planning models adaptable to different regions.

Recently, Indian communities have become actively involved with these threats to their survival.[5] In some instances tribal councils have established welfare commitees to become involved with decisions pertaining to child neglect and dependency; and have adopted more stringent tribal codes governing child welfare matters. Depending on the local circumstances, such active participation on the part of tribal groups has led to a reduction of off-reservation

placements. Indeed, there are some innovative efforts by Indian tribes to find and support foster homes, establish group homes and residential centers for families, and provide for other child-care services.[8] While there are some complex issues resulting from the various degrees of jurisdictional authority, the relationship with the B.I.A., the availability of assistance from the Indian Health Service (a section of the Public Health Service), and the local or state welfare departments, coordinated working relationships are possible. The major point here is that the tribal groups have made an effort to assume parental, and in many ways, grandparental authority over the families and children in their community. Indeed this corresponds to the increasing activity on the part of Native Americans to gain control over their own lives.

While some changes in the practice of child placement have begun on some reservations, more needs to be done. The following are recommendations related to the specific reasons given previously.

1. The bureau of Indian Affairs and state welfare agencies, which are the recipients of federal funds, should assert explicitly that a major goal of their work is to support the integrity of Indian families and communities. In the area of child placement, this policy would be implemented by recommendation #2.
2. Options should be sought out and made available to Indian communities other than placement. These options should be integrated into a continuum of services under the general direction of the tribal government. The options would be flexible, i.e., capable of responding to the needs of an individual family whic would vary with time. Such options might include:

a) in-home help, such as homemaker care, home counselor-child rearers able to work within a family for extended periods of time, and,

b) out-of-home help such as pre-school care, after-school care, day care, respite service, group homes, and residential treatment facilities.

Both kinds of support should be provided either by Indians or by personnel familiar with Indian culture, and who are trained in the psychological aspects of child development.

3. When placement is considered, the child and his parents should each be represented by an advocate. This would help to insure that the interests of each are represented. It is important to keep in mind that these interests are not necessarily the same, and may indeed be different from the state's interests.

4. Decisions about the custody or placement of Indian children should be under the auspices of Indian tribal governments. Agency personnel and professionals should be available in an advisory capacity, but they should not be decision-makers.

5. The standards that govern these decisions should be developed and monitored by appropriate groups under the auspices of the tribe. Thus the fate of a child and his family would be determined by persons who share the child's and family's socio-cultural milieu.

6. Monies for the support and care of children should flow through the tribe, rather than through B.I.A. Welfare and state welfare agencies. Funds should be available for innovative responses to the needs for child care -- e.g., the funding of foster families at a rate reflecting their training, their experience and the magnitude of the child's needs; the development of group homes; the establishment of family centers; the improvement of housing to allow for better child care; arrangements for subsidized adoption, etc.

7. Judgments pertaining to child-care and placement should be under systematic review. In every case the tribes should be the responsible agent for this on-going process of evaluation. The goal of the process would be to insure that the service is providing the child with the least detrimental alternative.

8. Within the B.I.A. there are offices focusing on roads, business and economic development, relocation, etc. But, there is no office, at any level, charged with focusing on the needs of Indian children[1]. Since it seems likely that "children's rights cannot be secured until some particular institution has recognized them and assumed responsibility for enforcing them,"[1] this issue should be explored.

These recommendations can be formally legislated by Congress. Indeed, the Association on American Indian Affairs has made very specific legislative recommendations that would enable broad implementation of similar policies.[7]

States, took can respond to the spirit of these new approaches.

Adopted on January 25, 1975 by American Academy of Child Psychiatry

This is evidenced by recent developments in Wisconsin. There the American Indian Child Welfare Service Agency, with an all-Indian policy board, has been established with broad responsibility for supervising all child placement decisions.

A recent book concerned with the complex issues of child placement highlights the importance of the issues involved.

> "....by and large, society must use each child's placement as an occasion for protecting future generations of children by increasing the number of adults-to-be who are likely to be adequate parents. Only in the implementation of this policy does there lie a real opportunity for beginning to break the cycle of sickness and hardship bequeathed from one generation to the next by adults, who as children, were denied the least detrimental alternative".

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STATEMENT OF MARLENE ECHOHAWK, PH. D., NATIONAL CONGRESS OF AMERICAN INDIANS

Ms. ECHOHAWK. Thank you, Mr. Chairman.

My name is Marlene Echohawk. I am a clinical psychologist. I am a member of the Otoe-Missouri Tribe.

I am here to present testimony in support of S. 1214. I am representing the National Congress of American Indians.

In general, this bill is considered to be humanely written. There are some specific recommendations I would like to suggest, which are measures to further insure Indian children's welfare.

First of all, to use a social action model as proposed in this bill presupposes an adequate knowledge of the culture under consideration. Other programs have failed, where Indians are concerned, by not having a well-grounded knowledge of Indian cultures—and I emphasize the plural of "culture."

The refreshing and energizing concept incorporated in S. 1214 permits the specific involvement of Indian tribes in the care of our own children. I am impressed by the earlier panel of high echelon Government witnesses; American Indians are notably absent. That emphasizes the need to respect our ability to care for our children and endow them with an identity necessary to function and enjoy this life.

I would be glad to answer any questions you have.

Senator HATFIELD. Dr. Echohawk, we do have a number of questions that staff has prepared. We would like to submit them to you. If you could respond for the record, we would appreciate it very much. I am sure you would want a little time to reflect on some of these questions.

[The prepared statement of Dr. Marlene Echohawk follows:]

PURPOSES

S. 1214 is intended to deal with the recurrent problem of forcible and fraudulent removal of Indian children from their natural or adoptive parents, or from the homes of blood relatives, for placement with non-Indian families or institutions, often without adequate information or notice to the children's parents, relatives, or tribe. The bill also seeks to strengthen Indian families by providing funds for family counseling and assistance, improved housing, construction of temporary care facilities, representation of Indian children and parents or relatives in child placement proceedings, and the gathering of information on which to base such programs.

SUMMARY OF MAJOR PROVISIONS

Under the child placement provisions (Title I) of the bill, no placement of a child living on a reservation is valid unless ordered by a tribal court or, if no tribal court exists, unless the tribe occupying the reservation has been given thirty days' written notice of the placement proceedings and the right to intervene as an interested party. [§101 (a) and (b).] In cases where neither the child nor the parents or relatives who have custody of the child live on a reservation, a placement is invalid unless the tribe in which the child is, or is eligible to be, a member has been given thirty days' written notice of the proceedings

and the right to intervene. [§101 (c).] In addition, the bill prohibits the removal of an Indian child for more than thirty days from the custody of his parents or of relatives with whom the child has been privately placed without written notice to the tribe to which the child belongs or on whose reservation the child normally lives. An exception to all of these requirements is made in the case of temporary placements under circumstances where the child's physical or emotional well-being is immediately threatened.

The bill further guarantees Indian parents, or blood relatives with custody of a child, thirty days' written notice of placement proceedings and the rights to intervene and be represented in the proceedings, to submit evidence and present witnesses, and to examine all materials or files on which a decision on placement may be based. [§102 (a).] Any consent by the parents or blood relatives to a placement must be voluntary, in writing, and signed before a judge with jurisdiction over the proceedings, who must certify that the consent was fully explained in the parents' or relatives native language and was fully understood. If the placement is not an adoption, the consent may be withdrawn at any time for any reason. If the consent is to the adoption of a child over two years old, the consent may be withdrawn at any time before the final decree of adoption, which cannot be entered until ninety days after the consent is given. Final adoptions cannot be attacked unless the child is again being placed for adoption, the adoption was unlawful, or the consent to the adoption was involuntary. [§102 (c).] Moreover,

the bill requires that an Indian child and his parents be represented by separate counsel in child placement proceedings. [§102 (d).]

In contested placement proceedings, a placement based on potential emotional damage to a child must be supported by the overwhelming weight of the evidence, including professional witnesses' testimony. Where the court bases a placement on the potential for serious physical harm to a child, that determination must be supported by clear and convincing evidence including testimony by a qualified physician. Evidence of poverty, inadequate housing, misconduct, or alcohol abuse on the part of a parent or blood relative is not sufficient, standing alone, to support a determiniation that continued custody will result in emotional or physical damage to the child. The court is to apply the standards of the parents' or relatives' Indian community in making placement determinations. [§102 (b).]

S. 1214 also requires that non-Indian adoption agencies grant a preference to members of a child's extended Indian family (as defined by tribal law or custom), and that preferences in other types of placements be given in the following order: (1) to the child's extended Indian family; (2) to a foster home licensed or designated by the Indian tribe on whose reservation the child normally lives; (3) to a foster home licensed by the tribe of which the child is, or is eligible to be, a member; (4) to any other foster home on a reservation recommended by the tribe of which the child is, or is eligible to be, a member; (5) to a foster home run by an Indian

family; and (6) to an institution for children operated by an Indian tribe, a tribal organization or non-profit Indian organization. This order of preference can be altered by tribal resolution, or upon a showing of good cause why it should not be followed. [§103 (b).]

Where a tribal court makes a child placement outside the child's reservation, the tribal court has continuing jurisdiction until the child is eighteen years old. [§103 (c).] Upon reaching the age of eighteen, an adopted Indian child is given the right, absent good cause to the contrary, to learn the names and last known addresses of his natural parents and brothers and sisters who are over eighteen years old, their tribal affiliations, and the basis for the family's breakup. [§104.] The bill also requires that court conducting placement proceedings governed by this legislation anywhere in the United States follow the tribal law and tribal court order of any Indian tribe involved in the proceedings. [§105.]

The family development provisions (Title II) of S. 1214 authorize the Secretary of the Interior to contract with or fund Indian tribes to assist them in preparing and implementing child welfare codes, and in establishing and operating the following types of family development programs:

(1) Programs to improve housing conditions of: Indian foster and adoptive parents, if their housing is substandard; Indians wishing to qualify as foster or adoptive parents whose homes do not meet tribal standards fixed for that purpose; and Indian families facing disintegration, where improved housing would aid family stability. [§201 (b)];

(2) Programs for the licensing and regulation of Indian foster and adoptive homes; the construction and operation of family development centers with facilities for family counseling and temporary custodial care; the provision of family assistance and counseling; the employment of personnel to assist tribal courts in domestic relations and child welfare matters; the education and training of Indians (including tribal judges) in skills related to child welfare and family assistance; and the provision of subsidies to raise the level of support of adopted Indian children to that of Indian foster children [§202 (a)];

(3) Programs for Indian child defense, providing legal representation for an Indian child or, if appropriate, his parents or blood relatives, involved in a child placement proceeding [§204 (b)]; and

(4) Off-reservation programs to provide the same services as the programs in paragraphs (2) and (3) above, as well as the furnishing of guidance, representation, and advice to Indian families involved in child placement proceedings before non-Indian government agencies [§203].

Finally, the bill gives the Secretary of the Interior discretion to prescribe rules and regulations to implement its provisions, in consultation with Indian tribes, Indian organizations and Indian-interest agencies, which regulations must be presented to the Senate Select Committee on Indian Affairs and the House Committee on Interior and Insular Affairs. [§205.]

COMMENTS AND RECOMMENDATIONS

Definitions: Section 4.

For the purpose of identifying the beneficiaries of this Act, Subsection (b) defines "Indian" to mean any person who is a member of, or is eligible for membership in, a federally recognized Indian tribe; and Subsection (c) defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community of Indians including any Alaska Native region, village, or group, as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. These definitions are consistent with present national policy limiting special Indian programs and services to specific tribes determined by the United States to be eligible for those services.

Indians who are members of tribes that are not federally recognized and Canadian Indians who live in the United States are not covered by the provisions of the Act, although they generally have the same needs as members of federally recognized tribes. The general child-welfare statutes of the United States and the programs and services available to Indians living in the United States who are not members of federally recognized tribes are wholly inadequate to promote the stability and security of these Indian families. The Association recommends that the general statutes be amended to meet their special needs or, alternatively, that S. 1214 be amended to accomplish this purpose.

The definition of "tribal court" in Subsection (e) includes tribunals which perform judicial functions. This recognizes the fact that some tribes do not have courts per se and respects the right of Indian tribes to determine for themselves the kind of tribal institutions they consider to be the most appropriate to deal with domestic and family relations. This recognition of tribal institutions was noted and respected in Wisconsin Potowatomies of the Hannahville Indian Community v. Houston, 393 F. Supp. 719 (W.D. Mich. 1973).

The definition of "child-placement" in Subsection (g) is intended to include every type of action under which an Indian child may be adopted or placed in a foster home or other insitution.

Three amendments to Subsection (g) are recommended:

1) Add the words "including any appeal" after the word "involuntary" on page 5, line 2.

2) Add the word "actions" after the word "private" on page 5, line 3.

(This perfecting amendment will make it clear that the phrase "public or private" does not modify "proceedings" on page 5, line 1, but rather refers to placement of children by public and private

child-placement agencies.)

3) Add the phrase "or who otherwise has custody in accordance with tribal law or custom" after the first time the word "parents" is used on page 5, line 7.

(This amendment will extend the protections of the Act to blood relatives who have valid custody that is not derived from an act of the natural parents.)

Subsection (h), which defines "natural parent," should be amended to add the phrase "under the laws of a state or in accordance with tribal laws or customs" after the last word on page 5, line 11. Absent this amendment, it is possible that the word "adopted" on page 5, line 11 will be construed to mean only state court adoptions, in accordance with the normally understood non-Indian use of the word. This amendment is consistent with the general thrust of the Act, which is to respect the sovereignty, customs, and family structure of Indian tribes.

It is recommended that the Act include a definition of the term "Indian reservation." We suggest the following language: "Indian

reservation" means Indian Country as defined in 18 U.S.C. §1151 and any Alaska Native village, as defined in the Alaska Native Claims Settlement Act (85 Stat. 688).

This amendment will clarify the scope of exclusive tribal jurisdiction in Section 101 (a) and the right of a tribe to intervene under Section 101 (b). The amendment is consistent with federal statutory and decisional law. Indian tribes that have not had their jurisdiction diminished under the authority of an Act of Congress are recognized to have jurisdiction within Indian Country and not merely on an Indian reservation. The amendment will also enable Alaska Native regions, villages, and groups to intervene in proceedings covered by Section 101 (b) and (c).

Child Placements Standards: Title I.

Section 101 gives effect to the underlying premise of the Act that Indian tribes, as governments, are essential participants in any decisions involving the possible separation of an Indian child from its family. The right of the tribes to participate in such decisions derives from their parens patriae interest in the health and welfare of children who are members of the tribal community and from the right of the tribes to perpetuate their tribal relations and culture.

Subsection (a) provides that , in the case of any Indian child who resides within an Indian reservation, no child placement shall be valid "unless made pursuant to an order of the tribal court,

where a tribal court exists within such reservation which exercises jurisdiction over child welfare matters and domestic relations." This subsection is supported by the recent decision of the United States Supreme Court in Fisher v. District Court, 424 U.S. 382 (1976). Fisher held that Indian children who are residents of a reservation where a tribal court exercises exclusive jurisdiction cannot be adopted in a state court.

Subsection (a) recognizes and does not change existing jurisdictional law. It delineates the breadth of tribal child welfare jurisdiction for tribes that have authority under law to exercise jurisdiction over tribal members. Under subsection (a), states that have properly acquired jurisdiction in Indian Country will continue unimpeded in that jurisdiction. The Supreme Court, in Bryan v. Itasca County, 426 U.S. 373 (1976), has recently held that P.L. 83-280 did no more than provide state forums in which Indians could settle their private disputes. Bryan supports the position that states may not impose their dependency, neglect, and delinquency laws and regulations on Indian people who live in Indian Country in P.L. 83-280 states.

Subsection (b) provides that, in the case of any Indian child who is domiciled within an Indian reservation, or who resides within an Indian reservation which does not have a tribal court, no child placement shall be valid unless the tribe occupying the reservation has been accorded thirty days' written notice of, and a right to intervene as an interested party in, the child placement proceedings.

This subsection does not alter the existing rights of Indian tribes to determine the placement of an Indian child domiciled within an Indian reservation. It does establish certain statutory rights of Indian tribes in such proceedings.

An unbroken line of recent judicial decisions holds that tribes have exclusive jurisdiction over placement decisions involving Indian children who are domiciled within an Indian reservation. See e.g., Wisconsin Potowatomies of the Hannahville Indian Community v. Houston, 393 F. Supp. 719 (W.D. Mich. 1973); Wakefield v. Little Light, 347 A. 2d 228 (1975); Adoption of Doe, 555 P. 2d 906 (1976); In the Matter of Greybull 543 P. 2d 1079 (1975); Adoption of Buehl, 555 P. 2d 1334 (1976); Severance of Duryea, 563 P. 2d 885 (1977).

As presently drafted, the definition of domicile in subsection (b) is too restrictive, and we suggest that the words "or who otherwise has custody in accordance with tribal law or custom" be added after the word "parents" on page 6, line 15.

Subsection (c) states that in the case of any Indian child who is not a resident or domiciliary of an Indian reservation, no child placement shall be valid or given any legal force and effect, unless the Indian tribe of which the child is a member, or is eligible for membership, has been accorded thirty days' written notice of, and a right to intervene as an interested party in, the child placement proceedings.

Two recent decisions, Adoption of Doe, supra, and Severance of

Burnett, supra, suggest that a tribe has concurrent jurisdiction with the state to determine the placement of Indian children who are members of the tribe and who neither reside nor are domiciled within Indian Country. Nothing in subsection (c) is intended to fix the extent of tribal jurisdiction over this class of Indian children. The scope of jurisdictional law with respect to this class of children is left by the Act to develop through judicial decision or other legislation.

An exception to the requirements in subsections (a), (b), and (c) is made in the case of temporary placements under circumstances where the child's physical or emotional well-being is immediately threatened. The exception is necessary to provide protection to Indian children who are in need of emergency placement while away from the tribal community. Although the term "temporary placement" is not defined in section 4, its scope is delimited by the qualifying phrase "under circumstances where the physical or emotional well-being of the child is immediately threatened." Once there is no longer an immediate threat to the child's physical or emotional well-being, the need and justification for the temporary placement vanishes and the placement should terminate.

Subsection (d) provides that no Indian child shall be removed from the custody of his natural parent or parents, Indian adoptive parent or parents, or blood relative in whose custody the child has been placed by the private actions of any private individual, corporation, group, or institution for a period of more than thirty

days without written notice served upon the tribe of which the child is a member or is eligible for membership in or upon whose reservation the child resides or is domiciled.

Subsection (e) provides that it shall be the duty of the party seeking a change of the custody of an Indian child to notify the revelant tribal governing body by mailing written notice to the chief executive officer or such other person as the tribe may designate.

Subsections (d) and (e) are intended to protect Indian children and families from coerced, fraudulent, or other overreaching privately arranged separations. These private agreements are frequently not explained to or understood by the Indian family and are not disclosed to the tribe. Such agreements often result in permanent separations of Indian children from their families, contrary to the wishes of the families and their understanding of the agreement.

Subsection (d) does not limit the authority a tribe may have to enact a system for the regulation of private child placements that are arranged within the tribal community.

Subsection (d) is ambiguous and its intent should be clarified. As drafted it could be construed to regulate the private placement actions of Indian parents or relatives who have custody of an Indian child rather than, as intended, the private placement actions

or individuals, corporations, groups, or institutions seeking to remove Indian children from the custody of their parents or relatives. Moreover, it could be construed to regulate private actions between parents or relatives and private actions occuring off the reservation, contrary to our understanding of its intent.

We suggest that Subsection (d) be amended to incorporate requirements similar to those now imposed by the Interstate Compact on the Placement of Children on all privately arranged placements that involve the movement of children across state lines. These requirements mandate that states be given notice of such placements and that the notice contain, inter alia, the information required in Subsection (d). The amendment should provide that, in private placement actions, any private individual, corporation, group, or institution intending to remove an Indian child from the custody of its family for placement from within an Indian reservation to a place outside the reservation shall give such notice to the tribe and that such notice be given at least thirty days prior to the date of removal. Further the amendment should make clear that it does not apply to private placement actions where the parties to the agreement are members of the same family.

Section 102 establishes the procedural rights of Indian parents and extended Indian families in voluntary and involuntary proceedings that may result in the placement of a child and provides evidentiary standards for such proceedings.

Subsection (a) requires that Indian parents, or blood relatives with custody of a child be given thirty days' written notice of placement proceedings and establishes their right to submit evidence, present witnesses, and examine all materials or files on which a decision regarding placement may be based.

It is a common practice in the child placement proceedings of nontribal government agencies to fail to notify blood relatives on the notion that only the nuclear family has a legitimate interest in the proceedings. The subsection gives recognition to the custodial interests of the extended Indian family by directing that blood relatives have full party status in child placement proceedings.

A significant additional feature of Subsection (a) is the requirement that nontribal government agencies must make affirmative efforts to prevent the breakup of an Indian family before seeking a child placement. Generally, nontribal government agencies practice crisis intervention. Aware in their incipiency of the presence of factors that frequently lead to family breakup, the agencies often passively observe the corrosive effect of these factors and intervene only when disintegration has reached the point of crisis to seek the legal separation of children from their

families. Remedial and rehabilitative services are generally not made available to the Indian family in distress. The laws of some states mandate that agencies must make affirmative efforts to provide families with remedial and rehabilitative services. Subsection (a) extends this requirement to all states when Indian families are involved.

Subsection (a) should be amended to delete the word "or" on page 8, line 12 and the words "alternatively, in a tribal court, through a lay advocate" on line 13. The purpose of this Act is to regulate the activities of nontribal government agencies and not to impose requirements on tribes in tribal proceedings. The proceedings in a tribal court should be held under tribal law and custom and in accordance with the Indian Civil Rights Act of 1968.

Subsection (b) provides that involuntary child placements must be based on overwhelming evidence, including the testimony of professional witnesses, that a child faces serious emotional damage if parental or familial custody continues. Where a child placement is based on the potential for serious physical harm to a child, that determination must be supported by clear and convincing evidence including testimony by a qualified physician. Evidence of poverty, inadequate housing, misconduct, or alcohol abuse on the part of the parent or blood relative with custody is not sufficient, standing alone, to support a determination that continued custody will result in emotional or physical damage to the child. The standards of the parents' or relatives' Indian community must be applied in

making placement determinations.

Many Indian families lose custody of their children through involuntary placement proceedings where evidence supporting placement is scant, wrong, or biased. Subsection (b) will eliminate the most serious abuses experienced by Indian families in such proceedings and prevent the unnecessary breakup of countless Indian families. Specifically, the evidentiary standard of overwhelming evidence of serious emotional damage will eliminate the common practices of: (1) utilizing witnesses untrained and inexperienced in mental health practice to describe emotional damage; (2) finding emotional damage in minor family upsets and using such "damage" to breakup Indian families; and (3) basing emotional damage on a mere preponderance of the evidence

There is controversy in the children's rights field over the use of emotional damage as a basis for child placement. The concerns revolve around the almost limitless scope of the word "emotional," the difficulty in proving emotional damage and the unavailability of competent witnesses to offer proof of emotional damage. Recognizing the potential for unnecessary placements of children based on emotional considerations, subsection (b) requires overwhelming evidence of emotional damage. The requirement is for evidence that is more than clear and convincing and less than beyond a reasonable doubt. Thus, the intent of subsection (b) is to permit placements based on emotional damage only in extraordinary circumstances.

Subsection (b) prohibits any child placement based on a mere preponderance of the evidence. This provision is premised on the singular importance of the rights at stake in such proceedings and on the fact that weak evidentiary standards have resulted in the unwarranted breakup of untold members of Indian families.

Consideration of parental poverty, misconduct, and alcohol abuse, as prima facie, and sometimes the only, evidence of emotional or physical damage to a child has led to the unnecessary placement of many Indian children. Subsection (b) proceeds from a recognition that poor people beset with social problems nevertheless have a right to raise children. Under subsection (b), the poverty and social problems of an Indian family can only be weighed in determinations of physical or emotional damage if other evidence demonstrates that the situation will cause serious harm to a child. Absent actual harm, an Indian child cannot be removed from its family in involuntary proceedings.

The provision in subsection (b) that placement decisions must be based on Indian community standards is vital in incorporating the child-rearing practices of an Indian community in the decision-making process of the nontribal government agency. Frequently, Indian children are removed from their families under circumstances considered wholly inappropriate by the Indian community. The removals are based on non-Indian child-rearing standards not shared by the Indian community or on a miscomprehension of Indian child-rearing practices and their effect on the child. Subsection (b) is

intended to prevent such inappropriate removals.

Subsection (c) provides that in voluntary child placements any consent by the parents or blood relatives to a placement must be voluntary, in writing, and signed before a judge with jurisdiction over the proceedings who must certify that the consent was fully explained in the parents' or relatives' native language and was fully understood. If the placement is not an adoption, the consent may be withdrawn at any time for any reason. If the consent is to the adoption of a child over two years old, the consent may be withdrawn at any time before the final decree of adoption, which cannot be entered until ninety days after the consent is given. Final adoptions cannot be attacked unless the child is again being placed for adoption, the adoption was unlawful, or the consent to the adoption was involuntary.

The provision of subsection (c) prescribing voluntary consent procedures will eliminate one of the most common and abusive practices by which nontribal government agencies obtain the custody of Indian children. Parental "voluntary" relinquishments of Indian children are commonly obtained by nontribal government agencies. These relinquishments generally involve parental signature on an agency voluntary consent form. The signature is witnessed by an agency employee. Review by a judge occurs only in those states that have statutes requiring voluntary relinquishments to occur in court. Frequently, Indian parents are coerced by agency personnel into signing relinquishment consents with threats of cutting off public assistance payments for failure to consent and with insinuations of

parental unfitness and lack of concern for providing the best way of life for the child. Consents are often signed with no explanation ←When explanations are given, the Indian parent often has the understanding that the placement is temporary and revocable. Many times the form states otherwise. Subsection (c) assures that consents will in fact be voluntary and with knowledge of exactly what the consent agreement includes.

The provisions of subsection (c) pertaining to withdrawal of consent are consistent with the laws of many states. Some states limit the revocability of consents to adoption. The thrust of subsection (c) is to support the general proposition that it is in the best interests of children to be raised by their natural family and that every opportunity should be provided to maintain the integrity of the natural family. Also, under subsection (c), an Indian parent or blood relative with custody may withdraw consent to adoption up to ninety days after the consent is given and by that act completely terminate an adoption proceeding. This provision was included in subsection (c) to protect improvident adoption consents by mothers during the post partem depression period and to grant a period of grace to parents and blood relatives during which they can reconsider their relinquishment decision and develop alternative plans for the child. Once consent is withdrawn the nontribal government agency must immediately return the child to the parents or blood relatives.

The authorization to set aside final decrees of adoptions affecting Indian children is another important feature of subsection (c).

The decrees can be set aside only if the adoption was unlawful or the child is available again for adoptive placement. This authorization is necessary to assure strict compliance with the standards set forth in Title I of this Act and other laws governing adoption. It also recognizes that Indian children suffer from many failed adoptions and admits the possibility of a restoration of parental or blood relative rights in such instances. Many states do not permit final adoption decrees to be set aside.

The last sentence in subsection (c) should be deleted because it is in direct conflict with the first sentence after the "provided further" clause on page 10, line 15. Under the last sentence in subsection (c), there can be no valid adoptive placement within ninety days of the birth of the child. The purpose of the subsection is to allow valid adoptive placements during a child's first ninety days of life but to allow parents or blood relatives to withdraw consent to the adoption up to ninety days after consent is given.

Subsection (d) requires that an Indian child and its parents or blood relative be represented by separate counsel in child placement proceedings.

Subsection (d) should be amended to delete the phrase "unless the child" on page 11, line 5 and to delete all of page 11, lines 6 and 7, and to delete the words "separate" and "or lay advocate" on page 11, line 12.

This amendment will permit existing state law on the child's right to counsel in placement proceedings to prevail. Some states grant a right to counsel for children in certain types of placement proceedings. Other states leave the appointment of counsel for a child to judicial discretion. The amendment is based on the view that in involuntary placement proceedings the interests of a child should not be presumed adverse to the interests of a parent and that counsel for the parents and counsel for the state and/or the tribe as parens patriae can adequately represent the interests of the child. In voluntary placement proceedings and in certain involuntary placement proceedings separate counsel for a child may be indicated and can be appointed in the discretion of the court. To provide an absolute right to counsel for children will place a burden on already strained judicial resources and may exacerbate the personal difficulties of the child and its family.

Section 103 will help assure that most Indian children in need of placement will be placed in Indian homes and that Indians seeking custody of Indian children will not unreasonably be denied the opportunity to adopt Indian children or to provide them with foster care.

Subsection (a) requires that nontribal government agencies grant a preference in adoption to members of a child's extended family as defined by tribal law or custom.

Subsection (b) requires that, in otherwise placing an Indian child, nontribal government agencies shall grant a preference in accordance with six stipulated categories of preference, except

upon a showing of good cause why the order of preference should not be followed. This preference order can be altered by the resolution of the governing body of each Indian tribe.

Subsections (a) and (b) cover only child placements made by nontribal government agencies. Private, non-agency placements are not covered.

Subsection (c) provides that, where an Indian child is placed in a foster or adoptive home, or in an institution, outside the reservation of which the child is a resident, pursuant to an order of a tribal court, the tribal court shall retain continuing jurisdiction until the child reaches the age of eighteen.

Subsection (c) assures a continuing relationship between the tribe and a child and protects the ability of a tribe to determine the best interests of a child placed outside of Indian Country by an Indian tribe. Many Indian tribes do not have sufficient placement resources on the reservation to meet the needs of Indian children within tribal jurisdiction. These tribes would use off-reservation placement resources if assured of continuing jurisdiction. There is frequently a reluctance to place children outside of the reservation because many tribes have experienced difficulty in exercising continuing jurisdiction over children so placed. The difficulty derives from the laws of many states that permit state adjudication of the best interests of any child physically present within state jurisdiction. The exclusion of tribes from the Interstate Compact on the Placement of Children exacerbates the problem. Under the Compact the state that sends a child to another state does so by agreement and the sending state retains jurisdiction over the child.

Section 105 needs to be perfected. We suggest the following substitute language:

> In any child placement proceeding within the scope of this Act the United States, every state, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to any Tribal Court orders relating to the custody of a child who is the subject of such a proceeding.

Indian Family Development: Title II.

Our comments and recommendations relating to this Title are limited to Section 204.

Section 204 authorizes and directs the Secretary to undertake a study of past Indian child placements and to take appropriate legal action to challenge the placement where (1) the child is under the age of eighteen; (2) there is good cause to believe that the placement is legally defective; and (3) the parents or relatives of the Indian child request that the Secretary take action.

The section also authorizes the Secretary to make grants and contracts with Indian tribes and Indian organizations for the operation of Indian family defense programs, and to maintain records on all future Indian child placements and all placements studied by

the Secretary under this section.

The child placements to be studied under subsection (a) include adoption, foster care and institutional placements. The greatest concern expressed by critics of subsection (a) is that it should not operate to undo well-functioning and longstanding adoptive placements regardless of any legal defect in the adoption proceedings. In order to assure against such a possibility it has been suggested that the subsection be amended to require that the Secretary, prior to taking any legal action, make a finding that the best interests of the child would be served by legal action. This amendment is too restrictive and should not be accepted.

We believe that the broad discretionary power granted the Secretary in subsection (a) is an important feature. Family relationships are, by their very nature, extremely complex. To limit his discretion by a test of "the best interests of the child" fails to recognize the importance of taking the broad family context into consideration. Certainly the best interests of the child should be given great weight in his decision-making.

There is considerable controversy among children's advocates concerning the standards that should apply in determining the best interests of the child, the impact of these standards on the rights of parents and, indeed, on our society as a whole and its laws.

Subsection (a) will be most often applied in situations where Indian children are in inappropriate foster and institutional care and the Indian extended family is capable of assuming the care of the child, and in situations where an Indian child is the victim of a failed adoption and the extended Indian family wants the child back.

Subsection (b) should be amended to mandate the right of parents to counsel and make the right of children to counsel discretionary, for the reasons stated above in our discussion of Section 102(d).

Subsection (b) should be further amended to provide that the Secretary may not operate an Indian family defense program on any Indian reservation if such program has been rejected by the tribe involved.

In order that the Act be administered effectively, we urge that Congress direct the Secretary of the Interior to establish an Office of Child Development within the Bureau of Indian Affairs and, accordingly, that a new section be added to Title II.

Finally, we urge that Congress authorize and direct the Secretary of the Interior to prepare and submit to it a master plan for the construction and operation of locally convenient day schools as an alternative to boarding schools and that a new title be added to the Act to accomplish this purpose.

ADDITIONAL AMENDMENTS

On page 4, line 13, change the word "and" to "or".

On page 6, line 2, after the period add the words "For the purposes of this Act, an Indian child shall be deemed to be resident where his natural parent or parents, or the blood relative in whose care he may have been left by his natural parent or who otherwise has custody in accordance with tribal law or custom, is resident."

On page 6, line 23, after the word "membership" add the words "and one of whose parents is in fact a member".

On page 8, line 12, after the word "counsel" add the words "except in child placement proceedings before a tribal court".

On page 8, line 10, after the word "notice" add the words "and an explanation of".

On page 8, line 23, change the words "any of three" to "either of two", and on line 24, after the number "101" add "(b) and (c)".

On page 11, line 2, after the number "101" add the words "(a) or".