

The Bureau of Indian Affairs has issued guidelines interpreting the ICWA, including section 1915(a). Those guidelines specifically discuss what constitutes "good cause" to modify the preferences set forth in section 1915(a):

F.3. Good Cause To Modify Preferences

(a) For purposes of foster care, preadoptive or adoptive placement, a determination of good cause not to follow the order of preference set out above shall be based on one or more of the following considerations:

(i) The request of the biological parents or the child when the child is of sufficient age.

(ii) The extraordinary physical or emotional needs of the child as established by testimony of a qualified expert witness.

(iii) The unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria.

(b) The burden of establishing the existence of good cause not to follow the order of preferences established in subsection (b) shall be on the party urging that the preference not be followed.

Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed. Reg. 67,583, 67,594 (Nov. 26, 1979). Nonetheless, as acknowledged in the introduction to the guidelines, this provision applying "good cause" to modify preferences, and the guidelines in general, are interpretative, not legislative, in nature, and not binding on the courts:

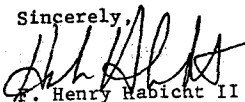
Although the rulemaking procedures of the Administrative Procedure Act have been followed in developing these guidelines, they are not published as regulations because they are not intended to have binding legislative effect. . . . If procedures different from those recommended in these guidelines are adopted by a state, their adequacy to protect rights guaranteed by the Act will have to be judged on their own merits.

44 Fed. Reg. 67,584 (Nov. 26, 1979). The guideline on "good cause" is clearly interpretative because the ICWA does not expressly

delegate to the Secretary the responsibility to interpret the statutory language of section 105. As acknowledged by the introduction to the guidelines, "[p]rimary responsibility for interpreting . . . language in the Act [which does not lie with the Department] rests with the courts that decide Indian child custody cases." *Id.*

Because the guidelines are merely interpretative and not legislative, we conclude that this case does not merit the *amicus* participation of the United States. The language of section 105 clearly leaves the state court with ample discretion to modify the preferences set forth there as long as "good cause" is shown. The Department's guidelines on "good cause" are not binding on the court and therefore provide no legal basis for us to argue that awarding custody to the foster parents is incorrect as a matter of law. The legislative history of the ICWA expressly provides that "placement of an Indian child with a non-Indian family" is not precluded by section 105(a). H.R. Rep. No. 1386, 95th Cong., 2d Sess. 23 (1978). Moreover, the state court has recognized that the ICWA applies to this child and we have no reason to believe it will ignore the Act when it makes its adoption determination. Finally, we fail to recognize a significant federal interest that would be implicated by the state court's adoption determination in this case.

Please be advised that our decision at this time does not rule out federal *amicus* participation at the appellate level should a strictly legal issue arise as a result of the trial court's determination. I appreciate your bringing this matter to our attention.

Sincerely,

 R. Henry Rabicht II
 Assistant Attorney General
 Land and Natural Resources Division



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of
Human Development ServicesOffice of Assistant Secretary
Washington DC 20201

STATEMENT OF
 BETTY J. STEWART, ACSW
 ASSOCIATE COMMISSIONER
 FOR THE CHILDREN'S BUREAU
 BEFORE
 SELECT COMMITTEE ON INDIAN AFFAIRS
 U.S. SENATE
 NOVEMBER 10, 1987

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

I AM PLEASED TO APPEAR HERE TODAY TO DISCUSS IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT AND HOW THE DEPARTMENT OF HEALTH AND HUMAN SERVICES HAS COORDINATED ACTIVITIES WITH THE BUREAU OF INDIAN AFFAIRS (BIA) TO ASSIST IN ACHIEVING THE GOALS OF THE ACT. I AM HERE REPRESENTING THE CHILDREN'S BUREAU WHICH IS LOCATED IN THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, (ACYF) IN THE OFFICE OF HUMAN DEVELOPMENT SERVICES (HDS) IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS). THE CHILDREN'S BUREAU ADMINISTERS THE CHILD WELFARE SERVICES PROGRAM UNDER TITLE IV-B OF THE SOCIAL SECURITY ACT AND HAS A LONGSTANDING INTEREST IN CHILD WELFARE SERVICES FOR INDIAN CHILDREN AND THEIR FAMILIES.

THE INDIAN CHILD WELFARE ACT OF 1978 IS THE EXPRESSION OF THIS NATION'S POLICY TO PROTECT THE BEST INTERESTS OF INDIAN CHILDREN AND TO PROMOTE THE STABILITY AND SECURITY OF INDIAN FAMILIES. IT ESTABLISHED STANDARDS GOVERNING THE REMOVAL OF INDIAN CHILDREN FROM THEIR FAMILIES, ENCOURAGED THE PLACEMENT OF SUCH CHILDREN IN FOSTER OR ADOPTIVE HOMES WHICH REFLECT THE UNIQUE VALUES OF INDIAN CULTURE, AND HELD THAT NO ADOPTION OF INDIAN CHILDREN WOULD BE LEGAL UNLESS A TRIBAL COURT CONCURS. WE FULLY SUPPORT THE LAW'S EMPHASIS ON TRIBAL JURISDICTION OVER INDIAN CHILD WELFARE MATTERS AND THESE EFFORTS TO PRESERVE THE CHILD'S CULTURAL HERITAGE.

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OUR SUPPORT FOR THE ACT AND ITS GOALS HAS BEEN DEMONSTRATED IN A NUMBER OF WAYS. MOST NOTABLY, WE HAVE FACILITATED AGREEMENTS BETWEEN STATES AND INDIAN TRIBES AND HAVE UNDERTAKEN SEVERAL JOINT PROJECTS WITH THE BUREAU OF INDIAN AFFAIRS. IN ADDITION, WE HAVE USED HDS DISCRETIONARY GRANT FUNDS TO PROVIDE SEED MONEY AND TRAINING FOR INDIANS WORKING IN THE CHILD WELFARE FIELD. THESE CONTRIBUTIONS, IN TURN, ARE PERHAPS BEST SEEN IN THE CONTEXT OF THE LARGER ROLE THAT THE CHILDREN'S BUREAU PLAYS IN PROVIDING SERVICES TO ALL CHILDREN.

CHILD WELFARE SERVICES - TITLE IV-B OF THE SOCIAL SECURITY ACT

MANY OF THE PRINCIPLES OF THE INDIAN CHILD WELFARE ACT ARE SIMILAR TO THE REQUIREMENTS OF THE ADOPTION ASSISTANCE AND CHILD WELFARE ACT OF 1980 (P.L. 96-272). THIS LANDMARK LEGISLATION ESTABLISHED A NEW FOSTER CARE AND ADOPTION ASSISTANCE PROGRAM UNDER TITLE IV-E OF THE SOCIAL SECURITY ACT AND MODIFIED THE TITLE IV-B CHILD WELFARE SERVICES PROGRAM TO IMPROVE PROTECTIONS AND SERVICES FOR CHILDREN.

THE GOALS OF P.L. 96-272 AND THE GOALS OF THE DEPARTMENT IN ADMINISTERING THIS LEGISLATION ARE:

- O PREVENTION OF UNNECESSARY SEPARATION OF THE CHILD FROM THE PARENTS;

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- O IMPROVED QUALITY OF CARE AND SERVICES TO CHILDREN AND THEIR FAMILIES, AND

- O PERMANENT HOMES FOR CHILDREN THROUGH REUNIFICATION WITH THEIR PARENTS OR THROUGH ADOPTION.

OUR PHILOSOPHY IS THAT, IF POSSIBLE, ALL CHILDREN SHOULD STAY WITH THEIR PARENTS; IF THEY ARE ALREADY IN FOSTER CARE, THEY SHOULD RE REUNITED WITH THEIR PARENTS; IF CHILDREN CANNOT STAY WITH OR BE RETURNED TO THEIR PARENTS, THEY SHOULD BE ADOPTED. THEREFORE, IN RECENT YEARS, WE HAVE PUT MAJOR EMPHASIS ON THE PROVISION OF FAMILY-BASED SERVICES TO PREVENT FOSTER CARE, PROMPT REUNIFICATION OF CHILDREN WHO ARE IN FOSTER CARE, AND THE ADOPTION OF CHILDREN WITH SPECIAL NEEDS.

UNDER P.L. 96-272 THE SECRETARY OF HEALTH AND HUMAN SERVICES MAKES GRANTS TO STATES FOR CHILD WELFARE SERVICES AND MAY PROVIDE DIRECT FUNDING FOR CHILD WELFARE SERVICES TO INDIAN TRIBES. TRIBAL GRANTS WERE FIRST AWARDED IN 1983. IN 1987, 35 INDIAN TRIBAL ORGANIZATIONS RECEIVED GRANTS TOTALLING \$432,679 UNDER SECTION 428 OF THE SOCIAL SECURITY ACT.

TO BE ELIGIBLE FOR FUNDING, A FEDERALLY RECOGNIZED TRIBE MUST BE DELIVERING CHILD WELFARE SERVICES UNDER AN INDIAN SELF-DETERMINATION ACT CONTRACT WITH THE BIA AND MUST DEVELOP A CHILD WELFARE SERVICES PLAN THROUGH JOINT PLANNING WITH HDS/CB STAFF. JOINT PLANNING, WHICH IS REQUIRED BY THE LAW, MEANS TRIBAL AND FEDERAL REVIEW AND ANALYSIS OF THE TRIBE'S CURRENT CHILD WELFARE SERVICES PROGRAM, ANALYSIS OF THE SERVICE NEEDS OF CHILDREN AND THEIR FAMILIES, IDENTIFICATION OF UNMET SERVICE NEEDS TO BE ADDRESSED IN A PLAN FOR PROGRAM IMPROVEMENT, AND DEVELOPMENT OF GOALS AND OBJECTIVES TO ACHIEVE THOSE IMPROVEMENTS. ACYF REGIONAL OFFICE STAFF HAVE MET ON AN ANNUAL BASIS WITH INDIAN TRIBES TO CARRY OUT JOINT PLANNING.

WE BELIEVE THAT THE PLANNING EFFORT IS A WORTHWHILE UNDERTAKING BECAUSE IT GIVES THE TRIBES THE LEADERSHIP ROLE IN ASSESSING THEIR NEEDS AND DEVELOPING SUITABLE RESOURCES. WITH THE TRIBE'S CONCURRENCE JOINT PLANNING ALSO OFFERS THE OPPORTUNITY TO INCLUDE BOTH THE STATE AND THE BIA IN THE PLANNING PROCESS AND PROVIDES A FRAMEWORK FOR COOPERATIVE AGREEMENTS CONCERNING THE PROVISION OF THESE SERVICES.

TRIBAL-STATE AGREEMENTS

THE PROVISION OF SERVICES TO INDIAN CHILDREN AND FAMILIES, PARTICULARLY CHILDREN AND FAMILIES ON RESERVATIONS, VARIES DEPENDING ON RELATIONSHIPS BETWEEN THE TRIBES AND THE STATE. IN SOME STATES, THERE ARE EXCELLENT WORKING RELATIONSHIPS WITH JOINT PLANNING AND INDIAN TRIBAL INVOLVEMENT IN FUNDING DECISIONS. IN OTHER STATES, HOWEVER, TRIBAL-STATE RELATIONS TEND TO BE PROBLEMATIC. THE PROBLEM OF DIVIDED OR UNCERTAIN LEGAL JURISDICTION AND RESPONSIBILITY FOR INTERVENTION AND PROVISION OF SERVICES HAS LONG BEEN RECOGNIZED. ONE SOLUTION PROPOSED HAS BEEN THE DEVELOPMENT OF TRIBAL-STATE AGREEMENTS ON INDIAN CHILD WELFARE ISSUES SPELLING OUT STATE AND TRIBAL RESPONSIBILITY FOR ACTION AND FUNDING.

PAST AGREEMENTS WERE SUPPORTED BY BOTH ACYF AND THE ADMINISTRATION FOR NATIVE AMERICANS (ANA) BUT TENDED TO BE NARROW IN SCOPE -- FOR INSTANCE, AN AGREEMENT THAT THE STATE WOULD CONTRACT WITH THE TRIBE TO DEVELOP AND MAINTAIN NATIVE AMERICAN FOSTER HOMES ON THE RESERVATION. A STATE COULD HAVE A DIFFERENT AGREEMENT WITH EACH OF THE TRIBES IN THE STATE.

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RECENTLY HOWEVER, THE AMERICAN ASSOCIATION OF INDIAN AFFAIRS HAS WORKED WITH THE STATE OF WASHINGTON AND AN ASSOCIATION OF WASHINGTON TRIBES TO DEVELOP A COMPREHENSIVE AGREEMENT, COVERING ALL ASPECTS OF INDIAN CHILD WELFARE AND DEFINING RESPONSIBILITIES AND PROCEDURES IN ALL CIRCUMSTANCES. THIS AGREEMENT HAS NOW BEEN SIGNED BY THE STATE AND ALMOST ALL OF THE 26 WASHINGTON TRIBES. THIS WINTER, ACYF WILL SPONSOR A MEETING WITH REPRESENTATIVES FROM THE AMERICAN ASSOCIATION OF INDIAN AFFAIRS, THE STATE OF WASHINGTON INDIAN DESK, AND THE TRIBAL ASSOCIATION TO PRESENT INFORMATION ON THE DEVELOPMENT AND IMPLEMENTATION OF THIS AGREEMENT. THE MEETING WILL BRING TOGETHER ANA, ACYF, BIA, CONGRESSIONAL STAFF AND NATIVE AMERICAN ORGANIZATIONS. IT IS HOPED THAT THIS AGREEMENT WILL SERVE AS A MODEL FOR OTHER STATES AND TRIBAL ASSOCIATIONS.

JOINT STUDY

IN A NUMBER OF OTHER INDIAN CHILD WELFARE AREAS HDS AND BIA HAVE ENGAGED IN COLLABORATIVE EFFORTS TO IMPROVE SERVICES TO INDIAN CHILDREN. FOR EXAMPLE, IN SEPTEMBER 1985, ACYF AND BIA JOINTLY CONTRACTED FOR A STUDY OF THE PREVALENCE OF INDIAN CHILDREN IN SUBSTITUTE OR FOSTER CARE. THE STUDY ALSO EXAMINED THE IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT AND RELEVANT PORTIONS OF P.L. 96-272 AS THEY AFFECT INDIAN CHILDREN AND FAMILIES. THIS IS THE FIRST SYSTEMATIC NATIONAL EXAMINATION OF THE EFFECTS OF THE INDIAN CHILD WELFARE ACT.

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THE PURPOSE OF THE STUDY WAS TO DETERMINE THE NUMBER OF INDIAN CHILDREN IN SUBSTITUTE OR FOSTER CARE ACROSS THE COUNTRY AND TO OBTAIN DATA ABOUT THEIR PLACEMENTS AND CASE GOALS. THE STUDY WAS ALSO DESIGNED TO LEARN HOW STATES, TRIBES AND BIA AGENCIES ARE WORKING TOGETHER IN AN EFFORT TO COMPLY WITH THE LEGISLATION, AND TO DETERMINE WHAT SUCCESSES AND PROBLEMS ARE AFFECTING ITS IMPLEMENTATION.

DATA COLLECTION FOR THE STUDY WAS RECENTLY COMPLETED. A HIGH RETURN RATE FOR THE SURVEY WAS ACHIEVED. PRELIMINARY FINDINGS INDICATE THERE WERE APPROXIMATELY 9,123 INDIAN CHILDREN IN SUBSTITUTE CARE IN 1986. THE FINAL STUDY REPORT IS EXPECTED TO BE AVAILABLE BY JANUARY 1988.

OTHER EXAMPLES OF COLLABORATIVE EFFORTS BETWEEN ACYF AND BIA INCLUDE

- o BIA PARTICIPATES IN TWO ACYF ADVISORY BOARDS WHICH ARE APPOINTED BY THE SECRETARY OF HHS: THE NATIONAL ADVISORY BOARD ON CHILD ABUSE AND NEGLECT AND THE ADVISORY COMMITTEE ON FOSTER CARE AND ADOPTION INFORMATION.
- o BIA STAFF HAVE BEEN DETAILED TO HDS TO WORK ON INDIAN CHILD WELFARE ISSUES.

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O FOR SEVERAL YEARS, BIA STAFF HAVE SERVED ON HDS GRANT REVIEW PANELS AND HDS STAFF HAVE SERVED ON BIA GRANT REVIEW PANELS IN THE AREA OF INDIAN CHILD WELFARE SERVICES.

O THE CHILDREN'S BUREAU PARTICIPATED AS A MEMBER OF THE BIA TASK FORCE ON CHILD ABUSE AND NEGLECT WHICH ADVISED BIA IN ITS DEVELOPMENT AND IMPLEMENTATION OF LOCAL CHILD PROTECTION TEAMS.

ONE OUTCOME OF THIS INTERAGENCY COLLABORATION HAS BEEN A FORMAL INTERAGENCY AGREEMENT UNDER WHICH HHS TRANSFERRED \$200,000 OF FY 1987 CHILD ABUSE PREVENTION FUNDS TO THE BIA TO BE USED ON TWO RESERVATIONS WITH SPECIAL PROBLEMS OF CHILD SEXUAL ABUSE.

DISCRETIONARY GRANT PROGRAM

FROM 1985 TO 1987, HDS HAS FUNDED APPROXIMATELY 66 DISCRETIONARY GRANTS TOTALLING OVER \$4 MILLION TO ADDRESS A WIDE VARIETY OF INDIAN CHILD WELFARE ISSUES. SOME PROJECTS WERE FOCUSED ON DEVELOPING COOPERATION BETWEEN STATES AND INDIAN TRIBES ON CHILD WELFARE ISSUES. OTHER PROJECTS WERE FOCUSED ON PREVENTION OF OUT-OF-HOME PLACEMENTS AND IMPROVING CHILD PROTECTIVE SERVICES ON

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INDIAN RESERVATIONS. OTHER GRANTS PROVIDE TRAINING FOR INDIAN STUDENTS INTERESTED IN WORKING IN CHILD WELFARE SERVICES AND FOR INDIAN PRACTITIONERS ALREADY WORKING IN THE AREA. STILL OTHER PROJECTS WERE DESIGNED TO HELP RESOLVE PROBLEMS WITH CHEMICAL DEPENDENCY, SCHOOL DROP-OUTS, AND RUNAWAYS.

THESE HDS DISCRETIONARY GRANTS, IT MUST BE EMPHASIZED, ARE FOR DEVELOPMENTAL PURPOSES ONLY. GRANTS MADE BY BIA UNDER THE INDIAN CHILD WELFARE ACT ARE DESIGNED TO FUND DIRECT SERVICE DELIVERY. THE DISCRETIONARY GRANTS MADE BY HDS COMPLEMENT BIA EFFORTS BY PROVIDING SEED MONEY FOR FUTURE IMPROVEMENTS IN SERVICES.

IN CLOSING, THE DEPARTMENT ACTIVELY SUPPORTS THE INDIAN CHILD WELFARE ACT AND THE PRINCIPLES IT EMBODIES REGARDING THE PREVENTION OF FAMILY SEPARATION; THE PROMOTION OF FAMILY REUNIFICATION; AND THE CENTRAL ROLE OF INDIAN TRIBES IN DECIDING THESE ISSUES.

ALTHOUGH WE HAVE NOT YET COMPLETED OUR ANALYSIS OF THE DRAFT BILL PROPOSED BY THE ASSOCIATION ON AMERICAN INDIAN AFFAIRS, WE APPRECIATE THE OPPORTUNITY TO COMMENT ON DRAFT LEGISLATION AFFECTING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

MR. CHAIRMAN, THAT CONCLUDES MY PREPARED REMARKS AND NOW I WOULD BE HAPPY TO RESPOND TO ANY QUESTIONS THAT YOU OR OTHER MEMBERS OF THE COMMITTEE MAY HAVE.

STATEMENT OF MICHELLE PENOZIEQUAH AGUILAR, EXECUTIVE DIRECTOR OF THE GOVERNOR'S OFFICE OF INDIAN AFFAIRS, STATE OF WASHINGTON.

Honorable Senators and staff of the Select Committee; thank you for allowing me to testify. My name is Michelle Penoziequah Aguilar. I am the Executive Director of the Governor's Office of Indian Affairs for the State of Washington. I also serve as a board member of the Indian Child Welfare Advisory Committee for the Affiliated Tribes of Northwest Indians and as a founding board member of Northwest Indian Child Welfare Association. My academic background is in human services and public administration. Prior to my current position I served as the Indian Child Welfare Program Director for The Suquamish Tribe. This is the second Indian Child Welfare oversight hearing at which I have testified.

As with any legislation, through the implementation process, areas of unclear language, jurisdiction, procedural difficulties, and misinterpretation of intent are discovered. Over the years some of the problems in the act have become tremendous barriers to implementation and operation of child welfare services both by tribal and state programs. These barriers and misunderstandings as to the intent of certain passages in the legislation has in some cases prevented a cooperative mode of operation and service provision between the state and the tribes. This in turn has hurt children and families.

Approximately four years ago tribal social workers in this

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state got together to discuss their frustration in trying to overcome these barriers and provide appropriate Indian child welfare services as intended by the act. After approximately one year a draft tribal/state agreement had been developed that could be presented to the state for negotiation between the governments. This draft agreement outlined the problems that existed on both the federal level and the state level and offered procedural solutions to the difficulties in service provision for all parties. Involved in the two and one half year negotiation process were representatives from the Bureau of Indian Affairs, Washington State Indian tribes and their legal counsel, the Department of Social and Health Services (DSHS) Division of Children and Family Services, DSHS Office of Indian Affairs, DSHS Legislative and Community Relations, the state Attorney General's Office, and the Governor's Office of Indian Affairs. This agreement is considered to be the most comprehensive tribal/state agreement in the nation.

Jule Sugarman, Secretary, Department of Social and Health Services, said " This agreement represents a most significant and impressive partnership which I fully support. This agency is committed to the terms, conditions and obligations contained in the agreement."

This agreement will serve as a blueprint for the development of policy, local agreements, training, and other necessary

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activities to be undertaken jointly by the tribes and DSHS.

Among the principles and concepts mutually agreed upon are:

- DSHS recognizes the jurisdiction of tribal governments over Indian child welfare matters.
- DSHS will utilize the prevailing social and cultural standards of Indian tribes and will involve tribal social services in all phases of placement services to Indian children.
- DSHS agrees to purchase child welfare services and social services by contract from tribes.
- DSHS agrees to provide pertinent Indian child welfare training to its staff serving Indian children.
- DSHS will provide notice of all state court proceedings regarding Indian children to parents, Indian custodians, tribal representatives, Bureau of Indian Affairs, when necessary, and extended family members.
- DSHS will enter into agreements with tribes for the delivery of Child Protective Services on reservations.

The outcome of the negotiation process and the agreement is manifold. It created a strong working relationship with the state and tribes, it created legislation that brought the state into compliance with the Act. It began a process to develop an Indian child welfare compliance audit cooperatively with the BIA, The Affiliated Tribes, and with the states of Oregon and Washington. It also made the involved state agencies very aware of the need for amendments to the act and for appropriate levels of non competitive funding for tribal Indian child welfare programs.

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This state is doing everything it can under very tight financial constraints to assist the tribes in providing culturally sensitive services to their children and families through tribal programs. This assistance is very minimal. I am here to implore you to consider putting a priority on the development of a bill that would address the specific areas of the act that need amending. I've included a copy of the tribal/state agreement, concurrent jurisdiction and exclusive jurisdiction, as well as a copy of second substitute house bill number 480 (the legislation referred to earlier in this document). As you will notice when reading the agreement, it goes beyond the Act to meet what the state and tribes felt was the intent of the act. It was important to develop this agreement to meet the needs of Indian children and families that the act does not address or where intent was not clear. The state of Washington would be glad to comment on a bill and assist in any other way we could.

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STATEMENT ON BEHALF OF THE
ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC.

DELIVERED BEFORE THE
SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

INDIAN CHILD WELFARE OVERSIGHT HEARING

November 10, 1987

DELIVERED BY:
JACK F. TROPE, STAFF ATTORNEY

PREPARED BY:
JACK F. TROPE, STAFF ATTORNEY AND
BERTRAM F. HIRSCH, SPECIAL COUNSEL TO THE ASSOCIATION

Mr. Chairman and Committee members. Thank you for inviting us to testify before this Committee. The Senate Select Committee on Indian Affairs has played a vital role in enacting legislation to protect Indian children and families. We are pleased to see that the Committee has a continuing interest in this important issue.

The Association on American Indian Affairs, Inc. (AAIA) is a national non-profit citizens' organization headquartered in New York City and dedicated to the preservation and enhancement of the rights and culture of American Indians and Alaska Natives. The policies of the Association are formulated by a Board of Directors, a majority of whom are Native Americans. The Association began its active involvement in Indian child welfare issues in 1967 and for many years was the only national organization active in confronting the crisis in Indian child welfare. AAIA studies were prominently mentioned in committee reports pertaining to the enactment of the Indian Child Welfare Act and, at the invitation of Congress, AAIA was closely involved in the preparation of the Act. We continue to work with tribes in implementing the Act including the negotiation of tribal-state agreements and legal assistance in contested cases.

This testimony is presented in support of legislation amending the Indian Child Welfare Act to strengthen and clarify the Act and legislation providing for direct federal funding to tribes from generally applicable Federal grant programs targeted to social services programs -- specifically the Title XX Social

Services Block Grant, Titles IV-B and IV-E of the Social Security Act and the Alcohol, Mental Health and Drug Abuse Block Grant.

The Indian Child Welfare Act was landmark legislation. The Act was a response to widespread evidence that abusive child welfare practices had caused thousands of Indian children to be wrongfully separated from their families, usually to be placed in non-Indian households or institutions. The essential role of tribes in ensuring the well-being of their children was a cornerstone of the Act.

The Act has provided vital protections to Indian children, families and tribes. It has formalized the authority and role of tribes in the Indian child welfare process. It has forced greater efforts and more painstaking analysis by agencies and courts before removing Indian children from their homes. It has provided procedural protections to families and tribes to prevent arbitrary removals of children. It has required recognition by agencies and courts alike that an Indian child has a vital interest in retaining a connection with his or her Indian heritage.

Nonetheless, our work in the field and continual contact with individuals involved in all levels of Indian child welfare has revealed to us that there are a number of obstacles which prevent Indian people from fully realizing the benefits of the Indian Child Welfare Act. Foremost among the obstacles to success has been the lack of adequate funding for tribal social services programs. These programs are best suited to provide

services to Indian children and in the best position to ensure that all public and private agencies involved with the children comply with the Act. Adequately funded tribal programs -- for example those tribes that have received Title XX funding through a contract with the State -- have the capacity to provide services to Indian communities in an efficient and culturally sensitive manner. Yet the only resource available to many tribes is the inadequately funded and competitive ICWA Title II grant which has been arbitrarily and erratically administered by the Bureau of Indian Affairs.

Another obstacle to the full and effective implementation of the Indian Child Welfare Act has been the uneven implementation of the Act by state agencies and courts. Agencies and courts that are not sympathetic to the Act's goals have sometimes circumscribed or circumvented the Act. Strained and narrow readings of its provisions have limited the scope and protections of the Act far more than Congress intended. In addition, experience with the Act has revealed issues that were not considered in 1978 and which could beneficially be addressed legislatively.

After continually being confronted by these problems in our work, we commenced a process to develop legislative recommendations to rectify these problems. AAIA informally surveyed dozens of people by phone, held meetings and gave seminars on Indian child welfare -- leading to substantial contact with social workers, attorneys and others involved in

Indian child welfare. We carefully reviewed case law and publications relating to the Act and the transcripts of 1984 and 1986 Congressional oversight hearings. Based upon these contacts and analyses, we drafted legislative proposals and circulated them to many persons known to the Association throughout Indian country who have had a long time involvement in Indian child welfare. The attached bills incorporate comments made by those individuals to whom the proposals were sent.

The bills are currently structured as two separate bills, but they are interrelated and could be combined. One bill amends the Indian Child Welfare Act. The other proposes a long-term solution to the Indian social services funding problem by providing for tribal set-asides in a number of social services programs currently targeted toward states. Both bills recognize that the best, most culturally sensitive mechanism for protecting Indian families and children is a strengthened tribe -- one with adequate authority, input and resources to provide the types of services and oversight, and, where appropriate, advocacy that are needed by Indian children and families. Such an approach is consistent with the overriding principle of Indian self-determination which rightfully informs the actions of Congress in the field of Indian affairs.

The substance of the proposals can be summarized as follows:

The Indian Child Welfare Act Amendments of 1987

This proposal amends the Indian Child Welfare Act to clarify

and expand the Act. The major goals of the amendments are as follows:

1. Clarify and expand coverage of the Act.
 - all children enrolled or eligible for enrollment are covered by the Act; previous living in an Indian environment is not a requirement of the Act
 - putative fathers need not take formal legal action to acknowledge paternity
 - expand the Act to provide coverage to Canadian Indian children for the purposes of notice, burdens of proof and placements, but not for purposes of jurisdiction
2. Increase tribal involvement and control
 - clarify transfer provisions by defining what constitutes good cause not to transfer
 - clarify that all tribes have exclusive jurisdiction over children domiciled or resident on the reservation
 - clarify that tribally-licensed foster care homes are eligible for Title IV-E foster care payments
 - expand requirements for involvement of tribal social services programs in any case where continued state involvement with an Indian child is expected, including a requirement that such services and other tribal resources be brought to bear before removal of a child, except in emergency circumstances
3. Keep families intact whenever possible

- requirement that tribal services be utilized (see above)
 - appointed counsel for families in administrative proceedings
 - testimony from culturally sensitive expert witnesses as a prerequisite to removal of a child
 - additional safeguards to ensure that all consents to out-of-home placements are truly voluntary
 - make explicit the requirement that the natural family receive notice if an adoptive placement fails
4. Placement of children who must be placed with the extended family, other tribal members or other Indian families whenever possible
- make placement preferences mandatory, except for explicit instances where alternative placements would be permitted
 - extended family provided with greater rights to intervene in proceedings and to challenge prior placements not in accordance with placement preferences
5. Fairer and quicker proceedings
- increased access to federal courts
 - requirement that proceedings be expedited
6. Compliance monitoring mechanisms
- creation of area-based Indian child welfare committees

- requirement that private agencies be required to comply with the ICWA as a condition of continued licensure
 - inclusion of ICWA compliance in Title XX audits of state programs
7. Improvement of Title II grant process
- programs in accordance with tribal priorities
 - review by non-Federal employees chosen in consultation with tribes
8. Better recordkeeping and increased access to records

The Indian Social Services Assistance Act of 1987

This proposal provides for a tribal set-aside -- determined by a formula which takes into account the Indian population on or near the reservation (as modified to deal with the special circumstances in Oklahoma and Alaska) and poverty levels of the population -- in the following programs:

1. Title XX Social Services Block Grant
2. Title IV-B Child Welfare Services
3. Alcohol, Mental Health and Drug Abuse Block Grant

The proposal also provides Title IV-E funding for tribally-licensed foster homes.

Consolidation of programs and formation of tribal consortiums would be permitted.

At current funding levels, the formulas would dictate a tribal set-aside of approximately \$30-40 million/year. An

additional undetermined amount would be available for Title IV-E foster payments.

Thank you once again for inviting us to testify at this hearing. Attached as appendices are the full texts of AAIA's proposals, explanatory summaries and revenue estimates.

APPENDIX A

INDIAN CHILD WELFARE ACT AMENDMENTS OF 1987

[] - Deletions

___ - Additions

An Act to amend the Indian Child Welfare Act of 1978 and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I - INDIAN CHILD WELFARE ACT AMENDMENTS

SEC. 101. Section 4 of the Indian Child Welfare Act (25 U.S.C. 1903) is amended to read as follows--

"SEC. 4. For the purposes of this Act, except as may be specifically provided otherwise--

(1) "child custody proceeding" shall mean and include--

(i) "foster care placement" which shall mean any administrative, adjudicatory or dispositional action, including a voluntary proceeding under section 103 of this Act, [removing] which may result in the placement of an Indian child [from its parent or Indian custodian for temporary placement] in a foster home or institution, group home or the home of a guardian or conservator [where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated];

(ii) "termination of parental rights" which shall mean any adjudicatory or dispositional action, including a voluntary proceeding under section 103 of this Act, which may result [resulting] in the termination of the parent-child relationship or the permanent removal of the child from the parent's custody;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption,

including any administrative, adjudicatory or dispositional action or any voluntary proceeding under section 103 of this Act, whether the placement is made by a state agency or by a private agency or individuals, which may result [resulting] in a final decree of adoption.

Such term or terms shall include the placement of Indian children from birth to the age of majority including Indian children born out of wedlock. Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime. Such terms shall also not include a placement based [or] upon an award of custody [in a divorce proceeding] to one of the parents in any proceeding involving a custody contest between the parents. All other proceedings involving family members which meet this definition are covered by this Act.

(2) "domicile" shall be defined by the tribal law or custom of the Indian child's tribe, or in the absence of such law or custom, shall be defined as that place where a person maintains a residence with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period;

[(2)] (3) "extended family member" shall be defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who, by blood or marriage, is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

[(3)] (4) "Indian" means any person who is a member of an Indian tribe, [or who is an Alaska Native and a member of a Regional Corporation as defined in section 7] including an Alaska Native who is a member of any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), any person who is considered by an Indian tribe to be a part of its community, or, for purposes of sections 107, any person who is seeking to determine eligibility for tribal membership;

[(4)] (5) "Indian child" means any unmarried person who is under age eighteen and is [either] (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe [and is the biological child of a member of an Indian tribe] or (c) is considered by an Indian tribe to be part of its community. Any child who meets the criteria in clause (a) or (b) is covered by this Act

regardless of whether the child has lived in Indian country, an Indian cultural environment or with an Indian parent;

[(5)] (6) "Indian child's tribe" means (a) the Indian tribe in which the Indian child is a member or eligible for membership or (b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts. The tribe with the more significant contacts may designate as the Indian child's tribe another tribe in which the child is a member or eligible for membership with the consent of that tribe;

[(6)] (7) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or, to [who] whom temporary physical care, custody, and control has been voluntarily transferred by the parent of such child whether through the tribe, state or a private placement;

[(7)] (8) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

[(8)] (9) "Indian tribe" means any Indian tribe, band,

nation, or other organized group or community of Indians, recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688,689), as amended, those tribes, bands, nations or groups terminated since 1940, and for the purposes of sections 101(c), 102, 103, 104, 105, 106, 107, 110, 111 and 112 of this Act, those tribes, bands, nations or other organized groups that are recognized now or in the future by the Government of Canada or any province or territory thereof;

[(9)] (10) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include, except for the purposes of the notice provision of this Act, the unwed father where paternity has not been acknowledged or established under tribal law or custom or under State law. For the purposes of asserting parental rights under this Act or State law, paternity may be acknowledged or established at any time prior to final termination of such rights under this Act or State law. An unwed father who has openly proclaimed his paternity to the mother, extended family, community or tribe of the child or who has submitted a letter, statement or other document to the

court, a party to the child custody proceeding or a representative of any public entity, including a child placement or adoption agency licensed by the state, shall be deemed to have acknowledged paternity for the purposes of this Act;

(11) "qualified expert witness" means (a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices, or (b) a person having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe, or (c) a professional person having substantial education and experience in the area of his or her specialty who has knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe;

[(10)] (12) "reservation" means Indian country as defined in section 1151 of Title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(13) "residence" shall be defined by the tribal law or custom of the Indian child's tribe, or in the absence of such law or custom, shall be defined as a place of general abode or a principal, actual dwelling place of a continuing or lasting nature;

{(11)} (14) "Secretary" means the Secretary of the Interior; and

{(12)} (15) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

SEC. 102. Section 101 of the Indian Child Welfare Act (25 U.S.C. 1911) is amended to read as follows--

"SEC. 101 (a) Notwithstanding any other Federal law to the contrary, an [An] Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where [such jurisdiction is] concurrent jurisdiction over voluntary child custody proceedings may be otherwise vested in the State by

existing Federal law or where jurisdiction is otherwise vested in a state, pursuant to an agreement entered into pursuant to section 109 of this Act. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) In any State court child custody proceeding [for the foster care placement of, or termination of parental rights to,] involving an Indian child not domiciled or residing within the reservation of the Indian child's tribe or in proceedings involving children domiciled or residing on the reservation where a state has assumed jurisdiction pursuant to subsection (a) of this section, the court, in the absence of [good cause] an agreement entered into under section 109 of this Act to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent [an] an unrevoked objection by either parent determined to be consistent with the purposes of this Act, upon the petition or request, orally or in writing, of either parent or the Indian custodian or the Indian child's tribe, Provided that the court may deny such transfer of jurisdiction where the petitioner did not file the petition within a reasonable time after receiving notice of the hearing and the proceeding is at an advanced stage when the petition to transfer is filed or if the evidence necessary to decide the case cannot be presented in the tribal court without undue hardship to the

parties or the witnesses and that hardship cannot be mitigated by the tribal court, Provided further, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) In any State court child custody proceeding [for the foster care placement of, or termination of parental rights to,] involving an Indian child, the Indian custodian of the child, the biological parent of the child unless parental rights have been previously terminated and the Indian child's tribe shall have a right to intervene at any point in the proceeding. The Indian custodian, the biological parent, except as provided above, and the Indian child's tribe shall also have a right to intervene in any administrative or judicial proceeding under State law to review the foster care, preadoptive or adoptive placement of an Indian child. The Indian child's tribe may permit an Indian organization or other Indian tribe to intervene in its behalf.

(d) Whenever a non-tribal social services agency determines that an Indian child is in a dependent or other condition that could lead to a foster care placement, preadoptive placement or adoptive placement and which requires the continued involvement of the agency with the child for a period in excess of 30 days, the agency shall send notice of the condition and of the initial steps taken to remedy it to the Indian child's tribe within seven days of the

determination. At this and any subsequent stage of its involvement with an Indian child, the agency shall, upon request, give the tribe full cooperation including access to all files concerning the child. If the files contain confidential or private data, the agency may require execution of an agreement with the tribe providing that the tribe shall maintain the data according to statutory provisions applicable to the data.

[(d)] (e) The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity. Differences in practice and procedure that do not affect the fundamental fairness of the proceeding shall not be cause to deny full faith and credit to a tribal judicial proceeding."

(f) Nothing in this section shall be construed to authorize a state to refuse to offer social services to Indians whether resident or domiciled on or off the reservation to the same extent that such State makes services available to all of its citizens.

SEC. 103. Section 102 of the Indian Child Welfare Act (25

U.S.C. 1912) is amended to read as follows--

"SEC. 102(a) In any involuntary child custody proceeding in a State court, where the court or the petitioner knows or has reason to know that an Indian child is involved, the party seeking the foster care, preadoptive or adoptive placement of, or termination of parental rights to, an Indian child, or which otherwise has initiated a child custody proceeding, shall notify the parent, [or] Indian custodian, if any, and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings, [and] of their right of intervention, and of their right to petition or request the court to transfer the case to tribal court. Whenever an Indian child is eligible for membership in more than one tribe, each such tribe shall receive notice of the pending proceeding. If the identity or location of the parent or Indian custodian and the tribe cannot be determined after reasonable inquiry of the parent, custodian and child, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No involuntary child custody [foster care placement or termination of parental rights] proceeding shall be held until at least [ten] fifteen days after receipt of notice by the parent or Indian custodian and the tribe or until at least thirty days after receipt of notice by the Secretary. Provided, That the parent or Indian

custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding. Provided further, That any request for appointed counsel, pursuant to subsection (b), shall toll the running of applicable time periods until a determination is made as to the parent or Indian custodian's eligibility for representation, unless the party requesting appointment of counsel waives such tolling.

(b) In any case in which the court or, in the case of an administrative proceeding, the administrator of the state agency determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any [removal, placement, or termination] child custody proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court or state agency shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge or, where applicable, the administrator of the State agency, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13). The Secretary shall also pay the reasonable fees and expenses of qualified expert witnesses retained on behalf of an indigent parent or Indian custodian.

(c) Each party [to a foster care placement or termination of parental rights] in any child custody proceeding under State law involving an Indian child shall have the right to examine and copy all reports or other documents [filed with the court] upon which any testimony or decision with respect to such action may be based.

(d) Any party seeking to effect a foster care, preadoptive or adoptive placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts, including efforts to involve the Indian child's tribe, extended family and off-reservation Indian organizations, where applicable, have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. In any case involving a non-tribal social services agency, no foster care, preadoptive or adoptive placement proceeding shall be commenced until the requirements of section 101(d) of this Act have been satisfied.

(e) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the [continued] custody of the child by the parent or Indian custodian is likely to

result in serious emotional or physical damage to the child. The clear and convincing evidence and qualified expert witnesses requirements shall apply to any and all findings which the court makes which are relevant to its determination as to the need for foster care, including the finding required by subsection (d) of this section.

(f) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the [continued] custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The beyond a reasonable doubt and qualified expert witnesses requirements shall apply to any and all findings which the court makes which are relevant to its determination as to the need to terminate parental rights, including the finding required by subsection (d) of this section.

(g) Evidence that only shows the existence of community or family poverty, crowded or inadequate housing, alcohol abuse, or non-conforming social behavior does not constitute clear and convincing evidence or evidence beyond a reasonable doubt that custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. To meet the burden of proof, the evidence must show the direct causal relationship between particular conditions and

the serious emotional or physical damage to the child that is likely to result.

(h) Notwithstanding any State law to the contrary, a judge may enter an order which will provide for continued contact between the child and his or her parents, extended family or tribe following the entry of an order of adoption."

SEC. 104. Section 103 of the Indian Child Welfare Act (25 U.S.C. 1913) is amended to read as follows--

"SEC. 103 (a) (1) Where any parent or Indian custodian voluntarily consents to a foster care placement, [or to] termination of parental rights, or adoption under state law, such consent shall not be valid unless executed in writing and recorded before a judge of [a court of competent jurisdiction] a tribal or State court and accompanied by the presiding judge's certificate that the terms and consequences of the consent and the relevant provisions of this Act were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that [either] the parent [or] and Indian custodian, if any, fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid. An Indian parent or custodian may not waive any of the

provisions of this section.

(2) At least ten days prior to any State court proceeding to validate a voluntary consent, the consenting parent shall notify the Indian child's tribe and the non-consenting parent, if any, by registered mail, return receipt requested, of the pending proceeding, of their right to intervention, and of their right to petition or request the court to transfer the case to tribal court.

(3) Consent to a foster care placement, termination of parental rights, preadoptive placement or adoptive placement shall not be deemed abandonment of the child by the parent or Indian custodian.

(4) The Secretary of Health and Human Services shall take appropriate action to ensure that all Indian Health Service personnel and consenting parents served by the Indian Health Service are informed of and comply with the provisions of this section.

(b) Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned immediately to the parent or Indian custodian unless returning the child to his or her parent or custodian would subject the child to a substantial and immediate danger of serious physical harm or

threat of such harm. The pendency of an involuntary child custody proceeding shall not be grounds to refuse to return the child to the parent or Indian custodian.

(c) In any voluntary proceeding for termination of parental rights to, or preadoptive or adoptive placement of, an Indian child, the consent of the parent or Indian custodian may be withdrawn for any reason at any time prior to the entry of a final decree of [termination or] adoption, [as the case may be,] and the child shall be immediately returned to the parent or Indian custodian unless returning the child to his or her parent or custodian would subject the child to a substantial and immediate danger of serious physical harm or threat of such harm. The pendency of an involuntary child custody proceeding shall not be grounds to refuse to return the child to the parent or Indian custodian.

(d) After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding based upon a preponderance of the evidence that such consent was obtained through fraud or duress, the court shall vacate such decree of adoption and return the child to the parent. Unless otherwise permitted under State law, no [No] adoption [which has been effective for at least two years] may be invalidated under the

provisions of this subsection unless the parent or Indian custodian has petitioned the court within two years of the entry of a final decree of adoption [otherwise permitted under State law]."

SEC. 105. Section 104 of the Indian Child Welfare Act (25 U.S.C. 1914) is amended to read as follows--

"SEC. 104. (a) Any Indian child who is the subject of any action for foster care, preadoptive or adoptive placement or termination of parental rights under state law, any parent, [or] any Indian custodian from whose custody such child was removed and the Indian child's tribe may petition any court with [of competent] jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 101, 102, [and] 103, 105 and 106 of this Act. The petition may include a demand that any subsequent child custody proceeding involving the same child be invalidated due to the violations which occurred in the earlier proceeding. Any member of the Indian child's extended family may intervene in a proceeding brought under this section and may independently petition any federal, state or tribal court with jurisdiction to invalidate such action upon a showing that such action violated any provision of section 105 of this Act. Such a petition may be filed at any time, but not more than two years following the entry of a final decree of adoption.

(b) Notwithstanding any law to the contrary, a federal court shall have jurisdiction for the purposes of this section. A federal court shall also have habeas corpus jurisdiction over Indian child custody proceedings.

(c) Upon the request of any party to the proceeding, the court shall hear any petition under this section or any appeal from a decision terminating the parental rights of a parent or Indian custodian on an expedited basis."

SEC. 106. Section 105 of the Indian Child Welfare Act (25 U.S.C. 1915) is amended to read as follows---

"SEC. 105. (a) Except as provided in sections (c) and (d) below, [In] any adoptive placement of an Indian child under State law[, a preference] shall be [given, in the absence of good cause to the contrary, to a placement] made in accordance with the following order of placement -- (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Any child accepted for foster care or preadoptive placement shall be placed (1) in the least restrictive setting which most approximates a family and [in which his special needs, if any, may be met. The child shall also be placed] (2) within reasonable proximity to his or her home[,

taking into account any special needs of the child]. Except as provided in subsections (c) and (d) below, [In] any foster care or preadoptive placement, [, a preference] shall be [given, in the absence of good cause to the contrary, to a placement] made in accordance with the following order of placement --

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

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

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) The order of placement established under subsection (a) or (b) of this section shall not apply to the placement of an Indian child where (1) the child is of sufficient age and maturity and requests a different placement; (2) the child has extraordinary physical or emotional needs, as established by the testimony of expert witnesses, that cannot be met through a placement within the order of placement; (3) there is clear and convincing evidence, including testimony of

qualified expert witnesses, that placement within the order of placement is likely to result in serious emotional or physical damage to the child; or (4) suitable families within such order of placement are unavailable after a diligent search has been completed, as provided for in subsections (f) and (g), for a family within the order of placement.

(d) [(c)] In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of [preference] placement by resolution, the agency or court effecting the placement shall follow such order so long as, in the case of a foster care or preadoptive placement, the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. [Where appropriate] Whenever the placement would be within one of the placement categories (or one of the exceptions in subsection (c) apply), the preference of the Indian child or parent and a request that the parent's identity remain confidential shall be considered: Provided, That the [where a] consenting [parent] parent's [evidences a] desire for anonymity shall not be grounds to fail to give notice to the Indian child's tribe or a non-consenting parent[, the court or agency shall give weight to such desire in applying the preferences].

(e) [(d)] Notwithstanding any State law to the contrary, the

[The] standards to be applied in meeting the [preference] placement requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties. If necessary to comply with this section, a State shall promulgate, in consultation with the affected tribes, separate state licensing standards for foster homes servicing Indian children and shall place Indian children in homes licensed or approved by the Indian child's tribe or an Indian organization.

(f) [(e)] A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made evidencing the efforts to comply with the order of [preference] placement specified in this section. Such efforts must include, at a minimum, contacting the tribe prior to placement to determine if it can identify placements within the order of placement, notice to all extended family members that can be located through reasonable inquiry of the parent, custodian, child and Indian child's tribe, a search of all county or state listings of available Indian homes and contact with local Indian organizations and nationally known Indian programs with available placement resources. [Such] The record of the State's compliance efforts shall be made available at any time upon the request of the Secretary or the Indian child's

tribe.

SEC. 107. Section 106 of the Indian Child Welfare Act (25 U.S.C. 1916) is amended to read as follows--

"SEC. 106. (a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive [parents voluntarily consent to the termination of their] parent's parental rights to the child have been terminated, the public or private agency or individual seeking to place the child, in accordance with the provisions of section 102(a), shall notify the biological parents, prior Indian custodians and the Indian child's tribe of the pending placement proceedings, their right of intervention, their right to petition for a transfer of jurisdiction to the tribal court and the parent's or Indian custodian's right to petition for return of custody. [a biological parent or prior Indian custodian may petition for return of custody and the] The court shall grant [such] the petition for return of custody of the parent or Indian custodian, as the case may be, unless there is a showing, in a proceeding subject to [the provisions] subsections (e) and (f) of section 102 of this Act, that such return of custody is not in the best interests of the child. Whenever an Indian child who has been adopted is later placed in foster care, the Indian child's tribe shall be notified and have the right to intervene in the

proceeding.

(b) In the event that the court finds that the child should not be returned to the biological parents or prior Indian custodian, placement shall be made in accordance with the order of placement in section 1915. For the purposes of this section, extended family shall include the extended family of the biological parents or prior Indian custodian.

(c) [(b)] Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, or when a review of any such placement is scheduled, such placement shall be in accordance with the provisions of this Act, including prior notice to the child's biological parents and prior Indian custodian, provided that their parental rights have not been terminated, and the Indian child's tribe, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed."

SEC. 108. Section 107 of the Indian Child Welfare Act (25 U.S.C. 1917) is amended to read as follows--

"SEC. 107. Upon application by an adopted Indian individual who has reached the age of eighteen [and who was the subject of an adoptive placement], the Indian child's

tribe or the Indian child's adoptive parents, the court which entered the final decree, through court records or records subject to court order, shall inform such individual of the names and tribal affiliation, if any, of the individual's biological parents and grandparents, if necessary, and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship."

SEC. 109. Section 108 of the Indian Child Welfare Act (25 U.S.C. 1918) is amended to read as follows--

"SEC. 108. (a) Any Indian tribe which became subject to State concurrent jurisdiction over voluntary child custody proceedings pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73,78), or pursuant to any other Federal law, may reassume exclusive jurisdiction over all voluntary child custody proceedings. Before any Indian tribe may reassume exclusive jurisdiction over voluntary Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b)(1) In considering the petition and feasibility of the plan of a tribe under subsection (a), the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogenous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographical area.

(2) In those cases where the Secretary determines that full jurisdiction [the jurisdictional provisions of section 101(a) of this Act are] is not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise (referral) exclusive jurisdiction [as provided in section 101(a)] over voluntary placements in limited community or geographical areas without regard for the reservation status.

(c) If the Secretary approves any petition under subsection