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

(a), the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume exclusive jurisdiction over all voluntary placements of children residing or domiciled on the reservation sixty days after publication in the Federal Register of notice of approval.

(d) Assumption of jurisdiction under this section shall affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 109 of this Act or as otherwise provided in the notice of the Secretary.

SEC. 110. Section 110 of the Indian Child Welfare Act (25 U.S.C. 1920) is amended to read as follows--

"SEC. 110. (a) Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

(b) In any instance where a child has been improperly removed or improperly retained by any individual or entity, the parent or Indian custodian from whose custody the child was removed may petition any federal, state or tribal court with jurisdiction for return of the child in accordance with this section. Notwithstanding any law to the contrary, a federal court shall have jurisdiction for the purposes of this section.

SEC. 111. Section 112 of the Indian Child Welfare Act (25 U.S.C. 1922) is amended to read as follows--

" SEC. 112. (a) Regardless of whether a child is subject to the exclusive jurisdiction of an Indian tribe, nothing [Nothing] in this title shall be construed to prevent the emergency removal of an Indian child who is [a resident of or is domiciled on a reservation, but temporarily] located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child. [and shall expeditiously initiate a child custody proceeding subject to

the provisions of this title, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.] Wherever possible, the child shall be placed within the order of placement provided for in section 105 of this Act.

(b) No later than the time permitted by state law, and in no event later than three days (excluding Saturday, Sunday and legal holidays) following the emergency removal, the state authority, agency or official must obtain a court order authorizing continued emergency physical custody. If the Indian child has not been restored to its parent or Indian custodian within 10 days following the emergency removal, the state authority, agency or official, in the absence of an agreement pursuant to section 109 to the contrary, shall (1) commence a state court proceeding for foster care placement if the child is not resident or domiciled on an Indian reservation and is not a ward of the tribal court, or (2) transfer the child to the jurisdiction of the appropriate Indian tribe if the child is resident or domiciled on an Indian reservation or a ward of the tribal court. Notwithstanding the filing of a petition for a foster care placement of the child, the State agency, authority or official shall continue active efforts to prevent the continued out-of-home placement of the child. No emergency custody order shall remain in force or in effect for more

than thirty (30) days without a determination by the appropriate court, in accordance with section 102(e) of this Act in the case of a State court, that foster care placement of the child is appropriate, Provided that in any case where the time requirements in section 102(a) do not permit a child custody proceeding to be held within 30 days, the emergency custody order may remain in force for a period not to exceed three days after the first possible date on which the proceeding may be held pursuant to section 102(a).

SEC. 112. Title I of the Indian Child Welfare Act (25 U.S.C. 1901 et seq.) is amended by adding at the end the following new section:

"SEC. 124 (a) The Secretary shall establish Indian Child Welfare committees consisting of not less than three persons for each area office. The committees shall monitor compliance with this Act on an on-going basis. Appointments to the committees shall be made for a period of three years and shall be chosen from a list of nominees furnished, from time to time, by Indian tribes and organizations. Each committee shall be broadly representative of the diverse tribes located in its area.

(b) In licensing any private child placement agency, any state in which either (1) a Federally-recognized Indian tribe is located or (2) there is an Indian population of more than

10,000, shall include compliance with this Act by the private agency as a condition of continued licensure and shall annually audit such agencies to ensure that they are in compliance. The audit report shall be made available upon the request of the Secretary or any tribe.

SEC. 113. Section 201 of the Indian Child Welfare Act (25 U.S.C. 1931) is amended to read as follows--

"SEC. 201. (a) The Secretary shall [is authorized to] make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs, in accordance with priorities established by the tribe, may include, but are not limited to--

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the

temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, cultural and family-enriching activities and respite care;

(4) home improvement programs;

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

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

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) Guidance, legal representation, and advice to Indian families and tribes involved in tribal, State, or Federal child custody proceedings.

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(b) Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this Act. The provision or possibility of assistance under this Act shall not be a basis for the denial or reduction of any assistance otherwise authorized under title IV-B and XX of the Social Security Act or any other federally assisted program. [For purposes of qualifying for assistance under a federally assisted program, licensing or approval of] Placements in foster or adoptive homes or institutions licensed or approved by an Indian tribe, whether the homes are located on or off of the reservation, shall qualify for assistance under federally assisted programs, including the foster care and adoption assistance program provided for in title IV-E of the Social Security Act (42 U.S.C. 670 et seq.) [be deemed equivalent to licensing or approval by a State].

(c) In lieu of the requirements of subsections 10, 14 and 16 of section 471 of the Social Security Act (42 U.S.C. 671 (10), (14) and (16)), Indian tribes may develop their own systems for foster care licensing, development of case plans and case plan reviews consistent with tribal standards, so long as such systems are not contrary to the requirements of

this Act.

(d) In determining eligibility for grants awarded pursuant to this section, the review process must utilize individuals selected in consultation with tribes and Indian organizations, who are not Federal employees and who have knowledge of Indian child welfare. Tribes in all areas of the country shall be eligible for grants awarded pursuant to this section.

SEC. 114. Section 202 of the Indian Child Welfare Act (25 U.S.C. 1932) is amended to read as follows--

"SEC. 202. (a) The Secretary [is also authorized to] shall also make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which, in accordance with priorities set by the Indian organizations, may include, but are not limited to--

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

(2) the operation and maintenance of facilities and

services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

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

(d) In determining eligibility for grants awarded pursuant to this section, the review process must utilize individuals selected in consultation with tribes and Indian organizations, who are not Federal employees and who have knowledge of Indian child welfare.

SEC. 115. Section 203 of the Indian Child Welfare Act (25 U.S.C. 1933) is amended to read as follows--

"SEC. 203. (a) In the establishment, operation and funding of Indian child and family service programs, both on and off reservation, the Secretary [may] shall enter into agreements with the Secretary of [Health, Education and Welfare] Health and Human Services, and the latter Secretary is hereby authorized and directed to use funds appropriated for similar programs of the Department of Health and Human Services for

such purpose. [Health, Education and Welfare: Provided, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.]

(b) [Funds for the purposes of this Act may be appropriated pursuant to the provisions of the Act of November 2, 1921 (42 Stat. 208), as amended.] Congress shall appropriate such sums as may be necessary to carry out the provisions and purposes of this Act. In addition, Congress may appropriate such sums as may be necessary to provide Indian child welfare training to Federal, state and tribal judges, court personnel, social workers and child welfare workers, including those employed by agencies licensed by a State.

(c) Indirect and administrative costs relating to a grant awarded pursuant to this Title shall be paid out of Indian Contract Support funds. One hundred per centum (100%) of the sums appropriated by Congress to carry out the provisions and purposes of this Act shall be awarded to tribes or Indian organizations."

SEC. 116. Section 301 of the Indian Child Welfare Act (25 U.S.C. 1951) is amended to read as follows--

"SEC. 301 (a) Any State court entering a final decree or order in any Indian child adoptive placement after the date

of enactment of this Act shall provide the Secretary and the Indian child's tribe with a copy of such decree or order together with such other information as may be necessary to show--

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

(2) the names and addresses of the biological parents;

(3) the names and addresses of the adoptive parents;

(4) the identity of any agency having files or information relating to such adoptive placement.

No later than 120 days after enactment of this bill, the administrative body for each State court system shall designate an individual or individuals who will be responsible for ensuring State court compliance with this Act. All information required by this subsection relating to decrees of adoption entered after May 8, 1979 shall be compiled and forwarded to the Secretary and Indian child's tribe no later than January 1, 1989. Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the

Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be held by the Secretary pursuant to subsection (a) of this section [necessary for the enrollment of an] Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership]. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting [anonymity] that their identity remain confidential and the affidavit has not been revoked, the Secretary shall [certify] provide to the Indian child's tribe[, where the] such information [warrants, that] about the child's parentage and other circumstances of birth as required by such tribe to determine [entitle] the [child] child's eligibility for [to enrollment] membership under the criteria established by such tribe.

(c) No later than January 15 of each year, the state social services agency shall compile and submit to the Secretary a list of all Indian children in foster care, preadoptive or adoptive placement as of December 31 of the previous year. The list shall include the name of the Indian child's tribe, the name and address, if known, of the child's biological parents and prior Indian custodian, if any, the names and

addresses of the parties having legal and/or physical custody of the child and the current legal status of the child, biological parents and prior Indian custodian. Within 10 days of the submission of the list to the Secretary, the state shall provide to each tribe all information on the list pertaining to the children of such tribe.

TITLE II - SOCIAL SECURITY ACT AMENDMENTS

SEC. 201 Section 408(a) of Title IV of the Social Security Act (42 U.S.C. 608(a)) is amended --

(1) by striking out at the end of subsection (2) (A) the word "or"

(2) by adding after subsection (2) (B) the following clause "or (C) in the case of an Indian child, as defined by subsection 4(4) of the Indian Child Welfare Act (25 U.S.C. 1903(4)), the Indian child's tribe as defined in subsections 4(5) and (8) of that Act (25 U.S.C. 1903(5) and (8)),".

SEC. 202 Section 422 of Title IV of the Social Security Act (42 U.S.C. 622) is amended by adding after and below clause (8) the following new clause:

" (9) include a comprehensive plan, developed in consultation with all tribes within the State and in-state

Indian organizations (with social services programs), as defined by section 4(7) of the Indian Child Welfare Act (25 U.S.C. 1903(7), to ensure that the State fully complies with the provisions of the Indian Child Welfare Act."

SEC. 203 Section 471 of Title IV of the Social Security Act (42 U.S.C. 671) is amended by adding after and below clause (17) the following new clause:

"(18) provides for a comprehensive plan, developed in consultation with all tribes within the State and in-state Indian organizations (with social services programs), as defined by section 4(7) of the Indian Child Welfare Act (25 U.S.C. 1903(7), to ensure full compliance with the provisions of the Indian Child Welfare Act. As part of the plan, the State shall make active efforts to recruit and license Indian foster homes and, in accordance with section 201 of the Indian Child Welfare Act (25 U.S.C. 1931), provide for the placement of and reimbursement for Indian children in tribally licensed or approved facilities."

TITLE III - MISCELLANEOUS

SEC. 301. These amendments shall take effect 90 days after enactment.

SEC. 302. Within 45 days after enactment of these

amendments, the Secretary shall send to the Governor, chief justice of the highest court of appeal, the Attorney General, and the director of the Social Service agency of each State and tribe a copy of these amendments, together with committee reports and an explanation of the amendments.

SEC. 303. If any of these amendments or the applicability thereof is held invalid, the remaining provisions of this Act shall not be affected thereby.

APPENDIX B

SUMMARY OF THE INDIAN CHILD WELFARE AMENDMENTS OF 1987

TITLE I - INDIAN CHILD WELFARE ACT AMENDMENTS

SEC. 101 (amends Sec. 3 of ICWA [25 U.S.C. 1903])

(1) Amends the definition of child custody proceedings to include administrative and dispositional proceedings. Some states have separate administrative, adjudicatory and dispositional proceedings while other states combine one or more of these proceedings. See In Re S.R., 323 N.W.2d 885 (S.D. Sup Ct. 1982). The Act has been construed in some jurisdictions to cover adjudicatory proceedings involved in the custody of Indian children and not administrative and dispositional proceedings. The amendment clarifies that each of these proceedings are included within the coverage of the Act. The section is also amended to state explicitly that voluntary placements under section 103 are included within the definition of "child custody proceeding". Some courts have ruled that these types of proceedings are not covered by the Act and by so doing have effectively voided the validation provisions in that section. See D.E.D. v. Alaska, 704 P.2d 774 (Alaska 1985); In re Baby Boy L, 643 P.2d 168 (Kan. 1981). See also In re Adoption of K.L.R.F., 515 A.2d 33 (Pa. Super. Ct. 1986) which pointed out the inconsistency

between this definition and the provisions in section 103 of the ICWA. In addition, the definition expressly includes "permanent removal of the child from the parent's custody" under the definition of "termination of parental rights" to address situations where children are placed in permanent custodial placements (e.g., guardianships) without a determination of parental fitness as required by the Act. Also, the revised definition expressly includes private adoptive placements to ensure that such placements are made in accordance with the placement priorities of the Act. Finally, the amendments specifically exclude custody disputes between both unmarried and married parents from the definition where custody is to be awarded to one of the parents; they include all other Indian children, and specifically include all other intrafamilial disputes. These amendments confirm In re S.B.R., 719 P.2d 154 (Wash. App. 1986) and In re Junious M, 193 Cal. Rptr. 40 (Cal. App. 1983) which held that the existence of a child custody proceeding and Indian child are sufficient to trigger the Act and overrule In re Baby Boy L, supra, Claymore v. Serr, 405 N.W.2d 650 (S.D. 1987) and similar cases which erroneously added the extra requirement that the child must also have lived in an Indian family. In addition, the amendments are designed to confirm A. B. M. v. M.H. & A. H., 651 P. 2d 1170 (Alaska 1982), cert. denied sub nom. Hunter v. Maxie, 461 U.S. 914 (1983) which ruled that the Act applies to intrafamilial disputes if not explicitly excluded and

overrule In re Bertleson, 617 P.2d 121 (Mont. 1980). Lastly, the amendments overrule "Decision of the Commissioner of Indian Affairs In the Appeal of William Stanek, March 20, 1981 (Adoption of L.A.C. and F.J.C., No. 19724, Thurston County Court, Nebraska), 8 I.L.R. 5021 (1981) which held that the Act applies to custody disputes between unmarried parents.

(2) Defines "domicile" in accordance with tribal law, or, in the absence of tribal law, it is defined as that place where a person maintains a 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. The "in the alternative" definition is taken from the United States compact with the Northern Mariana Islands approved by Congress. The definition recognizes the special circumstances of many Indian people on reservations who may leave the reservation for an extended period for the purposes of work or education but retain a domicile on the reservation during that period. See Wisconsin Potawatomies v. Houston, 393 F. Supp. 719 (N.D. Mich. 1973). The addition of this definition to the ICWA addresses a number of cases where trial courts have automatically applied state domicle law to the disadvantage of an Indian parent. See, e.g., Matter of Adoption of Halloway, 732 P.2d 962 (Utah 1986), Goclanney v. Desroches, 660 P.2d 491 (Ariz. Ct. App. 1982).

(3) Amends the definition of "extended family" to include all persons related to the child by blood or marriage. This addresses the not infrequent circumstance where a child may have developed a relationship with a stepgrandparent or other relative by marriage and placement with such relative would be appropriate.

(4) Amends the definition of "Indian" to include Alaska Natives born after the passage of ANCSA in 1971, clarifies that section 107 applies to persons who by definition cannot yet establish a right to tribal membership and includes any person recognized by an Indian tribe as part of its community. (See explanation in section (5).)

(5) Amends the definition of "Indian child" to include children considered to be part of the Indian community. The purpose of this amendment is to deal with children who are clearly Indian and live in Indian communities but who may not technically meet criteria for membership because of, for example, patrilineal or matrilineal tribal membership systems or insufficient blood quantum for membership in any one tribe because of connections with more than one tribe. A similar provision can be found in the Washington State Administrative Code, WAC 388-70-091(3). In addition, the definition is amended to make clear that a child who is member of a tribe or eligible for membership need not live with an Indian parent or in an Indian community to be covered

by this Act. This would reverse In Re Baby Boy L, supra, Johnson v. Howard, 12 ILR 5128 (Okla. Sup. Ct. 1985) and Claymore v. Serr, supra, and endorse the holdings in In re S. B. R., supra and In re Junious M., supra.

(6) Indian child's tribe is amended to allow the tribe with the most significant contact with the child to designate another tribe in which the child is a member or eligible for membership as the Indian child's tribe (with its consent). A variation of this provision is found in the Minnesota Indian Family Preservation Act, Minn. Stat. sec. 257.351(7).

(7) Amends "Indian custodian" to include all Indian persons to whom a parent has voluntarily transferred custody whether in accordance with state, federal or tribal law. This amendment addresses the case of State ex. rel. Multnomah County Juvenile Dept. v. England, 640 P.2d 608 (Or. 1982) which held that since the state retains legal custody of children it places in foster care, an Indian foster parent is not an Indian custodian even where the foster parent is a member of the child's extended family and the parent has consented to the placement.

(9) Includes terminated tribes in the definition of Indian tribe. Includes Canadian tribes in the definition of Indian tribe for the purposes of some sections of the Act, including the notice, intervention, voluntary consent and

placement sections, but not including the jurisdiction and grant provisions. This change recognizes the close cultural and familial relationship between Canadian and American tribes and the significant number of Canadian Indian children in the United States, but avoids problems of international law by excluding Canadian tribes from the jurisdiction clauses. The Washington Administrative Code contains a similar provision, WAC 388-70-091(2).

(10) Changes the definition of "parent" to clarify that paternity may be acknowledged or established at any time prior to final termination of the father's parental rights and that acknowledgement of paternity does not require a formal legal proceeding. This reverses court cases which have required formal acknowledgement proceedings to be held before the child custody proceeding is commenced in order for the father to have standing. See In re Baby Boy D, 12 ILR 5117 (Okla. Sup. Ct. 1985). In addition, the amendments provide that any person believed to be the unwed father is entitled to notice regardless of whether he has acknowledged or established paternity. See Stanley v. Illinois, 405 U.S. 645 (1972).

(11) Defines "qualified expert witness" to include persons recognized as knowledgeable by the Indian community and to require that all expert witnesses have at least some knowledge of the customs and childrearing practices of the

Indian child's tribe -- the degree of knowledge required is dependent upon the individual's level of training. This is a modified version of Bureau of Indian Affairs Guidelines for State Courts; Indian Child Custody Proceedings (hereinafter BIA Guidelines), 44 Fed. Reg. 67584 (1979), section D.4. The amendment endorses cases which have enforced such a requirement, see, e. g. State ex rel Juvenile Department of Multnomah County v. Charles, 688 P.2d 1354 (Or. Ct. App. 1984), app. dism. 701 P.2d 1052 (1985) and reverses cases which have held that expert witnesses are not required to have such knowledge. See, e. g., D.W.H. v. Cabinet for Human Resources, 706 S.W.2d 840 (Ky. Ct. App. 1986).

(13) Defines "residence" in accordance with tribal law, or, in the absence of tribal law, it is defined as a place of general abode or a principal, actual dwelling place of a continuing or lasting nature. The "in the alternative" definition is taken from the United States compact with the Marshall Islands and Micronesia approved by Congress. The definition recognizes the special circumstances of many Indian people on reservations who may leave the reservation for an extended period for the purposes of work or education but retain their true residence on the reservation during that period. See Wisconsin Potawatomies v. Houston, 393 F. Supp. 719 (N.D. Mich. 1973). See also explanation to the definition of domicile above.

SEC. 102 (amends Sec. 101 of ICWA [25 U.S.C. 1911])

(a) Makes clear that all tribes, including those in Public Law 280 states, have exclusive jurisdiction over involuntary child custody proceedings involving children residing or domiciled on the reservation. Notwithstanding Bryan v. Itasca County, 426 U.S. 373 (1976) and subsequent cases such as California v. Cabazon Band of Mission Indians, 107 S.Ct. 1083 (1987) which limited the scope of Public Law 280 over civil/regulatory matters, many 280 states and at least one court decision, Fawcett v. Fawcett, 13 I.L.R. 5063 (Alaska Super. Ct. 1986), have improperly construed Public Law 280 as extending jurisdiction over involuntary child custody proceedings to states. Moreover, in Native Village of Nenana v. Alaska Department of Health and Social Services, 722 P.2d 219 (Alaska 1986), cert. den. 107 S. Ct. 649 (1986), the court erroneously held that unless a tribe submitted a petition to resume jurisdiction pursuant to section 108 of the ICWA, it has no jurisdiction over child welfare proceedings. These amendments overturn these cases. The amendments recognize, however, that Public Law 280 may have conferred concurrent jurisdiction over voluntary proceedings to the states subject to that law. The amendments also explicitly permit a tribe to consent to the exercise of concurrent jurisdiction by the state by means of an agreement pursuant to section 109 of this Act in order to protect the children of those tribes who do not have the

resources to administer their own system. Tribes are, of course, free to designate other tribes or to form consortiums to exercise jurisdiction on their behalf as an alternative to state jurisdiction.

(b) The amendments remove the good cause exception for failure to transfer a case involving a child resident and domiciled off reservation (or a child resident or domiciled on the reservation where the State has acquired concurrent jurisdiction pursuant to subsection (a)) and instead require transfer, absent a continuing parental objection consistent with the purposes of the Act, except in three instances: (1) where the proceeding is at an advanced stage and the tribe or parent has ignored timely notice, (2) where the transfer would cause undue hardship to the witnesses and the tribal court cannot mitigate the hardship and (3) when there is a tribal-state agreement to the contrary. This recognizes the original purpose of the "good cause" exception (a modified forum non conveniens notion), see Matter of Appeal in Pima County, 635 P.2d 187 (Ariz. Ct. App. 1981), cert. den. 455 U.S. 1007 (1982) and prevents state court abuse of the good cause exception, see, e.g., In re Bertleson, supra, In re Bird Head, 308 N.W.2d 837 (Neb. 1983), In re J.R.H., 358 N.W.2d 311 (Iowa 1985), In re Adoption of K.L.R.F., supra, (Del Sole, J. conc. op.), In the Matter of Adoption of T.R.M., 489 N.E.2d 156 (Ind. Ct. App. 1986) (Staton, P. J., dissent). It also reverses court cases (1) which have

refused to allow a parent to withdraw an objection, (2) where an objection to transfer has been based solely upon a desire to break the child's bonds with the tribe and Indian family, see In re Baby Boy L, supra, and (3) where courts have ruled that they cannot transfer the case to tribal court where there is concurrent jurisdiction because the transfer provision of the ICWA only involves children who live off of the reservation. The amendments also make clear that a request to transfer may be made orally, as provided in the BIA guidelines, section C.1. Some courts have required full participation in the proceeding by the party requesting transfer before considering that request --an unnecessary and unduly burdensome requirement. See In re Bird Head, supra. Finally, this section is made applicable to all child custody proceedings to explicitly permit tribes to petition for transfer of preadoptive and adoption proceedings to tribal court.

(c) Amends this section to clarify that the right of intervention applies to all child custody proceedings and that all biological parents whose parental rights have not been terminated have the right to intervene. The amendments also extend the right of intervention to administrative or judicial proceedings to review the child's placement and allow a tribe to designate another tribe or Indian organization (with its consent) to act in its behalf to deal with situations where a child is away from the reservation of

his or her tribe.

(d) Requires a state and local social services agency to notify the Indian child's tribe within seven days and to cooperate fully with the tribe whenever it determines that an Indian child is in a dependent or other condition that could lead to an out-of-home placement and continued agency involvement with the child for 30 days or more. This provision is designed to better ensure that the provisions of the Act are enforced and recognizes the importance and benefits of tribal involvement in all stages of the process. Both the Minnesota Indian Family Preservation Act (Minn. Stat. sec. 257.352 (3)) and the Washington Tribal-State Agreement regarding child custody services and proceedings (hereinafter Washington Tribal-State Agreement) (Part III, Section 3) include a similar provision.

(e) Amends subsection 1911(d) to clarify that differences in practice and procedures that do not affect the fundamental fairness of a tribal court proceeding are not grounds to refuse to give full faith and credit to a tribal judicial proceeding. Under existing language, tribes sometimes encounter difficulty meeting state requirements for introduction of public records in state courts because tribal court procedures for certifying or authenticating documents do not comport with the technical requirements of state law.

(f) Adds a new subsection which makes clear that this section does not mean that a state can refuse to offer the same services to its Indian citizens as it does to all citizens. Some states have determined that they have no authority to provide services to on reservation Indians or to off reservation Indians who were the subject of a tribal court order, thereby depriving those individuals of the opportunity to voluntarily make use of available State services. This was not the intent of this section of the ICWA.

SEC. 103 (amends Sec. 102 of ICWA [25 U.S.C. 1912])

(a) Amends the notice requirements to make them applicable to all involuntary child custody proceedings, including adoptive and preadoptive placements. This amendment recognizes that without such a requirement there may not be any party to the proceeding in a position to ensure that placement priorities are followed by the court in the adoption context -- some cases in fact start at the adoption phase. Cf. Matter of J.R.S., 690 P.2d 10 (Alaska 1984). The amendments also clarify the required contents of the notice to make sure that all necessary information about the rights of all parties is included and specify necessary procedures for determining the Indian child's tribe and providing notice to all tribes in which an Indian child is eligible for membership (or to the tribe in which he or she is a member)

prior to notifying the BIA. These clarifications are included because of the common practice in some states, for example, some counties in California, to simply provide notice to the BIA without a good faith effort to notify the appropriate tribe(s). The BIA often does not pass these notices on to the tribes nor does it take any other action. In addition, the amendments clarify that if there is both a parent and Indian custodian, both receive notice. At least one court has held that notice to the Indian custodian and not the parent was sufficient. Additionally, the amendments make explicit there is reason to know that the child is Indian when the petitioner has reason to know, not only when the court has reason to know. This change is consistent with and gives force to section B.1.c. of the BIA guidelines which provides, among other things, that the court has reason to believe that a child is Indian when (1) any party to the case informs the court, (2) any agency or officer of the court has information that the child may be Indian, or (3) the child lives in a predominantly Indian community. Some courts have been lax in implementing this provision. See, e. g., In the Matter of the Adoption of an Indian Child (Baby Larry), 217 N.J.Super. 28 (1987). The notice time limits in this section are also amended. The section as enacted allows a child custody proceeding to be held five days prior to the time within which the Secretary is authorized to provide notice to the parent, Indian custodian and the tribe. This is clearly a drafting error and these amendments would

rectify this problem. Finally, the amendments provide for a tolling of the time limits, at the option of the parent or Indian custodian, if an application for counsel is pending. It is, of course, presumed that the Secretary will process such requests promptly so that there is no undue delay in the scheduling of the proceeding.

(b) Extends the right to counsel to administrative hearings. This will ensure that families are appointed counsel at all stages of proceedings which could have an effect on family unity. Also requires payment by the Secretary of reasonable expert witness fees. This is necessary if parents and Indian custodian are to be able to participate on an equal footing in child custody proceedings.

(c) Clarifies that the right to discover documents in a child custody proceeding includes access to the case record and all documents which serve as the basis for oral testimony. In some states, social workers have refused to release information to tribes on the ground that the information has not been "filed" with the court. This refusal is especially critical where a state worker files an abbreviated social summary with the court and does not file the worker's raw data file which provides information to the Indian tribe or Indian parent about the basis for the social worker's dispositional and case work decisions. The amendments also clarify that such documents may be copied by

counsel. Some courts and agencies have narrowly construed this provision to permit examination and not copying.

(d) Expands upon the notion of reasonable efforts to indicate that in most cases such efforts must include the involvement at a minimum of the Indian tribe and extended family. The amendment is designed to make clear that, whenever possible, the resources of the tribal community are to be brought to bear before removal of the child, including the involvement of an Indian child and family service program, individual Indian care givers and the provision of culturally sensitive childrearing services. To strengthen this requirement, the amendments provide that no child custody proceeding may be commenced, except in emergency circumstances, unless the tribe has previously received notice of the dependent status of the child.

(e) Clarifies that the clear and convincing standard utilized in involuntary foster care proceedings applies to all findings that the court needs to make in order to place the child in foster care. Also, the amendments remove the word "continued" before the word "custody". See section f. below for explanation.

(f) Same as above in regard to the beyond a reasonable doubt standard required to terminate parental rights and the "continued custody" issue. This first cited provision would

reverse the decisions of some courts which have applied a lesser standard to some of the elements required for the termination of parental rights. See In the Matter of J.R.B., 715 P.2d 1170 (Alaska 1986); In re T.J.J., 12 I.L.R. 5068 (Minn. Ct. App. 1985). Congress recognized in 1978 that permanent removal of a child is a penalty as severe as a criminal penalty --that stringent protections must be in place and that termination is a last resort to be applied only when the conditions threatening the child are likely to continue for a prolonged, indeterminate period. A stringent standard of proof is necessary as to all elements of proof required to ensure that termination is truly justified. As for the second change mentioned above, some courts have cited the continued custody clause to wrongfully deny the applicability of the Act where the child is not in the custody of the Indian parent at the time the proceeding is brought. See, e. g., Johnson v. Howard; supra.

(g) Clarifies that the existence of community or family poverty, crowded or inadequate housing, alcohol abuse or non-conforming social behavior is not grounds to remove the child from his or her home unless a direct causal relationship between these conditions and serious harm to the child can be demonstrated. This change brings into the statute section D.3. of the BIA guidelines.

(h) This section explicitly recognizes the customary

system of adoption prevalent among Indian tribes, i.e., continued contact between the adopted child and his or her biological family (and tribe) after a final decree of adoption. In some cases where permanent out-of-home placement may be unavoidable, termination of parental rights and contact between the child and his or her family and tribe may not be the least restrictive nor best method to provide for the best interests of the child. Nonetheless, some state courts have no statutory authority to explore such options. This section would provide that authority.

SEC. 104 (amends Sec. 103 of ICWA [25 U.S.C. 1913])

(a) (1) Provides that consents must be validated regardless of the type of placement. Thus, all adoptive placements whether by state agency or a private agency or individual would require validation by the state court. Moreover, the section is amended to make sure that the relevant provisions of the Act, for example, placement preferences, the ten day restriction on consent, the right to legal counsel and the notice provisions, are explained to the parent and Indian custodian, if any. These changes are designed to ensure that all consents are truly informed and voluntary. Also, parents and Indian custodians are not permitted to waive the requirements of this section. Too often, private adoption agencies have continued to try to circumvent the Act by having the uninformed parent sign a

blanket waiver of the Act. Additionally, the amendments make clear that both state and tribal courts may take consents in appropriate situations. Some state courts have not accepted tribal courts as courts of competent jurisdiction. The change clarifies that the tribal court's jurisdiction is the same in the voluntary context as in the involuntary context. Children resident or domiciled on the reservation or who are wards of tribal courts must have their consents validated by tribal courts except where jurisdiction has otherwise been vested in a state in accordance with section 101(a). Off reservation, both tribes and states have jurisdiction to validate consents which may be exercised in accordance with section 101 of this Act.

(2) This clause provides that the tribe shall be notified of all voluntary proceedings. A number of states have recognized that it is important for tribes to have notice of these proceedings and have included such provisions in State law, e.g., Washington (RCW 26.33.090, as amended by L. 1987, c. 170), Minnesota (Minn. Stat. sec. 257.353(2)), or in tribal-state agreements, e.g., New Mexico-Navajo agreement (section III.A.2.(b)). Without notice of voluntary placements, tribes lose the opportunity to intervene in the case and request transfer of the case. Consequently, their ability to monitor and influence what is happening to a significant number of their children is greatly diminished.

(3) This clause mandates that consent to out-of-home placement shall not be considered to be equivalent to abandonment by the parent or Indian custodian. Some courts have utilized voluntary consents as grounds to involuntarily terminate parental rights or to change the child's domicile in order to improperly assert jurisdiction. See, e.g., Matter of Adoption of Halloway, supra.

(4) This clause requires that IHS ensure that parents are informed of their rights under this Act and that the IHS is in compliance with this provision of the Act. This clause is designed to increase compliance with this section and to address instances in which IHS personnel have reportedly helped effectuate consensual placements not in accordance with the requirements of this section.

(b) Clarifies that upon revocation of consent to a foster care placement, the child is to be immediately returned to the parent or Indian custodian unless to do so would subject the child to a substantial and immediate danger of serious physical harm or threat of such harm. The amendments explicitly provide that the pendency of an involuntary child custody proceeding is not adequate reason to refuse to return the child to the parent or Indian custodian. These amendments are designed to ensure that parents who have voluntarily relinquished custody are truly able to regain their children upon demand as the statute

intends. See Minnesota Family Preservation Act, Minn. Stat. sec. 257.353(4) (child must be returned within 24 hours).

(c) Amendments are made to the consent to termination of parental rights, preadoptive or adoptive placement provisions which are similar to the amendments in subsection (b) above. Also, the amendments clarify that consent may be withdrawn at any time prior to the entry of a final decree of adoption. This affirms the case of Angus v. Joseph, 655 P.2d 208 (Or. Ct. App. 1982), rev. den. 660 P.2d 683 (1983), cert. den. 104 S.Ct. 107 (1983) and reverses the cases of In the Interest of L.D.R.T., 391 N.W.2d 594 (N. D. 1986) and Matter of J.R.S., supra, in which it was erroneously held that consent could not be revoked once parental rights are terminated even though the adoption itself had not been finalized. This clarification is important because often the termination of parental rights is entered immediately after consent is given, effectively rendering the revocation meaningless if the L.D.R.T. and J.R.S. interpretation is accepted. Finally, the amendments make clear that Indian custodians may withdraw consent under this section, thereby conforming this section with subsection (b).

(d) Clarifies that a fraudulent consent may be challenged so long as a petition is filed within two years of the entry of the decree of adoption, see BIA Guidelines, sec. G.1., and that a preponderance of the evidence standard

applies to such a proceeding.

SEC. 105 (amends Sec. 104 of ICWA [25 U.S.C. 1914])

(a) Extends the provision authorizing challenges to proceedings which contravene the ICWA as follows: preadoptive and adoptive placements are explicitly included under this section; violations of the order of placement (section 105 of ICWA) and adoption set-aside (section 106 of ICWA) provisions would also give rise to a challenge under this section; the invalidity of a prior proceeding may be grounds to invalidate a subsequent proceeding; extended family members may intervene in these proceedings and may mount independent challenges alleging a violation of the order of placement. These changes are designed to strengthen the ability of wronged children, parents, tribes or custodians to challenge proceedings that have not complied with the ICWA, thereby creating a more viable mechanism for overseeing compliance and protecting Indian children and parents. These amendments would address the D.E.D. v. Alaska, supra, and Matter of M.E.M., 679 P.2d 1241 (Mont. 1984) cases to the extent that they imply that the flaws of an earlier proceeding may not be grounds to overturn subsequent proceedings. Of course, if the earlier rulings were not necessary prerequisites to the later proceeding and the aggrieved individual received notice and an opportunity to be heard in the later procee ing, the earlier failures to comply with the statute might ot cause

the later proceeding to be invalidated. In view of the expanded nature of this section, a clause has also been added which limits review to two years after final adoption. At present, the section contains no time limitation.

(b) Clarifies that federal courts have jurisdiction over challenges under this section and have habeas corpus jurisdiction over Indian child welfare cases. These changes would make clear that the analysis in Lehman v. Lycoming County, 458 U.S. 502 (1982) -- in which the court ruled that habeas corpus is not a remedy applicable to state child custody proceedings because such proceedings have historically been the responsibility of states -- is not applicable in the Indian Child Welfare context because of the extensive Federal interest in the sphere of Indian affairs. In addition, this change would overrule Kiowa Tribe v. Lewis, 777 F.2d 587 (10th Cir. 1985), cert. den. 107 S. Ct. 247 (1986) and other cases which refused to review state court interpretations of federal law.

(c) Provides for expedited proceedings upon request of any party to the proceeding. There are far too many cases which continue for years, as many as seven, before they are resolved. See, e.g., Matter of Adoption of Halloway, supra. This is not in the best interests of the child, parents or tribe and this clause is meant to address this problem.

SEC. 106 (amends Sec. 105 of ICWA [25 U.S.C. 1915])

(a)-(c) Strengthens the placement preferences by making them mandatory except in four instances: (1) when the child is of sufficient age and requests a different placement; (2) the child has extraordinary physical or emotional needs, as established by the testimony of qualified 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; (4) suitable families within the order of placement are unavailable even after a diligent search to find such families. These changes are made because of the lack of compliance with the placement preferences by many state and private agencies. For example, a 1983 California audit revealed that about half of the placements fell outside of all the placement preferences without any showing that there was good cause for an out of preference placement. In addition, many courts have abused the good cause exception by using that exception to deny placements on the reservation because, for example, they think it is too rural, that no doctors are available or for other culturally inappropriate reasons. The exceptions to mandatory placements in new subsection (c) are derived from BIA Guidelines, section F.3., with one addition, the clause dealing with evidence of

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serious emotional and physical harm -- the changing of the preferences from presumptive to mandatory gives rise to the need for this additional exception.

(d) Amends subsection 1915(c) to provide that a placement preference (and request for confidentiality) of a parent or child shall be considered only if it would lead to a placement within the placement categories. This reflects the notion that the parent does not have the right, by means of a request for anonymity, to prevent the child from access to his or her Indian heritage. The agreement between the Navajo Tribe and State of New Mexico contains such a provision, section V.D. The amendments also provide that the request for confidentiality shall not be grounds to fail to provide notice to the tribe and non-consenting parent for much the same reason, as well as the need to protect the constitutional rights of the non-consenting parent. See Stanley v. Illinois, 405 U.S. 645 (1972).

(e) Amends subsection 1915(d) to provide that the State shall promulgate separate state licensing standards for Indian homes in consultation with affected tribes and place children in tribally licensed and approved homes if necessary to meet the requirement that the prevailing social and cultural standards of the Indian community be utilized in placing Indian children. Many state licensing standards contain elements that are inappropriate in the Indian

cultural and socioeconomic context. These unnecessary criteria can result in a shortage of Indian foster and adoptive homes for State placements. By promulgating separate licensing standards and utilizing tribally licensed and approved homes, states may alleviate this shortage. States, of course, have an affirmative duty to actively take affirmative steps to recruit Indian foster and adoptive homes.

(f) Amends subsection 1915(e) to make explicit that efforts to comply with the order of placement must include contacting the tribe and notice to extended family members (with identifying information eliminated if the court sees fit to honor a request for confidentiality), and a search of national, state, county, tribal and Indian organization listings of Indian homes. This addition to the subsection is a modified version of language included in the commentary to section F. 3. of the BIA guidelines and is considered necessary, once again, to assure compliance with the placement provisions.

SEC. 107 (amends Sec. 106 of ICWA [25 U.S.C. 1916])

(a) Explicitly provides for notice to the biological parents, prior Indian custodian and the tribe in any case where an adoption is vacated in order to enable them to exercise the rights granted by this section. The BIA

Guidelines, section G.3., provide for notice to the parent or Indian custodian. The amendments also clarify that all relevant provisions of the Act, including the notice, jurisdiction and burden of proof sections, apply to Indian children whose adoptive placements terminate. Finally, the section is amended to provide for notice to the tribe and a right to intervene when adopted Indian children are placed in foster care. These provisions recognize that reestablishing the child's connection with his tribe and family in cases where an adoptive placement has broken down is often in the child's best interest.

(b) Provides that whenever such children are not returned to their biological parent or Indian custodian, placement shall be made in accordance with the ICWA and that, in this context, extended family shall include the extended family of the biological parents or prior Indian custodian. See explanation to subsection a.

(c) Provides for notice to the tribe, as well as parents or Indian custodian whose parental rights have not been terminated, whenever the foster care placement of an Indian child is reviewed or changed. This is implicit in the Act at present and included in the BIA Guidelines, section G.3. However, such notice is not always sent at present.

SEC. 108 (amends Sec. 107 of ICWA [25 U.S.C. 1917])

Allows the tribe and adoptive parents, as well as an adult adoptee, to petition for information about an adopted child. Both have an obvious interest in obtaining such information. This section is also amended to make clear that where court records are insufficient to enable a court to assist an Indian adoptee to secure the rights contemplated by Section 107, the court is required to seek the necessary information from agency and other records that may be subject to court order. Finally, the amendments provide that the names of the biological parents shall be made available to the petitioner, as well as the names and tribal affiliation of grandparents, where necessary (e.g., where the natural parent of the adopted child was also adopted).

SEC. 109 (amends Sec. 108 of ICWA [25 U.S.C. 1918])

Amends this section to make the reassumption provisions applicable only in the context of reassumption of exclusive jurisdiction over all voluntary proceedings. This section, as currently drafted, has served to confuse state courts and in fact has led one court in Native Village of Nenana v. Alaska Dept. of Health & Social Services, supra, to conclude that absent petition under section 108, the village in question had no jurisdiction over child welfare proceedings. In essence, it construed this section as taking away the

tribal jurisdiction possessed by the village prior to the ICWA! The amendments to section 101(a) of this Act, together with the amendments to this section, make clear it was not the intent of the ICWA to remove jurisdiction from tribes -- the 101 amendments also eliminate the need for this section to be as expansively drafted as is presently the case.

SEC. 110 (amends Sec. 110 of ICWA [25 U.S.C. 1920])

Clarifies that the parent or Indian custodian has the right to petition any court with jurisdiction, including Federal court, to regain custody in a case where a child has been illegally removed or retained. At present, the section is silent as to whether parents and Indian custodians have that right. If they do not, there may be no remedy in a case where a person illegally gains or retains custody of a child without attempting to have that custody formalized by a court.

SEC. 111 (amends Sec. 112 of ICWA [25 U.S.C. 1922])

(a) Amends the existing section to make clear that a state agency has the authority to remove on an emergency basis all Indian children located off the reservation. Some states have been reluctant to deal with emergency cases involving Indian children because of an ambiguity that they perceive regarding the scope of this section. This section

is also amended to provide that, whenever possible, emergency placement shall be made in accordance with the order of placement in section 1915.

(b) Requires that a court affirm the need for an emergency placement within three working days of the child's removal unless the child can be returned prior to that time (the requirement that the child be returned immediately if the emergency has ended is unchanged). In addition, the section requires that unless the child is returned to the parent or Indian custodian within 10 days, the state, in the absence of a section 109 tribal-state agreement to the contrary, must take steps to either transfer the child to the tribe (in the case of a child who is resident or domiciled on the reservation or a ward of the tribal court) or commence a child custody proceeding in State court. Ongoing efforts to prevent removal of the child must continue while a petition is pending. No emergency custody order shall remain in force for more than 30 days (unless there is a delay in the child custody proceeding because of the requirements in section 101). These changes are designed to prevent emergency proceedings from turning into long-term involuntary placements, thereby circumventing the provisions of the Act. The changes are also designed to make sure that the state does not obtain continuing jurisdiction over a child through the emergency removal provision in instances where the child would otherwise be subject to the exclusive jurisdiction of

the tribe.

SEC. 112 (new section 124 of the ICWA)

(a) Requires the Secretary to establish a Indian Child Welfare monitoring committee of not less than 3 persons for each area office. The members of each committee are to be appointed for two years from a list of nominees furnished by Indian tribes and organizations and shall represent diverse elements of the Indian community. The purpose of the committees is to monitor compliance with the ICWA. The nominating structure is derived from 20 U.S.C. sec. 1221g pertaining to the National Advisory Council on Indian Education.

(b) Provides that any state in which a Federally-recognized Indian tribe is located or which contains an Indian population which exceeds 10,000 must require that all of its licensed private agencies comply with the Act and periodically audit their compliance. Private adoption agencies often fail to comply with the Act with few, if any, consequences. This amendment would provide a strong incentive for compliance. The Minnesota Indian Family Preservation Act, Minn. Stat. secs. 257.352 and 257.353, includes private placement agencies under its aegis and the Washington Tribal-State Agreement, Part II, sec. 6, requires compliance of private agencies as a condition for continued

licensure. States which do not meet the above criteria would be permitted and encouraged to establish such a regulation, but would not be required to do so.

SEC. 113 (amends Sec. 201 of ICWA [25 U.S.C. 1931])

(a) The amendments make clear that priorities in grant programs shall be set by the tribes, not the BIA, and that grants may be used for legal representation for the tribe and for cultural and family-enriching activities. These changes are meant to address the administration of the ICWA grant program by the BIA whereby the Bureau's has attempted to set its own priorities and has refused to allow grant money to pay for tribal legal representation.

(b) Provides that all placements in tribally licensed or approved foster or adoptive homes, whether located on or off the reservation, qualify for applicable federally assisted programs, such as title IV-E payments for foster care and adoption assistance. This would ensure that the original purpose of the "equivalent" language of this section is fulfilled, namely, that Indian tribal foster and adoptive homes are eligible for funds appropriated for adoptive and foster care under the Social Security Act.

(c) Provides that, notwithstanding P.L. 96-272, tribes may develop their own systems for foster care licensing,

development of case plans and case plan reviews. There are some potential inconsistencies between the ICWA and 272 as applied and differences between the resources available to state and tribal social services agencies. For example, the permanancy planning provision in 272 is sometimes interpreted as placing strict limits on the length of foster care. Under ICWA, it may sometimes be that a long-term arrangement is the only way to preserve the child's connection with his or her tribe and heritage. Moreover, the review system by 96-272 may not make sense in the context of a small, personalized tribal program. Tribes should have the flexibility to structure child placements and their child welfare programs in general notwithstanding their receipt of funds authorized by P. L. 96-272.

(d) Provides that the grant review process must utilize individuals with knowledge of Indian child welfare chosen in consultation with tribes who are not Federal employees. The grant review process has been widely criticized by tribes for lack of fairness, impartiality and rationality. This amendment is an attempt to improve the process. This subsection also provides that tribes throughout the country are eligible for grants to make clear that tribes, Native villages and non-profit regional associations in Alaska are eligible for grants.

SEC. 114 (amends Sec. 202 of ICWA [25 U.S.C. 1932])

Makes the same changes to the grant sections applicable to Indian organizations as are made in subsections (a), (b), and (d) of Section 112. The changes explicitly indicate that the Secretary shall award grants to Indian organizations to make clear that the Secretary may not unilaterally eliminate funding for off reservation programs.

SEC. 115 (amends Sec. 203 of ICWA [25 U.S.C. 1933])

(a) Requires IHS and BIA to enter into an agreement relating to the establishment, operation and funding of Indian child and family services programs, including the use of IHS money for such purposes. This change is designed to accomplish the original intent of this section -- programmatic and financial involvement of IHS in Indian Child Welfare.

(b) Provides independent appropriations authorization for Indian Child Welfare grants and related training programs. This is designed to indicate that the ICWA grant program and other child welfare funding is not to be the first program to be eliminated if budget reductions are required.

(c) Provides that indirect costs of ICWA grant programs

are to be funded from BIA contract support funds and that all funds appropriated for these programs shall go to the tribe and not to BIA administration or programs. This amendment is meant to ensure that, given the inadequate level of funding for ICWA grants, all money that is appropriated is spent directly on the provision of child welfare services by the tribe.

SEC. 116 (amends Sec. 301 of ICWA [25 U.S.C. 1951])

(a) Provides that information relating to adoptions, retroactive to the effective date of ICWA, shall be sent to the Indian child's tribe, as well as to the Secretary; requires each court system to designate a responsible individual(s) to comply with the Act. Recordkeeping and access to information has been sporadic under the current provision. These changes are designed to improve the system and also to ensure that the tribe has information about its children. The Minnesota Indian Family Preservation Act, Minn. Stat. sec. 257.356, provides for such information to be sent to the tribe.

(b) Requires the Secretary to provide all information in his possession to the tribe, adoptive or foster parents, or adult adoptee, including the names of all parents, unless the parents are still living and have requested confidentiality. The rationale for this change is that in the absence of a

request for confidentiality, there is no reason to withhold information from an adult or tribe. In the case of a request for confidentiality, the Secretary must provide enough information for the tribe to make its own determination as to an adopted child's eligibility for tribal membership, rather than permitting the BIA to make that determination for the tribe. See Minnesota Indian Family Preservation Act, Minn. Stat. 257.356(2). The presumption should be in favor of maximum disclosure with only that information relating directly to the identity of the specific person requesting confidentiality withheld and not other information relating to, for example, the child's other parent. The rights in this section are, of course, in addition to those rights provided by section 107.

(c) Requires the state social services agency to annually prepare a summary of Indian children in foster care, preadoptive or adoptive placements and submit it to the Secretary and the Indian child's tribe. Again, this is designed to improve the quality of information available to all concerned.

TITLE II - SOCIAL SECURITY ACT AMENDMENTS
SEC. 201

Amends section 408(a) of Title IV of the Social Security