

Representative Wallis

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October 20, 1987

To provide more recent information on children in custody of the Department, a special computer analysis was done of children in custody on September 30, 1987.

~~Of that number, 413 or 74% were Native. On the same date, 444 children were in out of home care. Of that number, 381 or 86% were Native.~~

The table below provides a breakdown of the placements of Native children in out of home care on September 30, 1987. As the table shows, the most frequent type of placement for Native children was in the home of a relative. Thirty-six percent (317) of these children were in the home of a relative. In 26 of these instances the relatives were acting formally as foster parents. The second most frequent placement for Native children was non-relative foster care where 287 or 32% of Native children were in placement.

Out of Home Placements of Native Children  
Receiving Child Protective Services  
September 30, 1987

Placement Type	Number	Percentage
Relative Home	291	32.7
Relative Foster Home	26	2.9
Non-relative Foster Home	287	32.2
Emergency Shelter	79	8.9
Adoptive Home	42	4.7
Hospital	16	1.8
Residential Care Facility	12	1.3
Other	138	15.5

To provide you with as clear an indication as possible of the placement of Native children, a special computer analysis was also performed to compare the race of foster parents with the race of children placed in their homes. Again because of inherent deficiencies, the period for which this information can be tracked is limited. Usually the information is available only for the most recent three month period; however, because certain normal procedures had been delayed, the information was available for a longer period during 1987.

~~During that period, 444 children were placed in foster care. Of these, 605 or 44% were Native children. Of the Native children placed in foster homes, 269 or 45% were placed in Native foster homes. One hundred seven were placed in Caucasian foster homes and 64 or 10% were placed in homes of other races. In 26 cases, the race of the foster parents was unknown because the foster~~

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parents chose not to record their race. The table below indicates the racial composition of children in placement and foster parents with placements during the period.

## Race of Children in Foster Homes

Foster Parent Race	Native	Caucasian	Other	Unknown	Total
Native	269	25	8	15	317
Caucasian	171	280	41	53	545
Other	64	72	60	38	234
Unknown	101	111	19	41	272
Total	605	488	128	147	1,368

In summary, the table shows that during the period studied, only 23% of foster parents were Native compared to 44% of children placed in foster care. Of Native children placed in foster care, 44% were placed in Native foster homes. This seems to indicate substantial effort to place Native children in Native foster homes despite an insufficient number of Native homes to meet the need for such placements.

Limitations in these data preclude definitive conclusions based on the data. However, the information seems to indicate that when Native children are placed out of their homes, most are placed in home-like settings and most of these are placed either in the homes of relatives or in Native foster homes. Nonetheless, a substantial number of Native youth are placed in non-Native homes. In part this is due to an insufficient number of Native foster homes. However, there a number of factors influencing placement patterns such as differences between urban and rural areas (for example, in Anchorage only 33 of 390 or 8% of foster homes which had placements during the period were Native homes, while nearly one-third of the Native children placed in foster care were in Anchorage).

Obviously, these are complex issues which are not easily resolved. I hope this information is helpful and I welcome further discussion of these issues.

Sincerely,

Myra M. Munson

Myra M. Munson  
Commissioner

Enclosure

1986 yr Totals

TABLE 5  
DEMOGRAPHIC CHARACTERISTICS OF CHILDREN  
Served by Living Situation at the End of the Period

LIVING SITUATION	GENDER **		ETHNIC GROUP **					AGE ***		
	MALE	FEMALE	ALASKA NATIVE	BLACK	CAUCA- SIAN	ASIAN	OTHER	4 Yrs. -Less	5-12	13-19
OWN OR PARENT HOME	3184	3765	2019	240	3464	70	1145	2064	3087	1793
RELATIVE HOME	234	302	338	12	158	5	22	152	215	168
NON-RELATIVE HOME	38	92	31	4	73	1	20	21	15	94
EMERGENCY SHELTER	135	138	110	13	127	1	23	76	84	114
RESIDENTIAL CHILD CARE FACILITY	49	77	55	4	58	0	5	8	28	89
ADAPTIVE HOMES	30	37	31	3	31	0	0	17	23	33
ALL OTHERS	75	93	84	13	72	2	24	41	39	102
TOTALS	4084	4938	3029	323	4266	87	1278	2585	3761	2672
	45%	55%	34%	3%	47%	1%	14%	29%	42%	30%

*est 90% no foster care placements*  
*majority of Relative placement Non Foster Care Placements.*  
*388 = 757*  
*47% Native children*  
*64% Native*  
*1035 = 2045*  
*61%*  
*minus in-home services.*

\* Gender of 200 individuals was not reported

\*\* Ethnic Group of 212 individuals not reported

\*\*\* Age of 204 individuals not reported

December, 1986

## MEMORANDUM

## State of Alaska

TO: Connie J. Sipe  
Acting Commissioner  
Department of Health and Social Services

DATE: December 5, 1986

FILE NO: 842/6967

TELEPHONE NO: 465-3170

THRU:

SUBJECT: Re: Native Children in Foster Care

FROM: Michael Price  
Director  
Division of Family and Youth Services

In 1984, 14% (7,5000) of the State's population, 523,000 were identified as American Indian, Eskimo, or Aleut (1). In FY 86 the Division of Family and Youth Services (DFYS) clientload of 19,211 included 6,256 (32.6%) Alaskan Native clients.

In response to questions raised in the ICWA and AFN meetings, the following information has been obtained from the Division of Family and Youth Services computer system in regard to Native children in out-of-home care. The number of children reflects a cumulative total of individual children who have been in foster care during the past 540 days or within the past eighteen months as of November 14, 1986. The information cross-references foster parent race with foster child race by field office, including youth services offices and statewide totals.

Extreme caution is recommended in drawing conclusions from the information presented because of inherent limitations of the data. For example, one-fifth (21%) of children in foster care were in placements for which no race was recorded in the data system. Also the data are insufficient for analysis of the impact of service exigencies (such as out of community placement for specialized care) or the race of foster care placements. Nor are the data analyzed in comparison with demographic and socio-economic trends which influence service need and delivery. It is clear that further information and analysis is needed in order to formulate valid conclusions. Within these limitations, the following information is presented.

The data depicts statewide totals and placements for several of the larger social service field offices specific to the cities listed.

(1) Alaska Population Overview, Alaska Department of Labor, September 1985, page 3.

Connie J. Sipe  
Acting Commissioner

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## STATEWIDE

(Cumulative unduplicated total during the period April 1, 1985 to November 14, 1986.)

FOSTER PARENT RACE	FOSTER CHILD RACE				
	Caucasian	Native	Other*	Unknown**	Total Placements
Caucasian	595	403	80	30	1,108
Native	40	489	12	19	560
Other*	128	94	126	39	387
Unknown**	214	264	32	61	571
Total Children	977	1,250	250	149	2,626

\* "Other" includes races other than caucasian or Alaskan Native, i.e., Filipino or Black.

\*\* Unknown numbers are the result either of foster parents choosing not to record their race or workers not knowing the race of a child when the child enters custody and then not recording the race later.

Points of interest are:

- 39% of Native children are placed in Native foster homes.
- 32% of Native children are placed in Caucasian foster homes.

29% of " we they don't know about."

## BETHEL SOCIAL SERVICES

(Cumulative unduplicated total during the period April 1, 1985 to November 14, 1986.)

FOSTER PARENT RACE	FOSTER CHILD RACE			TOTAL
	NATIVE	UNKNOWN		
Caucasian	9	0		9
Native	77	2		79
Unknown	42	0		42
Total	128	2		130

Points of interest:

- 24% Licensed Native homes in Bethel.
- 40% Licensed Native homes in villages.
- 8% Licensed Caucasian homes in Bethel and villages.

- 98% of children in placement are Native.
- 59% of children are in Native foster homes.
- 7% of Native children are in Caucasian foster homes.

34% Unknown

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Acting Commissioner

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## ANCHORAGE SOCIAL SERVICES

(Cumulative unduplicated total during the period April 1, 1985 to November 14, 1986.)

FOSTER PARENT RACE	FOSTER CHILD RACE					TOTAL
	Caucasian	Native	Other	Unknown		
Caucasian	180	92	30	30		330
Native	15	67	0	19		96
Other	41	33	49	39		152
Unknown	83	71	17	61		229
Total Children	319	263	58	149		807

Points of interest:

- 43% of children in placement are Native.
- 25% of Native children are in Native foster homes.
- 35% of Native children are in Caucasian foster homes.

## BARROW

(Cumulative unduplicated total during the period April 1, 1985 to November 14, 1986.)

FOSTER PARENT RACE	FOSTER CHILD RACE	
	Caucasian	Native
Caucasian	15	
Native	27	
Other	3	
Total Children	45	

## FAIRBANKS

(Cumulative unduplicated total during the period April 1, 1985 to November 14, 1986.)

FOSTER PARENT RACE	FOSTER CHILD RACE			
	Caucasian	Native	Other	TOTAL
Caucasian	99	47	13	159
Native	1	63	0	64
Other	24	13	30	67
Unknown	17	15	0	32
Total Children	141	138	43	322

Points of interest:

- 42.9% of children in placement are Native.
- 46% of Native children are placed in Native foster homes.
- 34% of Native children are placed in Caucasian foster homes.

LIST OF AREAS OF CONCERN FOR POTENTIAL  
DRAFTING INTO A MODEL ALASKA ICWA AGREEMENT

An overall goal was agreed upon: To promote communication and coordination between the State and villages from the first point in time that a child in need of protection comes to the attention of either the State or the village.

[The items numbered 1-4 were chosen as the first four priorities. Other items are listed, but have not been placed in any order of priority.]

- |   |   |
|---|---|
| <p>1. Emergency</p> <ul style="list-style-type: none"> <li>- reports</li> <li>- removals</li> </ul> <p>2. Identification</p> <ul style="list-style-type: none"> <li>- child as Indian</li> <li>- tribal membership/(dual +)</li> <li>- expert witnesses</li> <li>- tribal order of placement preference</li> <li>- customs of tribe</li> <li>- tribal courts</li> </ul> <p>Investigations</p> <ul style="list-style-type: none"> <li>- procedures</li> </ul> <p>Foster Care</p> <ul style="list-style-type: none"> <li>- list of children</li> <li>- licensing</li> <li>- list of homes (Native)</li> </ul> <p>Good Cause to Contrary</p> <p>Tribal Court Orders</p> <p>Intervention</p> <ul style="list-style-type: none"> <li>- when</li> <li>- where</li> <li>- by whom</li> </ul> <p>Remedial Services</p> <p>Jurisdiction</p> <p>Native Organizations and State want:</p> <ul style="list-style-type: none"> <li>- priorities set</li> <li>- resolution prior to next meeting - comments</li> <li>- at next meeting, highly focused to try to develop points of agreement</li> </ul> | <p>3. Notice</p> <ul style="list-style-type: none"> <li>- official agent</li> <li>- private adoption</li> <li>- placement/custody changes</li> <li>- voluntary/involuntary</li> </ul> <p>4. Placement</p> <ul style="list-style-type: none"> <li>- when</li> <li>- where</li> <li>- by whom (case planning)</li> <li>- extended family</li> </ul> <p>Full Faith &amp; Credit</p> <p>Training</p> <ul style="list-style-type: none"> <li>- employment standards (State/Tribal)</li> </ul> <p>Village Resource List</p> <p>Inter-Tribal Agreements</p> <p>Confidentiality (State and Tribal)</p> <ul style="list-style-type: none"> <li>- access to records</li> <li>- standards for disc1</li> </ul> <p>Testimony of Social Workers</p> <p>Role of Associations vs. Villages</p> |
|---|---|

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Acting Commissioner

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The division intends to complete more detailed analysis of all children in care during the next year which will include comparison of service delivery with demographic and socio-economic trends and the impact of service contingencies on service delivery.

We are very hopeful to improve placement ratios through the federal grant recently received which targets increasing the ratio of placements of Native children in Native homes. The project includes developing written agreements with Tribal Social Service agencies to enhance the recruitment of Native foster and adoptive homes. Early involvement of these agencies will increase the likelihood of placing Native children in Native homes. The grant will enable the Division to develop and refine a tracking system for all children in need of permanent planning. Statewide teleconferencing and inter-agency meetings will be utilized to develop agreements and improve service delivery. These meetings will be coordinated with the current effort to develop the statewide model for tribal agreements.

MLP:MAH:lh:pvp

TESTIMONY OF CRAIG J. DORSAY, NATIONAL COORDINATOR OF THE INDIAN LEGAL SERVICES PROGRAM TASK FORCE ON THE INDIAN CHILD WELFARE ACT.

I. INTRODUCTION

My name is Craig J. Dorsay. I am presently director of the Native American Program of Oregon Legal Services, and I also contract with a number of Indian tribes on a private basis. My practice specializes in the field of Indian law and I have specialized primarily within this field in handling Indian Child Welfare Act matters. In the last seven years I have handled over 500 Indian Child Welfare Act cases in at least 22 different states. I have appealed ICWA decisions to Courts of Appeal in numerous states including Alaska, Washington, Oregon, California, Arizona, New Mexico, and Utah. In addition, I have initiated ICWA litigation in several federal courts to test implementation of the Act by both states and the federal government.

During my three years with the Navajo Nation as Assistant Attorney General in charge of Human Services I set up and created an ICWA response team so that the Navajo Tribe could respond and participate actively in state ICWA proceedings. My responsibilities also included negotiating Indian Child Welfare state-tribal agreements with the states of Arizona and New Mexico and the preparation of ICWA grants on behalf of the tribe for operation of tribal child and family service programs. I

supervised four other tribal attorneys who handled ICWA cases on a part-time basis and contracted with local attorneys in fifteen different states to act on behalf of the Navajo Nation in those states where the tribe did not have an attorney licensed to practice.

In addition, I have conducted over 75 training sessions on the Act with a wide variety of audiences including state and tribal judges, state, tribal and federal social workers, private attorneys, and a large number of community groups and lay people interested in operation of the ICWA. I have also published a number of articles on the Indian Child Welfare Act and several handbooks on operation of the Indian Child Welfare Act in state and tribal courts. It is safe to say that I have discussed the Indian Child Welfare Act with a large number of people in the country and probably have more personal experience handling ICWA legal proceedings than any other attorney.

II. OVERALL IMPELEMENTATION OF THE INDIAN CHILD WELFARE ACT.

The Indian Child Welfare Act is a complex piece of legislation that is made even more complicated by virtue of the fact that the original Act was changed and amended several times prior to enactment. Not all sections of the Act were conformed to avoid later interpretation problems. The ICWA is the first statutory reflection of the jurisdictional interplay between

state, federal, and tribal interests. Resoultion of these conflicts has previously taken place only in court proceedings addressing natural resources and taxation issues. While the ICWA is recognized as being consistent with the modern trend in child custody and social work practice, it has encountered a great deal of resistance by virtue of its Indian content and the intrusion on what are thought to be state concerns rather than from any substantive objection to its provisions or the effect of the Act on best interests of the Indian child. The recent Halloway decisions from the Utah Supreme Court and the Navajo tribal court system is indicative of this conflict. There was substantial public outcry over the operation of the Indian Child Welfare Act when the Utah Supreme Court overturned an adoption of a Navajo child by a non-Indian couple after the child had been in their home for the six years while custody was being contested in the court system. While the outcry was based on the injustice that would befall the child if he were removed from the home he had known for such a long time, the debate ignored whether the Navajo Tribal Court could operate to protect the child's best interests to the same extent as a state court. The recent settlement of the Halloway case in a manner which protected the Navajo child's emotional ties to his non-Indian parents and at the same time protected his cultural and tribal ties with his natural family and the Navajo Nation shows that the initial outcry from Utah Supreme Court reversal was unwarranted and that the Indian Child Welfare Act indeed can operate to reach a result that was most

consistent with protecting all facets of the child's emotional and physical well being.

Cases interpreting the Indian Child Welfare Act can be split into two distinct camps. One camp interprets the Indian Child Welfare Act as a broad remedial piece of legislation consistent with the federal government's trust obligation to protect Indian tribes and children, and analyzes ICWA provisions in a manner consistent with achieving the objectives and goals of the Act. The other camp considers the Indian Child Welfare Act an unwarranted intrusion upon state prerogatives in the field of child custody and tends to interpret the Act narrowly so that it disrupts state juvenile procedures as little as possible. Because the interpretation of the ICWA has been left to state courts - the very body which Congress noted its legislative findings to the ICWA as responsible for past improper child custody proceedings involving Indian children - there has been a wide range of decisions under the Indian Child Welfare Act. This widespread responsibility for interpreting the ICWA has caused great trouble for and financial drain to Indian tribes because the tribes cannot be certain how the Act will be perceived in each state, and therefore must expend the financial resources necessary to defend tribal interests and to advocate proper interpretation of the ICWA in every state where the Act is raised as an issue. Because of the ambiguities inherent in the language of the Act as it presently exists, there is considerable

opportunity for a diverse range of interpretations of the Acts. intent and purposes.

Implementation of the Act on a day-to-day basis has also been somewhat inconsistent. Many tribes have a positive relationship with neighboring state and county social workers on protecting Indian children who have become before the state court system. Both state and tribal workers now work together in joint case planning and case service provision in order to offer the best services designed to keep Indian families together or to work towards reuniting Indian children with their families.

Substantial problems still exist, however, in many states regarding the Indian Child Welfare Act and its implementation. Some states and/or counties are still hostile toward implementation of the Act and either do not cooperate with the tribe and the provision of services to Indian children or attempt to send all children back to the reservation regardless of what might be best for that child. Confusion also still exists surrounding the jurisdictional status of Indian tribes and whether state social workers can be required to come on reservations to testify in tribal courts in order to protect Indian children and ensure that they are not returned to abusive or neglectful homes. These technical considerations operate to the detriment of Indian children since they all cause delays in resolution of problems involving Indian children.

Funding is a critical concern underlying effective implementation of the Indian Child Welfare Act. It is a sad fact that funding has never been more than one quarter of the amount initially recommended by Congress as necessary to effectively implement the Act, and this amount has remained stable or declined over the last few years. The ICWA places a great deal of responsibility on Indian tribes in operating Indian child and family service programs and in responding legally to state ICWA proceedings. In some ways the ICWA has impacted detrimentally on Indian tribes because the great responsibility placed on tribes cannot be carried out with the woefully inadequate funding that has been made available to date by the federal government. It is clear that if Indian tribes are to be given the same level of responsibility under the Indian Child Welfare Act that state courts and social workers must comply with, they must also obtain equal amounts of funding in order to carry out these responsibilities.

In my opinion the Indian Child Welfare Act has been a noble idea that has succeeded spectacularly in some areas such as in raising the consciousness of non-Indian courts and state personnel about the existence of Indian tribes and the legitimate interests that Indian tribes have in their children, and has been a failure to date in other areas mainly due to the lack adequate funding and the lack of federal follow through necessary to fully

achieve the goals and objectives set forth in the Act. For this reason I believe amendments are critically needed at this time, both to clear up problems that exist in day-to-day implementation of the Act and to overturn or clarify judicial rulings that have tended to emasculate the underlying intent and purposes of the ICWA. Enough experience has been gained during the last ten years that the necessary changes can be pinpointed with a great deal of accuracy. I would therefore recommend that this committee and congress seriously consider the adoption of Indian Child Welfare Act amendments at the earliest available opportunity.

### III. PROPOSED AMENDMENTS.

My prepared testimony at the 1984 oversight hearings on the Indian Child Welfare Act on behalf of the Navajo Nation remains relevant today. I will not go into great detail about the proposed changes that are necessary in the Act at this time because these changes should be discussed in light of specific proposed amendments. I am including for the committee's information a proposed ICWA amendments drafted by tribal and legal service attorneys in the northwest United States, as well as two letters that I have previously submitted to the committee which explain the need for changes in specific sections of the Act and discuss the rationale for the changes that have been suggested. In some cases my comments are directed at the

proposed ICWA amendments drafted by the Association on American Indian Affairs. I have consulted with tribal and legal services attorneys throughout the northwest and most of them agree with the proposed amendments attached to this testimony. The Navajo Nation, with whom I still work under contract on ICWA matters, also supports the proposed changes. I would suggest that these changes be considered the basis for further discussion in terms of specific amendments to the Indian Child Welfare Act.

One of the critical areas for proposed amendments to the Act is in the Findings, Policies, and Definitions sections of the Act. This is because those State Courts which have narrowly construed the Act have used these sections to avoid applying the Act at all. Definitions, Findings, and Policies must therefore be clarified to make it crystal clear what situations the ICWA should be applied to and what situations should be excepted. Aside from these sections we have proposed amendments primarily in the Jurisdiction, Invalidation, Placement, and Funding sections of the Act. Some sections of the Act are clear, simple, and work well. Others are confusing, contradictory, and have been interpreted to the detriment of Indian people and Indian families. I would hope that the proposed changes submitted with my prepared testimony will serve to alleviate the concerns that have arisen to this date with implementing the ICWA. Funding necessary to achieve full implementation of the ICWA is also a critically vital and independent concern.



These proposed amendments are intended for the committee's information and education. They are not yet a final product. Since it is anticipated that ICWA amendments will be submitted in bill form for several months, it is our intent to meet with as many tribal attorneys and tribal representatives as possible to discuss the proposed draft attached to this testimony, and to draft further provisions that will achieve the full intent and purposes of the ICWA. We would appreciate any and all comments on these provisions, and hope that we can come up with a product best suited to the original intent of Congress in adopting the ICWA manner which works for tribes, states, and the federal government.

Thank you for the opportunity to address the committee. I look forward to further action by Congress on this critically important matter.

## SECOND SUBSTITUTE HOUSE BILL NO. 480

State of Washington 50th Legislature 1987 Regular Session  
by Committee on Ways & Means/Appropriations (originally sponsored by Representatives Brekke, Winsley, Moyer, Scott, Wang, Leonard and Brough; by request of Department of Social and Health Services)

Read first time 3/9/87 and passed to Committee on Rules.

1 AN ACT Relating to Indian child welfare; amending RCW 13.04.030,  
2 26.33.080, 26.33.090, 26.33.110, 26.33.120, 26.33.160, 26.33.240,  
3 26.33.310, 74.13.031, 74.13.080, 74.15.020, and 74.15.090; adding a  
4 new section to chapter 13.34 RCW; adding a new section to chapter  
5 74.15 RCW; and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 Sec. 1. Section 2, chapter 160, Laws of 1913 as last amended by  
8 section 29, chapter 354, Laws of 1985 and RCW 13.04.030 are each  
9 amended to read as follows:

10 The juvenile courts in the several counties of this state, shall  
11 have exclusive original jurisdiction over all proceedings:

12 (1) Under the interstate compact on placement of children as  
13 provided in chapter 26.34 RCW;

14 (2) Relating to children alleged or found to be dependent as  
15 provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.170,  
16 as now or hereafter amended;

17 (3) Relating to the termination of a parent and child  
18 relationship as provided in RCW 13.34.180 through 13.34.210, as now  
19 or hereafter amended;

20 (4) To approve or disapprove alternative residential placement as  
21 provided in RCW 13.32A.170;

22 (5) Relating to juveniles alleged or found to have committed  
23 offenses, traffic infractions, or violations as provided in RCW  
24 13.40.020 through 13.40.230, as now or hereafter amended, unless:

25 (a) The juvenile court transfers jurisdiction of a particular  
26 juvenile to adult criminal court pursuant to RCW 13.40.110, as now or  
27 hereafter amended; or

28 (b) The statute of limitations applicable to adult prosecution  
29 for the offense, traffic infraction, or violation has expired; or

Sec. 1

1 (c) The alleged offense or infraction is a traffic, fish,  
 2 boating, or game offense or traffic infraction committed by a  
 3 juvenile sixteen years of age or older and would, if committed by an  
 4 adult, be tried or heard in a court of limited jurisdiction, in which  
 5 instance the appropriate court of limited jurisdiction shall have  
 6 jurisdiction over the alleged offense or infraction: PROVIDED, That  
 7 if such an alleged offense or infraction and an alleged offense or  
 8 infraction subject to juvenile court jurisdiction arise out of the  
 9 same event or incident, the juvenile court may have jurisdiction of  
 10 both matters: PROVIDED FURTHER, That the jurisdiction under this  
 11 subsection does not constitute "transfer" or a "decline" for purposes  
 12 of RCW 13.40.110(1) or subsection (5)(a) of this section: PROVIDED  
 13 FURTHER, That courts of limited jurisdiction which confine juveniles  
 14 for an alleged offense or infraction may place juveniles in juvenile  
 15 detention facilities under an agreement with the officials  
 16 responsible for the administration of the juvenile detention facility  
 17 in RCW 13.04.035 and 13.20.060:

18 (6) Under the interstate compact on juveniles as provided in  
 19 chapter 13.24 RCW: ((and))

20 (7) Relating to termination of a diversion agreement under RCW  
 21 13.40.080 as now or hereafter amended, including a proceeding in  
 22 which the divertee has attained eighteen years of age; and

23 (8) Relating to court validation of a voluntary consent to foster  
 24 care placement under chapter 13.34 RCW or relinquishment or consent  
 25 to adoption under chapter 26.33 RCW, by the parent or Indian  
 26 custodian of an Indian child, except if the parent or Indian  
 27 custodian and child are residents of or domiciled within the  
 28 boundaries of a federally recognized Indian reservation over which  
 29 the tribe exercises exclusive jurisdiction.

30 NEW SECTION. Sec. 2. A new section is added to chapter 13.34  
 31 RCW to read as follows:

32 (1) Where any parent or Indian custodian voluntarily consents to  
 33 foster care placement of an Indian child and a petition for  
 34 dependency has not been filed regarding the child, such consent shall  
 35 not be valid unless executed in writing before the court and filed  
 36 with the court. The consent shall be accompanied by the written

Sec. 2

1 certification of the court that the terms and consequences of the  
 2 consent were fully explained in detail to the parent or Indian  
 3 custodian during the court proceeding and were fully understood by  
 4 the parent or Indian custodian. The court shall also certify in  
 5 writing either that the parent or Indian custodian fully understood  
 6 the explanation in English or that it was interpreted into a language  
 7 that the parent or Indian custodian understood. Any consent given  
 8 prior to, or within ten days after, the birth of the Indian child  
 9 shall not be valid.

10 (2) To obtain court validation of a voluntary consent to foster  
 11 care placement, any person may file a petition for validation  
 12 alleging that there is located or residing within the county an  
 13 Indian child whose parent or Indian custodian wishes to voluntarily  
 14 consent to foster care placement of the child and requesting that the  
 15 court validate the consent as provided in this section. The petition  
 16 shall contain the name, date of birth, and residence of the child,  
 17 the names and residences of the consenting parent or Indian  
 18 custodian, and the name and location of the Indian tribe in which the  
 19 child is a member or eligible for membership. The petition shall  
 20 state whether the placement preferences of 25 U.S.C. Sec. 1915 (b) or  
 21 (c) will be followed. Reasonable attempts shall be made by the  
 22 petitioner to ascertain and set forth in the petition the identity,  
 23 location, and custodial status of any parent or Indian custodian who  
 24 has not consented to foster care placement and why that parent or  
 25 Indian custodian cannot assume custody of the child.

26 (3) Upon filing of the petition for validation, the clerk of the  
 27 court shall schedule the petition for a hearing on the court  
 28 validation of the voluntary consent no later than forty-eight hours  
 29 after the petition has been filed, excluding Saturdays, Sundays, and  
 30 holidays. Notification of time, date, location, and purpose of the  
 31 validation hearing shall be provided as soon as possible to the  
 32 consenting parent or Indian custodian, the department or other child-  
 33 placing agency which is to assume custody of the child pursuant to  
 34 the consent to foster care placement, and the Indian tribe in which  
 35 the child is enrolled or eligible for enrollment as a member. If the  
 36 identity and location of any nonconsenting parent or Indian custodian

## Sec. 2

1 is known, reasonable attempts shall be made to notify the parent or  
2 Indian custodian of the consent to placement and the validation  
3 hearing. Notification under this subsection may be given by the most  
4 expedient means, including, but not limited to, mail, personal  
5 service, telephone, and telegraph.

6 (4) Any parent or Indian custodian may withdraw consent to a  
7 voluntary foster care placement, made under this section, at any  
8 time. Unless the Indian child has been taken in custody pursuant to  
9 RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW  
10 13.34.060, or placed in foster care pursuant to RCW 13.34.130, the  
11 Indian child shall be returned to the parent or Indian custodian upon  
12 withdrawal of consent to foster care placement of the child.

13 (5) Upon termination of the voluntary foster care placement and  
14 return of the child to the parent or Indian custodian, the department  
15 or other child placing agency which had assumed custody of the child  
16 pursuant to the consent to foster care placement shall file with the  
17 court written notification of the child's return and shall also send  
18 such notification to the Indian tribe in which the child is enrolled  
19 or eligible for enrollment as a member and to any other party to the  
20 validation proceeding including any noncustodial parent.

21 Sec. 3. Section 8, chapter 155, Laws of 1984 as amended by  
22 section 1, chapter 421, Laws of 1985 and RCW 26.33.080 are each  
23 amended to read as follows:

24 (1) A parent, an alleged father, the department, or an agency may  
25 file with the court a petition to relinquish a child to the  
26 department or an agency. The parent's or alleged father's written  
27 consent to adoption shall accompany the petition. The written  
28 consent of the department or the agency to assume custody shall be  
29 filed with the petition.

30 (2) A parent, alleged father, or prospective adoptive parent may  
31 file with the court a petition to relinquish a child to the  
32 prospective adoptive parent. The parent's or alleged father's  
33 written consent to adoption shall accompany the petition. The  
34 written consent of the prospective adoptive parent to assume custody  
35 shall be filed with the petition. The identity of the prospective  
36 adoptive parent need not be disclosed to the petitioner.

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1 (3) A petition for relinquishment, together with the written  
2 consent to adoption, may be filed before the child's birth. If the  
3 child is an Indian child as defined in 25 U.S.C. Sec. 1903(4), the  
4 petition and consent shall not be signed until at least ten days  
5 after the child's birth and shall be recorded before a court of  
6 competent jurisdiction pursuant to 25 U.S.C. Sec. 1913(a).

7 Sec. 4. Section 9, chapter 155, Laws of 1984 as amended by  
8 section 2, chapter 421, Laws of 1985 and RCW 26.33.090 are each  
9 amended to read as follows:

10 (1) The court shall set a time and place for a hearing on the  
11 petition for relinquishment. The hearing may not be held sooner than  
12 forty-eight hours after the child's birth or the signing of all  
13 necessary consents to adoption, whichever is later. However if the  
14 child is an Indian child, the hearing shall not be held sooner than  
15 ten days after the child's birth, and no consent shall be valid  
16 unless signed at least ten days after the child's birth and recorded  
17 before a court of competent jurisdiction pursuant to 25 U.S.C. Sec.  
18 1913(a). Except where the child is an Indian child, the court may  
19 enter a temporary order giving custody of the child to the  
20 prospective adoptive parent, if a preplacement report has been filed,  
21 or to the department or agency to whom the child will be relinquished  
22 pending the court's hearing on the petition. If the child is an  
23 Indian child, the court may enter a temporary custody order under  
24 this subsection only if the requirements of 25 U.S.C. Sec. 1913(a)  
25 regarding voluntary foster care placement have been satisfied.

26 (2) Notice of the hearing shall be served on any relinquishing  
27 parent or alleged father, and the department or agency in the manner  
28 prescribed by RCW 26.33.310. If the child is an Indian child, notice  
29 of the hearing shall also be served on the child's tribe in the  
30 manner prescribed by RCW 26.33.310.

31 (3) The court may require the parent to appear personally and  
32 enter his or her consent to adoption on the record. However, if the  
33 child is an Indian child, the court shall require the consenting  
34 parent to appear personally before a court of competent jurisdiction  
35 to enter on the record his or her consent to the relinquishment or  
36 adoption. The court shall determine that any written consent has

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1 been validly executed, and if the child is an Indian child, such  
 2 court shall further certify that the requirements of 25 U.S.C. Sec.  
 3 1913(a) have been satisfied. If the court determines it is in the  
 4 best interests of the child, the court shall approve the petition for  
 5 relinquishment.

6 (4) If the court approves the petition, it shall award custody of  
 7 the child to the department, agency, or prospective adoptive parent,  
 8 who shall be appointed legal guardian. The legal guardian shall be  
 9 financially responsible for support of the child until further order  
 10 of the court. The court shall also enter an order pursuant to RCW  
 11 26.33.130 terminating the parent-child relationship of the parent and  
 12 the child.

13 (5) An order of relinquishment to an agency or the department  
 14 shall include an order authorizing the agency to place the child with  
 15 a prospective adoptive parent.

16 Sec. 5. Section 11, chapter 155, Laws of 1984 as amended by  
 17 section 4, chapter 421, Laws of 1985 and RCW 26.33.110 are each  
 18 amended to read as follows:

19 (1) The court shall set a time and place for a hearing on the  
 20 petition for termination of the parent-child relationship, which  
 21 shall not be held sooner than forty-eight hours after the child's  
 22 birth. However, if the child is an Indian child, the hearing shall  
 23 not be held sooner than ten days after the child's birth and the time  
 24 of the hearing shall be extended up to twenty additional days from  
 25 the date of the scheduled hearing upon the motion of the parent,  
 26 Indian custodian, or the child's tribe.

27 (2) Notice of the hearing shall be served on the petitioner, the  
 28 nonconsenting parent or alleged father, the legal guardian of a  
 29 party, and the guardian ad litem of a party, in the manner prescribed  
 30 by RCW 26.33.310. If the child is an Indian child, notice of the  
 31 hearing shall also be served on the child's tribe in the manner  
 32 prescribed by 25 U.S.C. Sec. 1912(a).

33 (3) Except as otherwise provided in this section, the notice of  
 34 the petition shall:

35 (a) State the date and place of birth. If the petition is filed  
 36 prior to birth, the notice shall state the approximate date and

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1 location of conception of the child and the expected date of birth,  
 2 and shall identify the mother;

3 (b) Inform the nonconsenting parent or alleged father that: (i)  
 4 He or she has a right to be represented by counsel and that counsel  
 5 will be appointed for an indigent person who requests counsel; and  
 6 (ii) failure to respond to the termination action within twenty days  
 7 of service will result in the termination of his or her parent-child  
 8 relationship with respect to the child;

9 (c) Inform an alleged father that failure to file a claim of  
 10 paternity under chapter 26.26 RCW or to respond to the petition,  
 11 within twenty days of the date of service of the petition is grounds  
 12 to terminate his parent-child relationship with respect to the child;

13 (d) Inform an alleged father of an Indian child that if he  
 14 acknowledges paternity of the child or if his paternity of the child  
 15 is established prior to the termination of the parent-child  
 16 relationship, that his parental rights may not be terminated unless  
 17 he: (i) Gives valid consent to termination, or (ii) his parent-child  
 18 relationship is terminated involuntarily pursuant to chapter 26.33 or  
 19 13.34 RCW.

20 Sec. 6. Section 12, chapter 155, Laws of 1984 and RCW 26.33.120  
 21 are each amended to read as follows:

22 (1) Except in the case of an Indian child and his or her parent,  
 23 the parent-child relationship of a parent may be terminated upon a  
 24 showing by clear, cogent, and convincing evidence that it is in the  
 25 best interest of the child to terminate the relationship and that the  
 26 parent has failed to perform parental duties under circumstances  
 27 showing a substantial lack of regard for his or her parental  
 28 obligations and is withholding consent to adoption contrary to the  
 29 best interest of the child.

30 (2) Except in the case of an Indian child and his or her alleged  
 31 father, the parent-child relationship of an alleged father who  
 32 appears and claims paternity may be terminated upon a showing by  
 33 clear, cogent, and convincing evidence that it is in the best  
 34 interest of the child to terminate the relationship and that:

35 (a) The alleged father has failed to perform parental duties  
 36 under circumstances showing a substantial lack of regard for his

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1 parental obligations and is withholding consent to adoption contrary  
2 to the best interest of the child; or

3 (b) He is not the father.

4 (3) The parent-child relationship of a parent or an alleged  
5 father may be terminated if the parent or alleged father fails to  
6 appear after being notified of the hearing in the manner prescribed  
7 by RCW 26.33.310.

8 (4) The parent-child relationship of an Indian child and his or  
9 her parent or alleged father where paternity has been claimed or  
10 established, may be terminated only pursuant to the standards set  
11 forth in 25 U.S.C. Sec. 1912(f).

12 Sec. 7. Section 16, chapter 155, Laws of 1984 as amended by  
13 section 5, chapter 421, Laws of 1985 and RCW 26.33.160 are each  
14 amended to read as follows:

15 (1) Except as otherwise provided in RCW 26.33.170, consent to an  
16 adoption shall be required of the following if applicable:

17 (a) The adoptee, if fourteen years of age or older;

18 (b) The parents and any alleged father of an adoptee under  
19 eighteen years of age;

20 (c) An agency or the department to whom the adoptee has been  
21 relinquished pursuant to RCW 26.33.080; and

22 (d) The legal guardian of the adoptee.

23 (2) Except as otherwise provided in subsection (4)(g) of this  
24 section, consent to adoption is revocable by the consenting party at  
25 any time before the consent is approved by the court. The revocation  
26 may be made in either of the following ways:

27 (a) Written revocation may be delivered or mailed to the clerk of  
28 the court before approval; or

29 (b) Written revocation may be delivered or mailed to the clerk of  
30 the court after approval, but only if it is delivered or mailed  
31 within forty-eight hours after a prior notice of revocation that was  
32 given within forty-eight hours after the birth of the child. The  
33 prior notice of revocation shall be given to the agency or person who  
34 sought the consent and may be either oral or written.

35 (3) Except as provided in subsection (2)(b) and (4)(g) of this  
36 section and in this subsection, a consent to adoption may not be

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1 revoked after it has been approved by the court. Within one year  
2 after approval, a consent may be revoked for fraud or duress  
3 practiced by the person, department, or agency requesting the  
4 consent, or for lack of mental competency on the part of the person  
5 giving the consent at the time the consent was given. A written  
6 consent to adoption may not be revoked more than one year after it is  
7 approved by the court.

8 (4) Except as provided in (g) of this subsection, the written  
9 consent to adoption shall be signed under penalty of perjury and  
10 shall state that:

11 (a) It is given subject to approval of the court;

12 (b) It has no force or effect until approved by the court;

13 (c) The consent will not be presented to the court until forty-  
14 eight hours after it is signed or forty-eight hours after the birth  
15 of the child, whichever occurs later;

16 (d) It is revocable by the consenting party at any time before  
17 its approval by the court. It may be revoked in either of the  
18 following ways:

19 (i) Written revocation may be delivered or mailed to the clerk of  
20 the court before approval of the consent by the court; or

21 (ii) Written revocation may be delivered or mailed to the clerk  
22 of the court after approval, but only if it is delivered or mailed  
23 within forty-eight hours after a prior notice of revocation that was  
24 given within forty-eight hours after the birth of the child. The  
25 prior notice of revocation shall be given to the agency or person who  
26 sought the consent and may be either oral or written;

27 (e) The address of the clerk of court where the consent will be  
28 presented is included; ((and))

29 (f) Except as provided in (g) of this subsection, after it has  
30 been approved by the court, the consent is not revocable except for  
31 fraud or duress practiced by the person, department, or agency  
32 requesting the consent or for lack of mental competency on the part  
33 of the person giving the consent at the time the consent was given.  
34 A written consent to adoption may not be revoked more than one year  
35 after it is approved by the court; and

36 (g) In the case of a consent to an adoption of an Indian child,

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1 no consent shall be valid unless the consent is executed in writing  
 2 more than ten days after the birth of the child and unless the  
 3 consent is recorded before a court of competent jurisdiction pursuant  
 4 to 25 U.S.C. Sec. 1913(a). Consent may be withdrawn for any reason  
 5 at any time prior to the entry of the final decree of adoption.  
 6 Consent may be withdrawn for fraud or duress within two years of the  
 7 entry of the final decree of adoption. Revocation of the consent  
 8 prior to a final decree of adoption, may be delivered or mailed to  
 9 the clerk of the court or made orally to the court which shall  
 10 certify such revocation. Revocation of the consent is effective if  
 11 received by the clerk of the court prior to the entry of the final  
 12 decree of adoption or made orally to the court at any time prior to  
 13 the entry of the final decree of adoption. Upon withdrawal of  
 14 consent, the court shall return the child to the parent unless the  
 15 child has been taken into custody pursuant to RCW 13.34.050 or  
 16 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or  
 17 placed in foster care pursuant to RCW 13.34.130.

18 (5) A written consent to adoption which meets all the  
 19 requirements of this chapter but which does not name or otherwise  
 20 identify the adopting parent is valid if it contains a statement that  
 21 it is voluntarily executed without disclosure of the name or other  
 22 identification of the adopting parent.

23 Sec. 8. Section 23, chapter 155, Laws of 1984 and RCW 26.33.240  
 24 are each amended to read as follows:

25 (1) After the reports required by RCW 26.33.190 and 26.33.200  
 26 have been filed, the court shall schedule a hearing on the petition  
 27 for adoption upon request of the petitioner for adoption. Notice of  
 28 the date, time, and place of hearing shall be given to the petitioner  
 29 and any person or agency whose consent to adoption is required under  
 30 RCW 26.33.160, unless the person or agency has waived in writing the  
 31 right to receive notice of the hearing. If the child is an Indian  
 32 child, notice shall also be given to the child's tribe. Notice shall  
 33 be given in the manner prescribed by RCW 26.33.310.

34 (2) Notice of the adoption hearing shall also be given to any  
 35 person who or agency which has prepared a preplacement report. The  
 36 notice shall be given in the manner prescribed by RCW 26.33.230.

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1 (3) If the court determines, after review of the petition,  
 2 preplacement and post-placement reports, and other evidence  
 3 introduced at the hearing, that all necessary consents to adoption  
 4 are valid or have been dispensed with pursuant to RCW 26.33.170 and  
 5 that the adoption is in the best interest of the adoptee, and, in the  
 6 case of an adoption of an Indian child, that the adoptive parents are  
 7 within the placement preferences of 25 U.S.C. Sec. 1915 or good cause  
 8 to the contrary has been shown on the record, the court shall enter a  
 9 decree of adoption pursuant to RCW 26.33.250.

10 (4) If the court determines the petition should not be granted  
 11 because the adoption is not in the best interest of the child, the  
 12 court shall make appropriate provision for the care and custody of  
 13 the child.

14 Sec. 9. Section 31, chapter 155, Laws of 1984 as amended by  
 15 section 6, chapter 421, Laws of 1985 and RCW 26.33.310 are each  
 16 amended to read as follows:

17 (1) Petitions governed by this chapter shall be served in the  
 18 same manner as a complaint in a civil action under the superior court  
 19 civil rules. Subsequent notice, papers, and pleadings may be served  
 20 in the manner provided in superior court civil rules.

21 (2) If personal service on the parent or any alleged father,  
 22 either within or without this state, cannot be given, notice shall be  
 23 given: (a) By registered mail, mailed at least twenty days before  
 24 the hearing to the person's last known address; and (b) by  
 25 publication at least once a week for three consecutive weeks with the  
 26 first publication date at least twenty-five days before the hearing.  
 27 Publication shall be in a legal newspaper in the city or town of the  
 28 last known address within the United States and its territories of  
 29 the parent or alleged father, whether within or without this state,  
 30 or, if no address is known or the last known address is not within  
 31 the United States and its territories, in the city or town where the  
 32 proceeding has been commenced.

33 (3) Notice and appearance may be waived by the department, an  
 34 agency, a parent, or an alleged father before the court or in a  
 35 writing signed under penalty of perjury. The waiver shall contain  
 36 the current address of the department, agency, parent, or alleged

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## Sec. 9

1 father. The face of the waiver for a hearing on termination of the  
 2 parent-child relationship shall contain language explaining the  
 3 meaning and consequences of the waiver and the meaning and  
 4 consequences of termination of the parent-child relationship. A  
 5 person or agency who has executed a waiver shall not be required to  
 6 appear except in the case of an Indian child where consent to  
 7 termination or adoption must be certified before a court of competent  
 8 jurisdiction pursuant to 25 U.S.C. Sec. 1913(a).

9 (4) If a person entitled to notice is known to the petitioner to  
 10 be unable to read or understand English, all notices, if practicable,  
 11 shall be given in that person's native language or through an  
 12 interpreter.

13 (5) Where notice to an Indian tribe is to be provided pursuant to  
 14 this chapter and the department is not a party to the proceeding,  
 15 notice shall be given to the tribe at least ten business days prior  
 16 to the hearing by registered mail return receipt requested.

17 Sec. 10. Section 17, chapter 172, Laws of 1967 as last amended  
 18 by section 4, chapter 246, Laws of 1983 and RCW 74.13.031 are each  
 19 amended to read as follows:

20 The department shall have the duty to provide child welfare  
 21 services as defined in RCW 74.13.020, and shall:

22 (1) Develop, administer, supervise, and monitor a coordinated and  
 23 comprehensive plan that establishes, aids, and strengthens services  
 24 for the protection and care of homeless, runaway, dependent, or  
 25 neglected children.

26 (2) Develop a recruiting plan for recruiting an adequate number  
 27 of prospective adoptive and foster homes, both regular and  
 28 specialized, i.e. homes for children of ethnic minority, including  
 29 Indian homes for Indian children, sibling groups, handicapped and  
 30 emotionally disturbed, and annually submit the plan for review to the  
 31 house and senate committees on social and health services. The plan  
 32 shall include a section entitled "Foster Home Turn-Over, Causes and  
 33 Recommendations."

34 (3) Investigate complaints of neglect, abuse, or abandonment of  
 35 children, and on the basis of the findings of such investigation,  
 36 offer child welfare services in relation to the problem to such

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1 parents, legal custodians, or persons serving in loco parentis,  
 2 and/or bring the situation to the attention of an appropriate court,  
 3 or another community agency: PROVIDED, That an investigation is not  
 4 required of nonaccidental injuries which are clearly not the result  
 5 of a lack of care or supervision by the child's parents, legal  
 6 custodians, or persons serving in loco parentis. If the  
 7 investigation reveals that a crime may have been committed, the  
 8 department shall notify the appropriate law enforcement agency.

9 (4) Offer, on a voluntary basis, family reconciliation services  
 10 to families who are in conflict.

11 (5) Monitor out-of-home placements, on a timely and routine  
 12 basis, to assure the safety, well-being, and quality of care being  
 13 provided is within the scope of the intent of the legislature as  
 14 defined in RCW 74.13.010 and 74.15.010, and annually submit a report  
 15 delineating the results to the house and senate committees on social  
 16 and health services.

17 (6) Have authority to accept custody of children from parents and  
 18 to accept custody of children from juvenile courts, where authorized  
 19 to do so under law, to provide child welfare services including  
 20 placement for adoption, and to provide for the physical care of such  
 21 children and make payment of maintenance costs if needed. Except  
 22 where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private  
 23 adoption agency which receives children for adoption from the  
 24 department shall discriminate on the basis of race, creed, or color  
 25 when considering applications in their placement for adoption.

26 (7) Have authority to provide temporary shelter to children who  
 27 have run away from home and who are admitted to crisis residential  
 28 centers.

29 (8) Have authority to purchase care for children; and shall  
 30 follow in general the policy of using properly approved private  
 31 agency services for the actual care and supervision of such children  
 32 insofar as they are available, paying for care of such children as  
 33 are accepted by the department as eligible for support at reasonable  
 34 rates established by the department.

35 (9) Establish a children's services advisory committee which  
 36 shall assist the secretary in the development of a partnership plan

## Sec. 10

1 for utilizing resources of the public and private sectors, and advise  
2 on all matters pertaining to child welfare, day care, licensing of  
3 child care agencies, and services related thereto. At least one-  
4 third of the membership shall be composed of child care providers.

5 (10) Have authority to provide continued foster care or group  
6 care for individuals from eighteen through twenty years of age to  
7 enable them to complete their high school or vocational school  
8 program.

9 (11) Have authority within funds appropriated for foster care  
10 services to purchase care for Indian children who are in the custody  
11 of a federally recognized Indian tribe or tribally licensed child-  
12 placing agency pursuant to parental consent, tribal court order, or  
13 state juvenile court order; and the purchase of such care shall be  
14 subject to the same eligibility standards and rates of support  
15 applicable to other children for whom the department purchases care.

16 Notwithstanding any other provision of RCW 13.32A.170 through  
17 13.32A.200 and RCW 74.13.032 through 74.13.036, or of this section  
18 all services to be provided by the department of social and health  
19 services under subsections (4), (5), and (7) of this section, subject  
20 to the limitations of these subsections, may be provided by any  
21 program offering such services funded pursuant to Titles II and III  
22 of the federal juvenile justice and delinquency prevention act of  
23 1974 (P.L. No. 93-415; 42 U.S.C. 5634 et seq.; and 42 U.S.C. 5701  
24 note as amended by P.L. 94-273, 94-503, and 95-115).

25 Sec. 11. Section 2, chapter 118, Laws of 1982 and RCW 74.13.080  
26 are each amended to read as follows:

27 The department shall not make payment for any child in group care  
28 placement unless the group home is licensed and the department has  
29 the custody of the child and the authority to remove the child in a  
30 cooperative manner after at least seventy-two hours notice to the  
31 child care provider; such notice may be waived in emergency  
32 situations. However, this requirement shall not be construed to  
33 prohibit the department from making or mandate the department to make  
34 payment for Indian children placed in facilities licensed by  
35 federally recognized Indian tribes pursuant to chapter 74.15 RCW.

## Sec. 12

1 Sec. 12. Section 2, chapter 172, Laws of 1967 as last amended by  
2 section 5, chapter 118, Laws of 1982 and RCW 74.15.020 are each  
3 amended to read as follows:

4 For the purpose of chapter 74.15 RCW and RCW 74.13.031, and  
5 unless otherwise clearly indicated by the context thereof, the  
6 following terms shall mean:

7 (1) "Department" means the state department of social and health  
8 services;

9 (2) "Secretary" means the secretary of social and health  
10 services;

11 (3) "Agency" means any person, firm, partnership, association,  
12 corporation, or facility which receives children, expectant mothers,  
13 or developmentally disabled persons for control, care, or maintenance  
14 outside their own homes, or which places, arranges the placement of,  
15 or assists in the placement of children, expectant mothers, or  
16 developmentally disabled persons for foster care or placement of  
17 children for adoption, and shall include the following irrespective  
18 of whether there is compensation to the agency or to the children,  
19 expectant mothers or developmentally disabled persons for services  
20 rendered:

21 (a) "Group-care facility" means an agency, other than a foster-  
22 family home, which is maintained and operated for the care of a group  
23 of children on a twenty-four hour basis;

24 (b) "Child-placing agency" means an agency which places a child  
25 or children for temporary care, continued care, or for adoption;

26 (c) "Maternity service" means an agency which provides or  
27 arranges for care or services to expectant mothers, before or during  
28 confinement, or which provides care as needed to mothers and their  
29 infants after confinement;

30 (d) "Day-care center" means an agency which regularly provides  
31 care for a group of children for periods of less than twenty-four  
32 hours;

33 (e) "Foster-family home" means an agency which regularly provides  
34 care on a twenty-four hour basis to one or more children, expectant  
35 mothers or developmentally disabled persons in the family abode of  
36 the person or persons under whose direct care and supervision the



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1 child, expectant mother or developmentally disabled person is placed:

2 (f) "Crisis residential center" means an agency which is a  
3 temporary protective residential facility operated to perform the  
4 duties specified in chapter 13.32A RCW, in the manner provided in RCW  
5 74.13.032 through 74.13.036.

6 (4) "Agency" shall not include the following:

7 (a) Persons related by blood or marriage to the child, expectant  
8 mother or developmentally disabled persons in the following degrees:  
9 Parent, grandparent, brother, sister, stepparent, stepbrother,  
10 stepsister, uncle, aunt, and/or first cousin;

11 (b) Persons who are legal guardians of the child, expectant  
12 mother or developmentally disabled persons;

13 (c) Persons who care for a neighbor's or friend's child or  
14 children, with or without compensation, where the person does not  
15 engage in such activity on a regular basis, or where parents on a  
16 mutually cooperative basis exchange care of one another's children,  
17 or persons who have the care of an exchange student in their own  
18 home;

19 (d) Nursery schools or kindergartens which are engaged primarily  
20 in educational work with preschool children and in which no child is  
21 enrolled on a regular basis for more than four hours per day;

22 (e) Schools, including boarding schools, which are engaged  
23 primarily in education, operate on a definite school year schedule,  
24 follow a stated academic curriculum, accept only school-age children  
25 and do not accept custody of children;

26 (f) Seasonal camps of three months' or less duration engaged  
27 primarily in recreational or educational activities;

28 (g) Hospitals licensed pursuant to chapter 70.41 RCW when  
29 performing functions defined in chapter 70.41 RCW, nursing homes  
30 licensed under chapter 18.51 RCW and boarding homes licensed under  
31 chapter 18.20 RCW;

32 (h) Licensed physicians or lawyers;

33 (i) Facilities providing care to children for periods of less  
34 than twenty-four hours whose parents remain on the premises to  
35 participate in activities other than employment;

36 (j) Facilities approved and certified under RCW 72.33.810;

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1 (k) Any agency having been in operation in this state ten years  
2 prior to June 8, 1967, and not seeking or accepting moneys or  
3 assistance from any state or federal agency, and is supported in part  
4 by an endowment or trust fund;

5 (1) Persons who have a child in their home for purposes of  
6 adoption, if the child was placed in such home by a licensed child-  
7 placing agency, an authorized public or tribal agency or court or if  
8 a preplacement report has been filed under chapter 26.33 RCW and the  
9 placement has been approved by the court;

10 (m) An agency operated by any unit of local, state, or federal  
11 government or an agency, located within the boundaries of a federally  
12 recognized Indian reservation, licensed by the Indian tribe;

13 (n) An agency located on a federal military reservation, except  
14 where the military authorities request that such agency be subject to  
15 the licensing requirements of this chapter;

16 (5) "Requirement" means any rule, regulation or standard of care  
17 to be maintained by an agency.

18 NEW SECTION. Sec. 13. A new section is added to chapter 74.15  
19 RCW to read as follows:

20 The state of Washington recognizes the authority of Indian tribes  
21 within the state to license agencies, located within the boundaries  
22 of a federally recognized Indian reservation, to receive children for  
23 control, care, and maintenance outside their own homes, or to place,  
24 receive, arrange the placement of, or assist in the placement of  
25 children for foster care or adoption. The department and state  
26 licensed child-placing agencies may place children in tribally  
27 licensed facilities if the requirements of RCW 74.15.030(2)(b) and  
28 (3) and supporting rules are satisfied before placing the children in  
29 such facilities by the department or any state licensed child-placing  
30 agency.

31 Sec. 14. Section 9, chapter 172, Laws of 1967 as last amended by  
32 section 10, chapter 118, Laws of 1982 and RCW 74.15.090 re each  
33 amended to read as follows:

34 Except as provided in section 13 of this 1987 act, it shall  
35 hereafter be unlawful for any agency to receive children, expectant

Sec. 14

1 mothers or developmentally disabled persons for supervision or care.  
2 or arrange for the placement of such persons, unless such agency is  
3 licensed as provided in chapter 74.15 RCW.

4 NEW SECTION. Sec. 15. If any provision of this act or its  
5 application to any person or circumstance is held invalid, the  
6 remainder of the act or the application of the provision to other  
7 persons or circumstances is not affected.

8 NEW SECTION. Sec. 16. Sections 10 and 11 of this act shall take  
9 effect July 1, 1988.

TESTIMONY OF THE NAVAJO NATION  
BEFORE THE SENATE SELECT COMMITTEE  
ON INDIAN AFFAIRS

OVERSIGHT HEARING OF THE INDIAN CHILD WELFARE ACT

November 10, 1987

I. INTRODUCTION

My name is Anslem Roannorse. I am the Executive Director of the Navajo Nation Division of Social Welfare. I am honored to present this testimony on behalf of the Navajo Nation regarding the Indian Child Welfare Act. In the rest of my testimony, I will refer to the Indian Child Welfare Act as the "Act" or the "ICWA".

First of all, we are pleased that you are holding this hearing. As you know, the Act was passed in 1978 and since that time the Indian Tribes and the States have carried out the intents and purposes of the Act, to the best of their abilities as Congress intended. In light of the fact the Navajo Nation has participated and worked with the terms of the Act, the Navajo Nation has gained substantial experience and has specific recommendations as to how the Act could be more effective.

However, before I get into these specific recommendations, I would like to tell you how the Navajo Nation applies the ICWA, and describe related problems which impede our ability to fully comply with the specific regulations associated with the Act.

## II. THE NAVAJO ICWA PROGRAM

The Navajo ICWA program is presently a vital part of our Division of Social Welfare. Our present goal of the program is to carry out our federally mandated responsibilities in accordance with the Act in any state court dependency, adoptive or foster care proceedings involving a Navajo child. We want our children to retain their Navajo heritage. As much as possible we work to place Navajo children with their relatives and if we cannot do so, we find other Navajo families, in accordance with the placement preference of the Act.

### SOCIAL WORK COMPONENT

The Navajo ICWA program has two components working together. The first is the Social Work program directed by a social worker, Virginia Hannon, in our central administrative office in Window Rock, Arizona. She coordinates the referrals we receive from the states concerning ICWA court proceedings involving Navajo children. Appendix "A" and "B" shows the demographics of children served. In 1985 we received 407 referrals. In 1986 we received 334 referrals. Each referral must be verified to determine if the child(ren) is Navajo, that is, if he/sne is enrolled or eligible for membership with the Navajo Nation. In order to be enrolled, a child must possess at least one-fourth Navajo blood.

We also have to determine where the child's family

comes from, that is, from which agency. The Navajo Nation is divided into five regional divisions called "agencies" (Appendix "C"). The Central Office Coordinator assigns the incoming ICWA case(s) to the Agency Social Worker who handles all the ICWA cases in the specific area of the Navajo Nation they are assigned. Our ICWA social workers are Ben Claw of Fort Defiance Agency, Donna Toledo of Crownpoint Agency, Truman Davis of Chinle Agency, Delores Greyeyes of Tuba City Agency and Virginia Polacca of Shiprock Agency. These social workers provide the first contact for the Navajo Nation with the family involved in the state proceeding and make an independent assessment of the case.

### LEGAL COMPONENT

The second component of the Navajo ICWA program is the legal program. One attorney and a tribal court advocate in the Navajo Department of Justice handle all legal representation on the ICWA cases for the Navajo Nation. Violet A. P. Lui is the attorney and Louise Grant is the tribal court advocate.

As you will note from the attached demographics our division gets numerous referrals from many states, from across the United States, all the way from Alaska to Texas to Pennsylvania. Naturally, our legal counsel are not licensed in all fifty states, therefore, the tribe must contract with attorneys who are licensed to practice in the particular

state where assistance is needed when we need legal representation. The Navajo Nation is fortunate in having the excellent services of Craig J. Dorsay in the Oregon and Washington area, Elizabeth Meyer in Colorado, Katherine Anderson in California, Brian Sexton in New Jersey, Mary Ellen Sloan in Utan, to name but a few. Mr. Dorsay used to work with the Navajo Nation and continues to consult with the Division of Social Welfare on ICWA issues and other matters, if and whenever necessary.

#### NAVAJO ICWA PROCESS

Our Navajo social workers and legal counsel work together on each ICWA case using the following steps for each case:

- Contact our state agency counterparts from whom the referral was received, including the state social worker and the county and/or District Attorney or the Assistant Attorney General.
- Determine the status of the ICWA case in the state court proceedings and whether or not there is a plan developed to reunite the Navajo child with his or her Navajo family.
- If it appears that placement with Navajo relatives is necessary, our social workers do an exhaustive search for suitable relatives

with whom to place the child.

- Gather and analyze facts to decide if we have exclusive jurisdiction of the child.
- Decide whether or not a particular case should be transferred to the Navajo courts.

Sometimes, we only intervene and monitor the state's work with the Navajo family. Our social workers can provide help by contacting urban Indian counselling programs, or just talk directly with the Navajo parents or relatives to get their perspective on what is happening. Often our social workers give help by explaining in Navajo what has happened and why the state has taken the child away.

The ICWA recognizes and protects an Indian tribe's interest in its children. My words alone cannot begin to express what this has meant in terms of dealing with the states. We have experienced many positive developments as a result of the Act. But we also have experienced problems regarding obstacles created by various state courts decisions. In addition there are administration and implementation difficulties we experience as a result of a grossly inequitable funding formula used to fund tribal ICWA programs.

#### III. NAVAJO - STATE RELATIONS UNDER THE ICWA

The states with which we have the most dealings

under the ICWA are New Mexico and Arizona. I am pleased to report that for the most part the Navajo Nation works well with New Mexico and Arizona on ICWA cases. Some of the reasons for this are:

- Some of our workers within the Navajo Division of Social Welfare had worked for the States of Arizona or New Mexico social services department, which helps us to better understand their system. For example, I too have worked with the Arizona Department of Economic Security from July, 1986 to February, 1987 as the Assistant Deputy Director in Phoenix, Arizona.
- Over the years the States of Arizona and New Mexico social workers have come to better understand the intents of ICWA and that the Navajo social workers share the same goals and objectives for the Navajo children and their families who are involved in dependency proceedings. This common goal and objective is the safety and security of the Navajo children and to provide provision of appropriate help for the immediate family, as well as to provide for adequate placement.
- The Navajo Nation does not transfer jurisdic-

tion on every ICWA case originating from the state courts to the Navajo courts. We recognize that sometimes the child and the family will be best served in the state system, and we can provide additional help, as necessary. The Navajo Nation's ability to identify and locate extended relatives for placement of children is a real asset for the states, when it becomes apparent that the parents cannot or should not take the children back.

We have an Intergovernmental Agreement ("IGA") with New Mexico specifically on ICWA cases. I am including a copy of the Agreement as an Exhibit to this testimony (See Appendix "D"). It is not a perfect agreement, but it is a working document that helps each of us to better coordinate our services, in the best interest of the child.

The primary difficulty that the Navajo Nation has with the IGA with New Mexico is that we do not have adequate funds for personnel program and support services to uphold our end of the agreement. We have one ICWA social worker in each agency who is expected to cover the entire agency with an area hundreds of square miles in size. One person for such an area is just not sufficient.

A related issue under the IGA is the availability of foster care and adoptive placements within the Navajo Res-

ervation. We have stretched our present resources to the limit to identify foster or adoptive homes, but we know we need to do more. This also requires more funds.

I know you hear this all the time, from all federal programs. However, I want to make the point that the federal funds the Indian tribes receive were inadequate to begin with and have gotten more inadequate over time. While the ICWA caseload has increased, the funding at the national level has decreased. The Congress appropriated \$9.7 million in FY 1983, \$8.4 million in FY 1984, \$8.7 million in FY 1985, \$8.4 million in FY 1986, and \$8.8 million in FY 1987. I would like to point out that the Congress initially appropriated only \$6.1 million for FY 1987 but it was only in June 1987 that the Congress approved \$2.7 million supplemental funds.

Further, the present funding formula and award process is not appropriate to the needs of a large Indian Tribe such as the Navajo Tribe. Presently a tribe of only 15,000 members can receive the same amount we receive, but we have 200,000 members. Under the present regulations, the Navajo Tribe can only receive a maximum of \$300,000 and only if it scores at least 85 points on its grant application. Because of this requirement, the Bureau of Indian Affairs did not provide any ICWA funds for FY 1985 and FY 1986. We have appealed the Bureau's actions. We feel the allocation should be based on actual need and not on a preconceived allocation

formula. Further, because of the important mandates of the law, we feel the grant awards should not be given on a competitive basis but should be treated as entitled funds to Indian tribes and organizations. Finally, we feel that the Congress must increase the national appropriation to at least \$15 million.

In the meantime, we have tried to be creative. For example, in one instance, one of our social workers worked with a New Mexico social worker to have pre-adoptive Navajo homes certified by the state. In that way we will have early placement of the Navajo child with a Navajo family while that case is still pending in the New Mexico courts. This is a good example of how a state and tribe can work together. But these creative efforts cannot substitute for the real needs.

Our dealings with Arizona are, as I said earlier, positive. We do not have an IGA with Arizona, but we are in the process of developing one on how we will work together on child welfare cases involving Navajo children. The main stumbling block seems to be the state's concerns about Navajo jurisdiction and Arizona jurisdiction. Another problem is the extent to which Arizona must give full faith and credit to Navajo laws, records and judicial proceedings on child custody proceedings covered by the Act. Our lawyers tell us that such concerns can be worked out, and the sovereignty of each government can remain intact. We know we have a

workable agreement with New Mexico, and we can use that as precedent for other agreements with the surrounding states.

Our dealings with other states are less extensive, but we have made progress by using our contract attorneys. The cost for contract attorneys is substantial but it is necessary if the intent and provisions of the Act are to be carried out.

I referred earlier to problems we have in enforcing our rights under the Act because of obstacles created by state courts. I want to say that we have had supportive decisions by the state courts, as shown by the Utah Supreme Court's decision in the nationally publicized Halloway case.

I will emphasize to you three areas of major concerns to the Navajo Nation with the current provisions of the Act. We have other concerns with the Act, but I will not mention them specifically here. Craig J. Dorsay, who I mentioned earlier is a consultant to the Navajo Nation on ICWA issue has presented to this Committee specific suggestions for revisions to the Act. The Navajo Nation endorses the revisions proposed by Mr. Dorsay, and incorporates said revisions into this testimony.

The three areas I want to refer to are: 1) the current provisions recognizing the tribal court's exclusive jurisdiction over children who reside on or are domiciled on the reservation, or are wards of the tribal court; 2) provid-

ing for parental objection to transfer a case to tribal court; and 3) issues concerning voluntary or private placements.

It is the Navajo Nation's position that 25 U.S.C.S. Section 1911(a) works and does not require extensive change. Our exclusive jurisdiction over reservation resident or domiciled children, or children already under tribal court jurisdiction, is a fairly clear principle.

The problem of whether a Navajo parent or custodian can prevent transfer of a case to the Navajo courts under 25 U.S.C.S. Section 1911(b) is serious. It is our position that this section was not meant to defeat the tribe's interest in taking a case back to the tribal courts, on the sole objection of a Navajo parent or custodian. We agree that non-Navajos can prevent a transfer. We do not agree that a Navajo should be able to prevent the transfer by simply objecting.

The Act provides for an explicit order of preference for placements of children in any adoptive placement of children under state law and in any foster care or pre-adoptive placement, 25 U.S.C.S. Section 1915. That section seems clear enough, but the Navajo Nation is not being given early notice of private adoption proceedings. This is because some state courts mistakenly believe that the Act does not apply to private placements of children. This belief is clearly

wrong. We need Congress' help to clarify this point and come up with better enforcement provisions, in order that all states may comply with this notification process.

The Navajo Nation has many other specific revisions to propose. I will not go into those proposed changes, except to repeat that Mr. Dorsay's proposed revisions are specifically endorsed by the Navajo Nation and incorporated in this testimony as if they were fully set forth. These are proposed amendments at this time. When this Committee schedules other hearings on amendments to the Act, we will submit further refinements to the present proposals.

Thank you for the opportunity to comment on the ICWA. We appreciate your efforts on behalf of all American Indians.

*Anslem Roanhorse*  
 Anslem Roanhorse  
 Executive Director  
 Navajo Nation Division of Social  
 Welfare  
 Post Office Drawer "JJ"  
 Window Rock, Arizona 86515  
 Tele: (602) 871-4941, Ext. 1556

## DEMOGRAPHICS OF CHILDREN SERVED

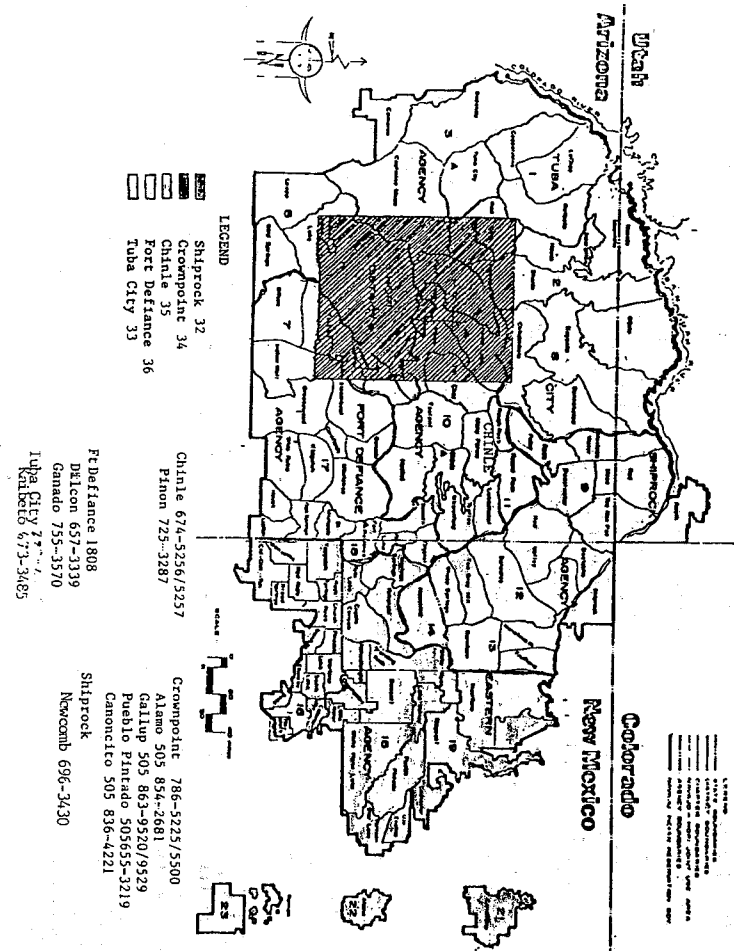
Under ICWA Program for 1985 - 1986

STATES FROM WHERE CHILDREN SERVED	TYPE OF SERVICES								TOTAL	AGENCY ASSIGNED				
	Custody Dispute	Abuse	Neglect	Sexual Abuse	T P R	Foster Care	Incest	Adoption		CHINLE	FORT DEFIANCE	SHIPROCK TUBA CITY	CROWN- POINT	
Alaska	0	0	1	0	0	0	0	1	2	2	0	0	0	0
Arizona	0	12	95	10	12	0	0	8	145	21	34	4	81	5
California	0	15	29	0	5	4	0	11	64	14	10	9	29	2
Colorado	0	2	16	1	0	0	0	0	19	0	7	1	11	0
Idaho	0	0	0	0	0	0	0	4	4	0	0	0	4	0
Illinois	0	0	1	0	0	0	0	0	1	0	1	0	0	0
Kansas	0	0	3	0	0	0	0	0	3	1	0	0	0	2
Minnesota	0	0	4	0	0	1	0	0	5	1	0	0	4	0
Nevada	0	0	1	0	0	1	0	1	3	3	0	0	0	0
New Jersey	0	0	0	0	0	0	1	0	1	0	0	1	0	0
New Mexico	0	7	41	6	0	0	0	15	69	9	14	11	4	40
New York	0	0	1	0	0	0	0	0	1	0	0	0	0	1
N. Carolina	0	0	6	0	0	0	0	3	9	9	0	0	0	0
Oklahoma	0	4	13	0	0	3	0	4	24	4	0	1	15	4
Oregon	4	0	0	0	0	0	0	1	5	0	0	1	4	0
Utah	0	2	21	0	0	0	0	13	36	17	0	0	17	2
Washington	0	6	7	0	0	0	0	0	13	0	7	0	6	0
TOTALS	4	48	240	17	25	9	1	63	407	72	74	33	171	57



DEMOGRAPHICS OF CHILDREN SERVED  
Under ICWA Program for 1986 - 1987

STATES FROM WHERE CHILDREN SERVED	TYPE OF SERVICES								TOTAL	AGENCY ASSIGNED				
	Custody Dispute	Abuse	Neglect	Sexual Abuse	T P R	Foster Care	Incest	Adoption		CHINLE	FORT DEFIANCE	SHIPROCK	TUBA CITY	CROWN- POINT
Arizona	0	26	23	13	12	4	0	10	88	5	31	8	43	1
Alaska	0	4	2	0	0	0	0	0	6	1	0	0	5	0
California	0	18	18	1	2	4	0	12	55	6	25	5	9	10
Colorado	0	10	9	1	0	0	0	2	22	0	6	1	13	0
Idaho	0	1	1	0	2	0	0	2	6	0	0	4	2	0
Illinois	0	0	1	0	0	0	0	0	1	0	1	0	0	0
Kansas	0	0	3	0	0	0	0	0	3	0	3	0	0	0
Minnesota	0	0	3	0	0	0	0	0	3	1	0	0	2	0
Nevada	0	0	1	0	0	0	0	1	2	1	0	0	1	0
New Jersey	0	2	0	0	0	0	0	0	2	0	0	0	0	2
New Mexico	1	9	44	6	0	10	0	23	93	0	19	17	6	51
New York	0	0	0	0	0	0	1	0	1	0	0	1	0	0
North C.	0	0	3	0	0	0	0	0	3	2	0	0	1	0
Oklahoma	0	0	5	2	0	0	0	0	7	4	0	1	2	0
Oregon	2	0	0	0	0	0	0	0	2	0	0	2	0	0
Utah	0	0	7	0	0	0	0	4	11	6	0	0	3	2
Washington	0	9	9	2	0	0	0	1	21	0	7	11	3	0
Texas	0	6	0	0	0	0	0	0	6	0	0	6	0	0
Missouri	0	0	0	0	0	0	0	2	2	0	0	2	0	0
TOTALS	3	85	129	25	16	18	1	57	334	26	92	58	90	68



Shiprock 32  
Mexican Water  
Rock Point  
Sweetwater  
Teec Nos Pos  
Aneth  
Beulahbito  
Rud Valley  
Sanostee  
Sheepsprings  
Shiprock  
Two Grey Hills  
Cudei  
Hogback  
Cove  
Newcomb  
Burnham  
Fruitland  
Nenahnezah  
San Juan  
Naschitti

Crownpoint 34  
Coyote Canyon  
Mexican Springs  
Tohatchi  
Twin Lakes  
Becenti  
Crownpoint  
Lake Valley  
Littlewater  
Nahodishgish/Dalton Pass  
Pueblo Pintado  
Standing Rock  
Torreon Star Lake  
White Horse Lake  
White Rock  
Prewitt/Baca  
Breadsprings  
Casamera Lake  
Chilchiltah  
Churchrock  
Iyanbito  
Manuelito  
Mariano Lake  
Pinedale  
Red Rock  
Rocksprings  
Smith Lake  
Thoreau  
Tse Ya Toh  
Huerfano  
Nageezi  
Ojo Encino  
Counselor  
Canoncito  
Alamo

Taba City 33  
Coppermine  
Kaibeto  
Lechee  
Tonalea/Red Lake  
Inscription House  
Navajo Mountain  
Shonto  
Bodaway/Gap  
Cameron  
Coalmine Mesa  
Tuba City  
Bird Springs  
Leupp  
Tolani Lake  
Chilchinbeto  
Dennehotso  
Kayenta  
Oljato

Chinle 35  
Forest Lake  
Hardrock  
Pinon  
Tahchee/Blue Gap  
Whippoorwill  
Black Mesa  
Low Mountain  
Chinle  
Many Farms  
Nazlini  
Rough Rock  
Tselani/Cottonwood  
Lukachukai  
Round Rock  
Tsaille/Wheatfield

Fort Defiance 36  
Dilkon  
Indian Wells  
Jeddito  
Teestoh  
Whitecone  
Cornfields  
Ganado  
Greasewood  
Kinlichee  
Klagetoh  
Steamboat  
Wide Ruins  
Crystal  
Fort Defiance  
Houck  
Lupton  
Oak Springs  
Red Lake  
St. Michaels  
Sawmill

300

INDIAN CHILD WELFARE ACT  
AGREEMENT BETWEEN THE NEW MEXICO  
HUMAN SERVICES DEPARTMENT AND THE  
NAVAJO TRIBE

Appendix "D"  
74424

301

This Agreement made and entered into this 17th day of September, 1985, by and between the Division of Social Welfare, NAVAJO TRIBE, hereinafter referred to as "the NAVAJO TRIBE," and the Human Services Department, STATE OF NEW MEXICO, hereinafter referred to as "the STATE."

I. PURPOSE AND POLICY

A. The Congress of the United States passed the Indian Child Welfare Act of 1978 (P.L. 95-608), November 8, 1978, hereinafter, referred to as the "ICWA".

B. The STATE and the NAVAJO TRIBE recognize: (1) that there is no resource that is more vital to the continued existence and integrity of the Navajo Tribe than its children; (2) that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe; (3) that the STATE has a direct interest in protecting the cultural diversity of the citizens of the State of New Mexico; (4) that this agreement is entered into under the Joint Powers Agreement Act, [§§11-1-1 to 11-1-7 NMSA 1978], acknowledges the April 19, 1984 Statement of Policy signed by the Governor of the State of New Mexico and the Chairman of the Navajo Nation, and is predicated on a government to government relationship between the State of New Mexico and the Navajo Nation in a spirit of cooperation, coordination, communication and good will; (5) that both voluntary and involuntary proceedings are of critical interest to the Navajo Tribe: (a) to prevent the inappropriate cultural separation of Navajo