

INDIAN CHILD WELFARE ACT OF 1978

THURSDAY, FEBRUARY 9, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INDIAN AFFAIRS AND PUBLIC LANDS,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met at 10:10 a.m., pursuant to notice, in room 1324, Longworth House Office Building, Hon. Teno Roncalio (chairman of the subcommittee) presiding.

Mr. RONCALIO. The Subcommittee on Indian Affairs and Public Lands of the House Interior and Insular Affairs Committee will come to order.

I apologize for being 10 minutes late.

This is a meeting to look into S. 1214, which passed the Senate November 4, and was referred to this committee.

Without objection, the background, and section-by-section analysis will be entered into the record.

Do we have the Senate report, too?

Yes; we do. The Senate report will be placed in the committee's files.

[The bill, S. 1214; background on the Indian Child Welfare Act, H.R. 12533; section-by-section analysis of H.R. 12533; views of the Department of the Interior on H.R. 12533; and the comments of the Department of Justice on S. 1214 follow.]

S. 1214

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 8, 1977

Referred to the Committee on Interior and Insular Affairs

AN ACT

To establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 That this Act may be cited as the "Indian Child Welfare
 4 Act of 1977".

5 **FINDINGS**

6 **SEC. 2.** Recognizing the special relations of the United
 7 States with the Indian and Indian tribes and the Federal
 8 responsibility for the care of the Indian people, the Congress
 9 finds that:

I

1 (a) An alarmingly high percentage of Indian children
 2 living within both urban communities and Indian reserva-
 3 tions, are separated from their natural parents through the
 4 actions of nontribal government agencies or private indi-
 5 viduals or private agencies and are placed in institutions
 6 (including boarding schools), or in foster or adoptive homes,
 7 usually with non-Indian families.

8 (b) The separation of Indian children from their fam-
 9 ilies frequently occurs in situations where one or more of the
 10 following circumstances exist: (1) the natural parent does
 11 not understand the nature of the documents or proceedings
 12 involved; (2) neither the child nor the natural parents are
 13 represented by counsel or otherwise advised of their rights;
 14 (3) the agency officials involved are unfamiliar with, and
 15 often disdainful of Indian culture and society; (4) the con-
 16 ditions which led to the separation are not demonstrably
 17 harmful or are remediable or transitory in character; and
 18 (5) responsible tribal authorities are not consulted about or
 19 even informed of the nontribal government actions.

20 (c) The separation of Indian children from their
 21 natural parents, especially their placement in institutions or
 22 homes which do not meet their special needs, is socially and
 23 culturally undesirable. For the child, such separation can
 24 cause a loss of identity and self-esteem, and contributes di-
 25 rectly to the unreasonably high rates among Indian chil-

1 dren for dropouts, alcoholism and drug abuse, suicides, and
 2 crime. For the parents, such separation can cause a similar
 3 loss of self-esteem, aggravates the conditions which ini-
 4 tially gave rise to the family breakup, and leads to a con-
 5 tinuing cycle of poverty and despair. For Indians generally,
 6 the child placement activities of nontribal public and private
 7 agencies undercut the continued existence of tribes as self-
 8 governing communities and, in particular, subvert tribal
 9 jurisdiction in the sensitive field of domestic and family
 10 relations.

11 DECLARATION OF POLICY

12 SEC. 3. The Congress hereby declares that it is the
 13 policy of this Nation, in fulfillment of its special responsi-
 14 bilities and legal obligations to the American Indian people,
 15 to establish standards for the placement of Indian children
 16 in foster or adoptive homes which will reflect the unique
 17 values of Indian culture, discourage unnecessary placement
 18 of Indian children in boarding schools for social rather than
 19 educational reasons, assist Indian tribes in the operation of
 20 tribal family development programs, and generally promote
 21 the stability and security of Indian families.

22 DEFINITIONS

23 SEC. 4. For purposes of this Act:

24 (a) "Secretary", unless otherwise designated, means
 25 the Secretary of the Interior.

1 (b) "Indian" means any person who is a member of
 2 or who is eligible for membership in a federally recognized
 3 Indian tribe.

4 (c) "Indian tribe" means any Indian tribe, band, na-
 5 tion, or other organized group or community of Indians
 6 recognized as eligible for the services provided by the Bureau
 7 of Indian Affairs to Indians because of their status as
 8 Indians, including any Alaska Native villages, as listed in
 9 section II (b) (1) of the Alaska Native Claims Settlement
 10 Act (85 Stat. 688, 697).

11 (d) "Indian organization" means any group, associa-
 12 tion, partnership, corporation, or other legal entity owned
 13 or controlled by Indians, or a majority of whose members
 14 are Indians.

15 (e) "Tribal court" means any Court of Indian Offenses,
 16 any court established, operated, and maintained by an Indian
 17 tribe, and any other administrative tribunal of a tribe which
 18 exercise jurisdiction over child welfare matters in the name
 19 of a tribe.

20 (f) "Nontribal public or private agency" means any
 21 Federal, State, or local government department, bureau,
 22 agency, or other office, including any court other than a tribal
 23 court, and any private agency licensed by a State or local
 24 government, which has jurisdiction or which performs func-
 25 tions and exercises responsibilities in the fields of social serv-

1 ices, welfare, and domestic relations, including child place-
2 ment.

3 (g) "Reservation" means Indian country as defined in
4 section 1151 of title 18, United States Code and as used in
5 this Act, shall include lands within former reservations where
6 the tribes still maintain a tribal government, and lands held
7 by Alaska Native villages under the provisions of the Alaska
8 Native Claims Settlement Act (85 Stat. 688). In a case
9 where it has been judicially determined that a reservation has
10 been diminished, the term "reservation" shall include lands
11 within the last recognized boundaries of such diminished res-
12 ervation prior to enactment of the allotment or pending
13 statute which caused such diminishment.

14 (h) "Child placement" means any proceedings, judicial,
15 quasi-judicial, or administrative, voluntary or involuntary,
16 and public or private action (s) under which an Indian child
17 is removed by a nontribal public or private agency from
18 (1) the legal custody of his parent or parents, (2) the
19 custody of any extended family member in whose care he
20 has been left by his parent or parents, or (3) the custody
21 of any extended family member who otherwise has custody
22 in accordance with Indian law or custom, or (4) under
23 which the parental or custodial rights of any of the above
24 mentioned persons are impaired.

25 (i) "Parent" means the natural parent of an Indian

1 child or any person who has adopted an Indian child in ac-
2 cordance with State, Federal, or tribal law or custom.

3 (j) "Extended family member" means any grandpar-
4 ent, aunt, or uncle (whether by blood or marriage), brother
5 or sister, brother or sister-in-law, niece or nephew, first or
6 second cousin, or stepparent whether by blood, or adoption,
7 over the age of eighteen or otherwise emancipated, or as
8 defined by tribal law or custom.

9 TITLE I—CHILD PLACEMENT JURISDICTION
10 AND STANDARDS

11 SEC. 101. (a) No placement of an Indian child, except
12 as provided in this Act shall be valid or given any legal
13 force and effect, except temporary placement under circum-
14 stances where the physical or emotional well-being of the
15 child is immediately and seriously threatened, unless (1) his
16 parent or parents and the extended family member in whose
17 care the child may have been left by his parent or parents or
18 who otherwise has custody according to tribal law or custom,
19 has been accorded not less than thirty days prior written
20 notice of the placement proceeding, which shall include an
21 explanation of the child placement proceedings, a statement
22 of the facts upon which placement is sought, and a right:
23 (A) to intervene in the proceedings as an interested party;
24 (B) to submit evidence and present witnesses on his or her
25 own behalf; and (C) to examine all reports or other docu-

1 ments and files upon which any decision with respect to child
 2 placement may be based; and (2) the party seeking to effect
 3 the child placement affirmatively shows that available reme-
 4 dial services and rehabilitative programs designed to prevent
 5 the breakup of the Indian family have been made available
 6 and proved unsuccessful.

7 (b) Where the natural parent or parents of an Indian
 8 child who falls within the provisions of this Act, or the
 9 extended family member in whose care the child may have
 10 been left by his parent or parents or who otherwise has
 11 custody in accordance with tribal law or custom, opposes the
 12 loss of custody, no child placement shall be valid or given
 13 any legal force and effect in the absence of a determination,
 14 supported by clear and convincing evidence, including testi-
 15 mony by qualified expert witnesses, that the continued cus-
 16 tody of the child by his parent or parents, or the extended
 17 family member in whose care the child has been left, or other-
 18 wise has custody in accordance with tribal law or custom,
 19 will result in serious emotional or physical damage. In
 20 making such determination, poverty, crowded or inade-
 21 quate housing, alcohol abuse or other nonconforming social
 22 behaviors on the part of either parent or extended family
 23 member in whose care the child may have been left by his
 24 parent or parents or who otherwise has custody in accord-
 25 ance with tribal law or custom, shall not be deemed prima

1 facie evidence that serious physical or emotional damage to
 2 the child has occurred or will occur. The standards to be
 3 applied in any proceeding covered by this Act shall be the
 4 prevailing social and cultural standards of the Indian
 5 community in which the parent or parents or extended
 6 family member resides or with which the parent or parents
 7 or extended family member maintains social and cultural ties.

8 (c) In the event that the parent or parents of an
 9 Indian child consent to a child placement, whether tempo-
 10 rary or permanent, such placement shall not be valid or
 11 given any legal force and effect, unless such consent is
 12 voluntary, in writing, executed before a judge of a court
 13 having jurisdiction over child placements, and accompanied
 14 by the witnessing judge's certificate that the consent was
 15 explained in detail, was translated into the parent's native
 16 language, and was fully understood by him or her. If the
 17 consent is to a nonadoptive child placement, the parent or
 18 parents may withdraw the consent at any time for any
 19 reason, and the consent shall be deemed for all purposes
 20 as having never been given. If the consent is to an adoptive
 21 child placement, the parent or parents may withdraw the
 22 consent for any reason at any time before the final decree
 23 of adoption: *Provided*, That no final decree of adoption
 24 may be entered within ninety days after the birth of such
 25 child or within ninety days after the parent or parents have

1 given written consent to the adoption, whichever is later.
 2 Consent by the parent or parents of an Indian child given
 3 during pregnancy or within ten days after the birth of the
 4 child shall be conclusively presumed to be involuntary. A
 5 final decree of adoption may be set aside upon a showing
 6 that the child is again being placed for adoption, that the
 7 adoption did not comply with the requirements of this Act
 8 or was otherwise unlawful, or that the consent to the adoption
 9 was not voluntary. In the case of such a failed adoption,
 10 the parent or parents or the extended family member from
 11 whom custody was taken shall be afforded an opportunity
 12 to reopen the proceedings and petition for return of custody.
 13 Such prior parent or custodian shall be given thirty days
 14 notice of any proceedings to set aside or vacate a previous
 15 decree unless the prior parent or custodian waives in writing
 16 any right to such notice.

17 (d) No placement of an Indian child, except as other-
 18 wise provided by this Act, shall be valid or given any legal
 19 force and effect, except temporary placements under circum-
 20 stances where the physical or emotional well-being of the
 21 child is immediately threatened, unless his parent or parents,
 22 or the extended family member in whose care the child may
 23 have been left or who otherwise has custody in accordance
 24 with tribal law or custom, has been afforded the opportunity

1 to be represented by counsel or lay advocate as required by
 2 the court having jurisdiction.

3 (e) Whenever an Indian child previously placed in
 4 foster care or temporary placement by any nontribal public
 5 or private agency is committed or placed, either voluntarily
 6 or involuntarily in any public or private institution, includ-
 7 ing but not limited to a correctional facility, institution for
 8 juvenile delinquents, mental hospital or halfway house, or is
 9 transferred from one foster home to another, notification
 10 shall forthwith be made to the tribe with which the child has
 11 significant contacts and his parent or parents or extended
 12 family member from whom the child was taken. Such notice
 13 shall include the exact location of the child's present place-
 14 ment and the reasons for changing his placement. Notice
 15 shall be made thirty days before the legal transfer of the
 16 child effected, if possible, and in any event within ten days
 17 thereafter.

18 SEC. 102. (a) In the case of any Indian child who
 19 resides within an Indian reservation which maintains a tribal
 20 court which exercises jurisdiction over child welfare matters,
 21 no child placement shall be valid or given any legal force
 22 and effect, unless made pursuant to an order of the tribal
 23 court. In the event that a duly constituted Federal or State
 24 agency or any representation thereof has good cause to be-
 25 lieve that there exists an immediate threat to the emotional

1 or physical well-being of an Indian child, such child may be
 2 temporarily removed from the circumstances giving rise to
 3 the danger provided that immediate notice shall be given to
 4 the tribal authorities, the parents, and the extended family
 5 member in whose care the child may have been left or who
 6 otherwise has custody according to tribal law or custom. Such
 7 notice shall include the child's exact whereabouts and the
 8 precise reasons for removal. Temporary removals beyond
 9 the boundaries of a reservation shall not affect the exclusive
 10 jurisdiction of the tribal court over the placement of an
 11 Indian child.

12 (b) In the case of an Indian child who resides within
 13 an Indian reservation which possesses but does not exercise
 14 jurisdiction over child welfare matters, no child placement,
 15 by any nontribal public or private agency shall be valid or
 16 given any legal force and effect, except temporary place-
 17 ments under circumstances where the physical or emotional
 18 well-being of the child is immediately and seriously threat-
 19 ened, unless such jurisdiction is transferred to the State pur-
 20 suant to a mutual agreement entered into between the State
 21 and the Indian tribe pursuant to subsection (j) of this sec-
 22 tion. In the event that no such agreement is in effect, the
 23 Federal agency or agencies servicing said reservation shall
 24 continue to exercise responsibility over the welfare of such
 25 child.

1 (c) In the case of any Indian child who is not a resi-
 2 dent of an Indian reservation or who is otherwise under the
 3 jurisdiction of a State, if said Indian child has significant
 4 contacts with an Indian tribe, no child placement shall be
 5 valid or given any legal force and effect, except temporary
 6 placements under circumstances where the physical or emo-
 7 tional well-being of the child is immediately and seriously
 8 threatened, unless the Indian tribe with which such child
 9 has significant contacts has been accorded thirty days prior
 10 written notice of a right to intervene as an interested party
 11 in the child placement proceedings. In the event that the
 12 intervening tribe maintains a tribal court which has juris-
 13 diction over child welfare matters, jurisdiction shall be trans-
 14 ferred to such tribe upon its request unless good cause for
 15 refusal is affirmatively shown.

16 (d) In the event of a temporary placement or removal
 17 as provided in subsections (a), (b), and (c) above, imme-
 18 diate notice shall be given to the parent or parents, the custo-
 19 dian from whom the child was taken if other than the parent
 20 or parents, and the chief executive officer or such other person
 21 as such tribe or tribes may designate for receipt of notice.
 22 Such notice shall include the child's exact whereabouts, the
 23 precise reasons for his or her removal, the proposed place-
 24 ment plan, if any, and the time and place where hearings
 25 will be held if a temporary custody order is to be sought. In

1 addition, where a tribally operated or licensed temporary
 2 child placement facility or program is available, such facili-
 3 ties shall be utilized. A temporary placement order must be
 4 sought at the next regular session of the court having juris-
 5 diction and in no event shall any temporary or emergency
 6 placement exceed seventy-two hours without an order from
 7 the court of competent jurisdiction.

8 (e) For the purposes of this Act, an Indian child shall
 9 be deemed to be a resident of the reservation where his parent
 10 or parents, or the extended family member in whose care he
 11 may have been left by his parent or parents or who otherwise
 12 has custody in accordance with tribal law or custom, is
 13 resident.

14 (f) For the purposes of this Act, whether or not a non-
 15 reservation resident Indian child has significant contacts
 16 with an Indian tribe shall be an issue of fact to be determined
 17 by the court on the basis of such considerations as: Member-
 18 ship in a tribe, family ties within the tribe, prior residency
 19 on the reservation for appreciable periods of time, reserva-
 20 tion domicile, the statements of the child demonstrating a
 21 strong sense of self-identity as an Indian, or any other ele-
 22 ments which reflect a continuing tribal relationship. A finding
 23 that such Indian child does not have significant contacts
 24 with an Indian tribe sufficient to warrant a transfer of juris-
 25 diction to a tribal court under subsection (c) of this section

1 does not waive the preference standards for placement set
 2 forth in section 103 of this Act.

3 (g) It shall be the duty of the party seeking a change
 4 of the legal custody of an Indian child to notify the par-
 5 ent or parents, the extended family members from whom
 6 custody is to be taken, and the chief executive of any tribe
 7 or tribes with which such child has significant contacts by
 8 mailing prior written notice by registered mail to the parent
 9 or parents, or extended family member, and the chief execu-
 10 tive officer of the tribe, or such other persons as such tribe or
 11 tribes may designate: *Provided*, That the judge or hearing
 12 officer at any child placement proceeding shall make a good
 13 faith determination of whether the child involved is Indian
 14 and, if so, whether the tribe or tribes with which the child
 15 has significant contacts were timely notified.

16 (h) Any program operated by a public or private agency
 17 which removes Indian children from a reservation area and
 18 places them in family homes as an incident to their attend-
 19 ance in schools located in communities in off-reservation
 20 areas and which are not educational exemptions as defined
 21 in the Interstate Compact on the Placement of Children shall
 22 not be deemed child placements for the purposes of this Act.
 23 Such programs shall provide the chief executive officer of
 24 said tribe with the same information now provided to send-
 25 ing and receiving States which are members of the Interstate

1 Compact on the Placement of Children. This notification
 2 shall be facilitated by mailing written notice by registered
 3 mail to the chief executive officer or other such person as
 4 the tribe may designate.

5 (i) Notwithstanding the Act of August 15, 1953 (67
 6 Stat. 588), as amended, or any other Act under which a
 7 State has assumed jurisdiction over child welfare of any
 8 Indian tribe, upon sixty days written notice to the State in
 9 which it is located, any such Indian tribe may reassume the
 10 same jurisdiction over such child welfare matters as any
 11 other Indian tribe not affected by such Acts: *Provided*, That
 12 such Indian tribe shall first establish and provide mecha-
 13 nisms for implementation of such matters which shall be sub-
 14 ject to the review and approval of the Secretary of the
 15 Interior. In the event the Secretary does not approve the
 16 mechanisms which the tribe proposes within sixty days, the
 17 Secretary shall provide such technical assistance and support
 18 as may be necessary to enable the tribe to correct any de-
 19 ficiencies which he has identified as a cause for disapproval.
 20 Following approval by the Secretary, such reassumption
 21 shall not take effect until sixty days after the Secretary
 22 provides notice to the State which is asserting such jurisdic-
 23 tion. Except as provided in section 102 (c), such reassump-
 24 tion shall not affect any action or proceeding over which a

1 court has already assumed jurisdiction and no such actions
 2 or proceeding shall abate by reason of such reassumption.

3 (j) States and tribes are specifically authorized to enter
 4 into mutual agreements or compacts with each other, respect-
 5 ing the care, custody, and jurisdictional authority of each
 6 party over any matter within the scope of this Act, including
 7 agreements which provide for transfer of jurisdiction on a
 8 case-by-case basis, and agreements which provide for concur-
 9 rent jurisdiction between the States and the tribes. The pro-
 10 visions of the Act of August 15, 1953 (67 Stat. 588), as
 11 amended by title IV of the Act of April 11, 1968 (82 Stat.
 12 78) shall not limit the powers of States and tribes to enter
 13 into such agreements or compacts. Any such agreements shall
 14 be subject to revocation by either party upon sixty days writ-
 15 ten notice to the other. Except as provided in section 102 (c)
 16 such revocation shall not affect any action or proceeding
 17 over which a court has already assumed jurisdiction and no
 18 such action or proceeding shall abate by reason of such revo-
 19 cation: *And provided further*, That such agreements shall
 20 not waive the rights of any tribe to notice and intervention as
 21 provided in this Act nor shall they alter the order of prefer-
 22 ence in child placement provided in this title. The Secretary
 23 of the Interior shall have sixty days after notification to
 24 review any such mutual agreements or compacts or any revo-
 25 cation thereof and in the absence of a disapproval for good

1 cause shown, such agreement, compact, or revocation thereof
2 shall become effective.

3 (k) Nothing in this Act shall be construed to either en-
4 large or diminish the jurisdiction over child welfare matters
5 which may be exercised by either State or tribal courts or
6 agencies except as expressly provided in this Act.

7 SEC. 103. (a) In offering for adoption an Indian child,
8 in the absence of good cause shown to the contrary, a prefer-
9 ence shall be given in the following order: (1) to the child's
10 extended family; (2) to an Indian home on the reservation
11 where the child resides or has significant contacts; (3) to an
12 Indian home where the family head or heads are members of
13 the tribe with which the child has significant contacts; and
14 (4) to an Indian home approved by the tribe: *Provided,*
15 *however,* That each Indian tribe may modify or amend the
16 foregoing order of preference and may add or delete prefer-
17 ence categories by resolution of its government.

18 (b) In any nonadoptive placement of an Indian child,
19 every nontribal public or private agency, in the absence of
20 good cause shown to the contrary, shall grant preferences
21 in the following order: (1) to the child's extended family;
22 (2) to a foster home, if any, licensed or otherwise designated
23 by the Indian tribe occupying the reservation of which the
24 child is a resident or with which the child has significant
25 contacts; (3) to a foster home, if any, licensed by the Indian

1 tribe of which the child is a member or is eligible for member-
2 ship; (4) to any other foster home within an Indian reser-
3 vation which is approved by the Indian tribe of which the
4 child is a member or is eligible for membership in or with
5 which the child has significant contacts; (5) to any foster
6 home run by an Indian family; and (6) to a custodial insti-
7 tution for children operated by an Indian tribe, a tribal
8 organization, or nonprofit Indian organization: *Provided,*
9 *however,* That each Indian tribe may modify or amend
10 the foregoing order of preferences, and may add or delete
11 preference categories, by resolution of its government body.

12 (c) Every nontribal public or private agency shall
13 maintain a record evidencing its efforts to comply with the
14 order of preference provided under subsections (a) and (b)
15 in each case of an Indian child placement. Such records
16 shall be made available, at any time upon request of the
17 appropriate tribal government authorities.

18 (d) Where an Indian child is placed in a foster or
19 adoptive home, or in an institution, outside the reservation
20 of which the child is a resident or with which he maintains
21 significant contacts, pursuant to an order of a tribal court,
22 the tribal court shall retain continuing jurisdiction over such
23 child until the child attains the age of eighteen.

24 SEC. 104. In order to protect the unique rights associ-
25 ated with an individual's membership in an Indian tribe,

1 after an Indian child who has been previously placed at-
 2 tains the age of eighteen, upon his or her application to
 3 the court which entered the final placement decree, and in
 4 the absence of good cause shown to the contrary, the child
 5 shall have the right to learn the tribal affiliation of his par-
 6 ent or parents and such other information as may be neces-
 7 sary to protect the child's rights flowing from the tribal
 8 relationship.

9 SEC. 105. In any child placement proceeding within
 10 the scope of this Act, the United States, every State, every
 11 territory or possession of the United States, and every
 12 Indian tribe shall give full faith and credit to the laws of
 13 any Indian tribe applicable to a proceeding under the Act
 14 and to any tribal court orders relating to the custody of a
 15 child who is the subject of such a proceeding.

16 TITLE II—INDIAN FAMILY DEVELOPMENT

17 SEC. 201. (a) The Secretary of the Interior is hereby
 18 authorized, under such rules and regulations as he may
 19 prescribe, to carry out or make grants to Indian tribes and
 20 Indian organizations for the purpose of assisting such tribes
 21 or organizations in the establishment and operation of Indian
 22 family development programs on or near reservations, as
 23 described in this section, and in the preparation and imple-
 24 mentation of child welfare codes. The objective of every
 25 Indian family development program shall be to prevent the

1 breakup of Indian families and, in particular, to insure that
 2 the permanent removal of an Indian child from the custody
 3 of his parent or parents, or the custody of any extended
 4 family member in whose care he has been left his parent or
 5 parents, or one who otherwise has custody according to
 6 tribal law or custom, shall be effected only as a last resort.
 7 Such family development programs may include, but are not
 8 limited to, some or all of the following features:

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

11 (2) the construction, operation, and maintenance
 12 of family development centers, as defined in subsection
 13 (b) hereof;

14 (3) family assistance, including homemakers and
 15 home counselors, day care, after school care, and em-
 16 ployment, recreational activities, and respite services;

17 (4) provision for counseling and treatment of In-
 18 dian families and Indian children;

19 (5) home improvement programs;

20 (6) the employment of professional and other
 21 trained personnel to assist the tribal court in the dispo-
 22 sition of domestic relations and child welfare matters;

23 (7) education and training of Indians, including
 24 tribal court judges and staff, in skills relating to child
 25 welfare and family assistance programs;

1 (8) a subsidy program under which Indian adoptive
2 children are provided the same support as Indian foster
3 children; and

4 (9) guidance, legal representation, and advice to
5 Indian families involved in tribal or nontribal child
6 placement proceedings.

7 (b) Any Indian foster or adoptive home licensed or
8 designated by a tribe (1) may accept Indian child place-
9 ments by a nontribal public or private agency and State
10 funds in support of Indian children; and (2) shall be
11 granted preference in the placement of an Indian child in
12 accordance with title I of this Act. For purposes of quali-
13 fying for assistance under any federally assisted program,
14 licensing by a tribe shall be deemed equivalent to licensing
15 by a State.

16 (c) Every Indian tribe is authorized to construct,
17 operate, and maintain a family development center which
18 may contain, but shall not be limited to—

19 (1) facilities for counseling Indian families which
20 face disintegration and, where appropriate, for the treat-
21 ment of individual family members;

22 (2) facilities for the temporary custody of Indian
23 children whose natural parent or parents, or extended
24 family member in whose care he has been left by his
25 parent or parents or one who otherwise has custody

1 according to tribal law or custom, are temporarily un-
2 able or unwilling to care for them or who otherwise are
3 left temporarily without adequate adult supervision by
4 an extended family member.

5 SEC. 202. (a) The Secretary is also authorized under
6 such rules and regulations as he may prescribe to carry
7 out, or to make grants to Indian organizations to carry out,
8 off-reservation Indian family development programs, as
9 described in this section.

10 (b) Off-reservation Indian family development pro-
11 grams operated through grants with local Indian organiza-
12 tions, may include, but shall not be limited to, the following
13 features:

14 (1) a system for regulating, maintaining, and
15 supporting Indian foster and adoptive homes, including
16 a subsidy program under which Indian adoptive chil-
17 dren are provided the same support as Indian foster
18 children;

19 (2) the construction, operation, and maintenance
20 of family development centers providing the facilities
21 and services set forth in section 201 (d) ;

22 (3) family assistance, including homemakers and
23 home counselors, day care, after school care, and em-
24 ployment, recreational activities, and respite services;

25 (4) provision for counseling and treatment both of

1 Indian families which face disintegration and, where
2 appropriate, of Indian foster and adoptive children;
3 and

4 (5) guidance, representation, and advice to Indian
5 families involved in child placement proceedings before
6 nontribal public and private agencies.

7 SEC. 203. (a) In the establishment, operation, and
8 funding of Indian family development programs, both on or
9 off reservation, the Secretary may enter into agreements or
10 other cooperative arrangements with the Secretary of Health,
11 Education, and Welfare, and the latter Secretary is hereby
12 authorized for such purposes to use funds appropriated
13 for similar programs of the Department of Health, Educa-
14 tion, and Welfare.

15 (b) There are authorized to be appropriated \$26,000,-
16 000 during fiscal year 1979 and such sums thereafter as may
17 be necessary during each subsequent fiscal year in order
18 to carry out the purposes of this title.

19 TITLE III—RECORDKEEPING, INFORMATION
20 AVAILABILITY, AND TIMETABLES

21 SEC. 301. (a) The Secretary of the Interior is author-
22 ized and directed under such rules and regulations as he
23 may prescribe, to collect and maintain records in a single,
24 central location of all Indian child placements which are
25 effected after the date of this Act which records shall show as

1 to each such placement the name and tribal affiliation of the
2 child, the names and addresses of his natural parents and
3 the extended family member, if any, in whose care he may
4 have been left, the names and addresses of his adoptive par-
5 ents, the names and addresses of his natural siblings, and
6 the names and locations of any tribal or nontribal public
7 or private agency which possess files or information concern-
8 ing his placement. Such records shall not be open for inspec-
9 tion or copying pursuant to the Freedom of Information
10 Act (80 Stat. 381), as amended, but information concern-
11 ing a particular child placement shall be made available in
12 whole or in part, as necessary to an Indian child over the
13 age of eighteen for the purpose of identifying the court which
14 entered his final placement decree and furnishing such court
15 with the information specified in section 104 or to the adop-
16 tive parent or foster parent of an Indian child or to an Indian
17 tribe for the purpose of assisting in the enrollment of said
18 Indian child in the tribe of which he is eligible for member-
19 ship and for determining any rights or benefits associated
20 with such membership. The records collected by the Secre-
21 tary pursuant to this section shall be privileged and confi-
22 dential and shall be used only for the specific purposes set
23 forth in this Act.

24 (b) A copy of any order of any nontribal public or
25 private agency which effects the placement of an Indian child

1 within the coverage of this Act shall be filed with the Secre-
 2 tary of the Interior by mailing a certified copy of said order
 3 within ten days from the date such order is issued. In addi-
 4 tion, such public or private agency shall file with the Secre-
 5 tary of the Interior any further information which the Sec-
 6 retary may require by regulations in order to fulfill his
 7 recordkeeping functions under this Act.

8 SEC. 302. (a) The Secretary is authorized to perform
 9 any and all acts and to make rules and regulations as may
 10 be necessary and proper for the purpose of carrying out the
 11 provisions of this Act.

12 (b) (1) Within six months from the date of this Act,
 13 the Secretary shall consult with Indian tribes, Indian orga-
 14 nizations, and Indian interest agencies in the consideration
 15 and formation of rules and regulations to implement the pro-
 16 visions of this Act.

17 (2) Within seven months from the date of enactment
 18 of this Act, the Secretary shall present the proposed rules
 19 and regulations to the Select Committee on Indian Affairs
 20 of the United States Senate and the Committee on Interior
 21 and Insular Affairs of the United States House of Repre-
 22 sentatives, respectively.

23 (3) Within eight months from the date of enactment
 24 of this Act, the Secretary shall publish proposed rules and

1 regulations in the Federal Register for the purpose of re-
 2 ceiving comments from interested parties.

3 (4) Within ten months from the date of enactment of
 4 this Act, the Secretary shall promulgate rules and regula-
 5 tions to implement the provisions of this Act.

6 (c) The Secretary is authorized to revise and amend
 7 any rules and regulations promulgated pursuant to this sec-
 8 tion: *Provided*, That prior to any revision or amendment
 9 to such rules or regulations, the Secretary shall present the
 10 proposed revision or amendment to the Select Committee on
 11 Indian Affairs of the United States Senate and the Com-
 12 mittee on Interior and Insular Affairs of the United States
 13 House of Representatives, respectively, and shall, to the
 14 extent practicable, consult with the tribes, organizations, and
 15 agencies specified in subsection (b) (1) of this section, and
 16 shall publish any proposed revisions in the Federal Register
 17 not less than sixty days prior to the effective date of such
 18 rules and regulations in order to provide adequate notice to,
 19 and receive comments from, other interested parties.

20 TITLE IV—PLACEMENT PREVENTION STUDY

21 SEC. 401. (a) It is the sense of Congress that the
 22 absence of locally convenient day schools contributes to the
 23 breakup of Indian families and denies Indian children the
 24 equal protection of the law.

25 (b) The Secretary is authorized and directed to prepare

1 and to submit to the Select Committee on Indian Affairs of
 2 the United States Senate and the Committee on Interior
 3 and Insular Affairs and Committee on Education and Labor
 4 of the United States House of Representatives, respectively,
 5 within one year from the date of enactment of this Act, a
 6 plan, including a cost analysis statement, for the provision to
 7 Indian children of schools located near the students home.
 8 In developing this plan, the Secretary shall give priority to
 9 the need for educational facilities for children in the ele-
 10 mentary grades.

Passed the Senate November 4 (legislative day, Novem-
 ber 1), 1977.

Attest:

J. S. KIMMITT,
Secretary.

BACKGROUND ON THE INDIAN CHILD WELFARE ACT, H. R. 12533

S. 1214 was passed by the Senate on November 4, 1977, and was referred to the Committee on Interior and Insular Affairs on November 8th. The Subcommittee on Indian Affairs and Public Lands held hearings on the bill on February 9th and March 9th. On April 18, the Subcommittee marked-up the bill by adopting an amendment in the nature of a substitute. The substitute was introduced as a clean bill by Mr. Udall and Mr. Roncalio.

The basic purpose of this legislation is to stem the outflow of Indian children from Indian homes into non-Indian foster and adoptive homes and institutions by recognizing the legitimate jurisdiction of Indian tribes over their children; by establishing minimum Federal standards in State proceedings involving Indian children; and by establishing preferences for the placement of Indian children in Indian foster or adoptive homes or institutions.

The need for this kind of remedial legislation has gradually emerged over the past decade. Surveys of states with large Indian populations conducted by the Association of American Indian Affairs in 1969 and in 1974 indicated that approximately 25-35 per cent of all Indian children are separated from their families and placed in foster and adoptive homes, or institutions. The federal boarding-school and dormitory programs have long been repudiated for their splintering effect on Indian families. The Bureau of Indian Affairs indicated in their 1971 school census that 34,538 children live in its institutional facilities rather than at home. This represents more than 17 per cent of the Indian school age population of federally recognized tribes and

school age population of federally recognized tribes and 60 per cent of the children enrolled in BIA schools. On the Navajo Reservation, about 20,000 children or 90 percent of the BIA school population live at boarding schools.

Recently, much attention has been drawn nation-wide to what is commonly referred to as the "Child welfare crisis" (educational under achievement, alcohol and drug abuse, and battered children). The child welfare crisis for Indian children primarily centers on the disparity in placement rates for Indian children and for non-Indian children. For example, in Minnesota, one in every eight Indian children under eighteen years of age is living in an adoptive home, and Indian children are placed in foster care or in adoptive homes at a per-capita rate five times greater than non-Indian children; in Montana, the ratio of Indian foster care placement is at least 13 times greater; in South Dakota, 40 per cent of all adoptions made by the state's Department of Public Welfare since 1967-68 are of Indian children, yet Indians make up only 7 per cent of the juvenile population; in Washington, the Indian adoption rate is 19 times greater and the foster care rate is ten times greater. The risk run by Indian children of being separated from their parents is nearly 1600 per cent greater than it is for non-Indian children in the state of Wisconsin. These figures document

a hazardous situation for Indian families; Indian children live in fear of losing their families, and the reverse is also true, Indian parents are continuously threatened by the possible loss of their children.

As early as 1973, the Senate Committee on Interior, Subcommittee on Indian Affairs, began to receive reports that an alarming high percentage of Indian children were being separated from their natural parents permanently through the actions of nontribal government agencies and, in most cases, placed with non-Indian families. The reports indicated that frequently the placements became permanent although the conditions that led to the need for placement away from home often were either temporary or remedial in nature. Also, litigation reports showed that many permanent placements occurred in situations where the Indian people involved did not understand the nature of the legal proceedings through which they relinquished their rights to their child.

In 1974, the Senate Subcommittee on Indian Affairs held oversight hearings on Indian child placement, and the testimony received strongly supported the earlier reports and pointed out that serious emotional problems often occur as a result of placing Indian children in homes which do not reflect their special cultural needs.

The American Indian Policy Review Commission in its Task Force IV report supports the comments made by child welfare experts and Indian people at the 1974 hearings. The Task Force made two primary recommendations: (a) that total jurisdiction over child welfare matters involving children from reservation areas be left firmly in the hands of the tribe when such tribe expresses a desire to exercise such jurisdiction, and (b) that tribes be provided with adequate financial assistance to allow them to establish Indian controlled family development programs at the local level.

The American Indian Policy Review Commission's final report stresses the right of a tribe to notice of and to have an opportunity to intervene in any nontribal placement proceeding involving one of its juvenile members.

Public hearings were held on August 4, 1977, by the Senate Select Committee on Indian Affairs and the testimony received clearly documented that the conditions which had been brought to light in 1969 and 1974 still were present. Federal, State and local agencies were criticized for their failure to develop understanding and sensitivity to the cultural needs of Indian children, and for their abysmally poor record for returning Indian children to their natural parents.

The hearings did point to the fact, however, that where the tribes had obtained funds to run child placement and family development programs, such programs had produced a significant drop in the number of children placed away from home. The Quinault Nation in Washington reported a decrease of as much as 40 % of the number of children in placement since the inception of their program.

The Subcommittee feels that there is a definite need for special legislation in this area because of the extreme poverty which exists on reservation areas and among Indian families near the reservations and because of the unique cultural differences. Assimilation has been tried, but the continued educational under achievement of Indian children contradicts the validity of that approach. Indian tribes have indicated a strong desire and ability to plan for and operate their own directly funded programs in a number of areas including child welfare.

H. R. 12533 contains four titles. Title I establishes standards for child placement proceedings which will insure that Indian parents will be accorded a fair hearing when a child placement is at issue. It provides that when foster or adoptive placement becomes necessary, preference should be given to the child's extended family first, and secondarily to Indian homes and institutions. It also provides that

the courts of the United States as well as state and tribal courts give full faith and credit to any tribal court order relating to the custody of a child within their jurisdiction.

Title II authorizes the Secretary of the Interior to make grants to Indian tribes and organizations for the purpose of establishing family development programs on and off the reservations. Such programs could include the hiring and training of culturally sensitive social workers, providing counseling and legal representation to Indian children and their families in a placement proceeding, and the licensing of culturally aware Indian and non-Indian foster homes.

Title III directs the Secretary to maintain records of all Indian child placements from the enactment of this act forward for essentially two purposes: (a) to provide a data base for remedial services, and (b) to be able to provide Indian children in placement with the necessary information upon reaching age 18 to enable them to exercise their tribal membership rights. Title IV requires the Secretary to conduct a study of the impact that the absence of locally convenient day school facilities has on Indian children and families, and directs the Secretary to submit to Congress a plan to remedy the situation.

SECTION-BY-SECTION ANALYSIS OF H. R. 12533

Sec. 1 provides that the Act may be cited as the "Indian Child Welfare Act of 1978".

Sec. 2 contains congressional findings relative to Indian Child Welfare.

Sec. 3 is a declaration of Congressional policy with respect to Indian child welfare.

Sec. 4 contains definitions of various terms used in the bill.

TITLE I

Section 101 (a) provides that an Indian tribe shall have exclusive jurisdiction over a child custody matter involving an Indian child residing or domiciled on an Indian reservation.

Subsection (b) provides that a State court having jurisdiction over an Indian child placement proceeding shall transfer such proceeding to the jurisdiction of the appropriate Indian tribe upon a petition from the parent, Indian custodian or tribe.

Subsection (c) provides that the domicile of an Indian child shall be deemed that of the parent or Indian custodian.

Subsection (d) provides that an Indian custodian and an Indian tribe shall have a right to intervene in any State court proceeding involving an Indian child.

Subsection (e) provides that States shall give full faith and credit to actions of Indian tribes with respect to child placement proceedings.

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Section 102 (a) provides that in any involuntary proceeding in State court for the placement of an Indian child, the party seeking placement must give written notice to the parent or Indian custodian or the appropriate Indian tribe if their location is known. If not, then the notice must be served upon the Secretary of the Interior. No action may take place until 30 days after receipt of such notice.

Subsection (b) provides that an indigent parent or Indian custodian of an Indian child shall have a right to court appointed counsel in a placement proceeding. The State court may also appoint counsel for the child, in its discretion. If State law does not make provision for counsel, the Secretary is authorized to pay reasonable fees and expenses of such counsel.

Subsection (c) authorizes any party to a child placement proceeding to examine all documents filed with the court.

Subsection (d) requires a party seeking placement, in a State court, of an Indian child to show what active efforts have been made to provide such remedial services as are available to prevent the breakup of the Indian family.

Subsection (e) provides that no placement of an Indian child in State court shall be ordered absent a showing, beyond a reasonable doubt, that continued custody by the parent or Indian custodian will result in serious emotional or physical damage to the child.

PAGE 3

Section 103 (a) provides that any consent to the placement of an Indian child must be executed in writing before the judge of a court of competent jurisdiction and it must be shown that the consenting parent or Indian custodian fully understood the consequence and that, if they did not understand English, it was translated into a language they could understand.

Subsection (b) provides that consent by a parent or Indian custodian to a temporary or permanent placement of an Indian child short of adoption can be withdrawn at any time and that the child must be returned to the parent.

Subsection (c) provides that consent to an adoptive placement can be withdrawn at any time prior to entry of a final decree and, after entry of a final decree, can be withdrawn upon a showing of fraud or duress.

Subsection (d) provides that nothing in this section shall affect the right of a parent who has not consented to any placement.

Section 104 provides that an aggrieved party can petition a competent court to set aside a placement made in violation of the provisions of sections 102 and 103. It further provides that no adoption which has been effective for two or more years can be invalidated under this section.

Section 105 (a) provides that, in an adoptive placement of an Indian child, a preference shall be given to a member of his family, other members of his tribe, and other Indian families.

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Subsection (b) provides that in a non-adoptive placement of an Indian child, a preference shall be given to placement with Indian families or homes or institutions licensed or approved by Indian tribes or organizations.

Subsection (c) permits an Indian tribe to establish a different order of preference and that, where appropriate the preference of the child or parent shall be considered.

Subsection (d) provides that, in applying the preference requirements, the placing agency will give effect to the social and cultural standards prevailing in the Indian community.

Subsection (e) provides that the States shall maintain a record of each placement which shows efforts made to comply with the preference requirements of this section.

Section 106 (a) provides that, when there is a failed placement for adoption of an Indian child, the biological parent or prior Indian custodian shall have a right to petition for return of the child.

Subsection (b) provides that where an Indian child is being removed from one foster situation to another foster or adoptive placement, the provisions of this act shall apply to such placement, unless the child is being returned to the parent or Indian custodian.

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Section 107 provides that an Indian individual, 18 years old or more, who was the subject to an adoptive placement, may apply to the court entering his decree for such information as is necessary to permit him to enroll with his tribe.

Section 108 authorizes, and provides procedures for, the retrocession of jurisdiction back to Indian tribes, who became subject to State jurisdiction under Public Law 83-280 or any other Federal law, with respect to child placement proceedings.

Section 109 authorizes mutual compacts or agreements between States and Indian tribes with respect to jurisdiction over Indian child custody proceedings and provides for revocation of such agreements.

Section 110 provides comprehensive standards of notice and recordkeeping for public or private agencies removing Indian children from their homes, with the consent of the parents or Indian custodians, for purposes of education off the reservation.

TITLE II

Section 201 (a) authorizes the Secretary of the Interior to make grants to Indian tribes to establish and operate Indian child and family service programs on or near Indian reservations and sets out the various kinds of services and benefits which would be included in such programs.

Subsection (b) authorizes funds appropriated for such programs to be used as non-Federal matching share for funds made available under Title IV-B and XX of the Social Security Act and other similar Federal programs. It further provides that assistance

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under this Act shall not prevent assistance under other Federal programs.

Subsection (c) authorizes the tribes to construct and maintain facilities for assistance to Indian families and for temporary custody of Indian children.

Section 202 (a) and (b) authorizes the Secretary to make similar grants to Indian organizations to establish and operate off-reservation Indian family and child service programs.

Section 203 (a) authorizes the Secretary to enter into cooperative agreements with the Secretary of HEW with respect to funding and operation of Indian child and family service programs.

Subsection (b) authorizes the appropriation of \$26,000,000 for FY 1980 and such sums as may be necessary thereafter for purposes of this title.

Section 204 defines the term "Indian" for purposes of sections 202 and 203 as it is defined in section 4 (c) of the Indian Health Care Improvement Act.

TITLE III

Section 301 (a) directs the Secretary to collect and maintain comprehensive records of all Indian child placements occurring after the date of enactment and to make such information available to an adopted Indian child over the age of eighteen or to adoptive or foster parents or to Indian tribes for purposes of enrolling

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the child in his tribe and otherwise taking advantage of the rights the child may have as an Indian.

Subsection (b) requires that any court document approving the placement of an Indian child shall be filed with the Secretary and any other court or agency record the Secretary may require to fulfill his record keeping functions under this Act.

Section 302 establishes timetables for the drafting, promulgation and amendment of rules and regulations of the Secretary in implementing this Act.

TITLE IV

Section 401 requires the Secretary to prepare and submit a report to the Congress with a plan for providing to Indian children schools located near the student's homes so they will not have to be placed in Federal boarding schools.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN 6 - 1978

Honorable Morris K. Udall
Chairman, Committee on Interior and
Insular Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This Department would like to make its views known on H.R. 12533, "The Indian Child Welfare Act of 1978," and urges the Committee to make the recommended changes during mark-up of the bill. We understand the Department of Justice has communicated its concerns with the bill to the Committee, and we urge the Committee to amend the bill to address those concerns.

If H.R. 12533 is amended as detailed herein and as recommended by the Department of Justice's letter of May 23, 1978, we would recommend that the bill be enacted.

Title I of H.R. 12533 would establish nationwide procedures for the handling of Indian child placements. The bill would vest in tribal courts their already acknowledged right to exclusive jurisdiction over Indian child placements within their reservations. It would also provide for transfer of such a proceeding from a State court to a tribal court if the parent or Indian custodian so petitions or if the Indian tribe so petitions, and if neither of the parents nor the custodian objects.

Requirements dealing with notice to tribes and parents and consent to child placements are also a major element of the bill. Testimony on the problems with present Indian child placement proceedings repeatedly pointed out the lack of informed consent on the part of many Indian parents who have lost their children.

Title I would also impose on state courts evidentiary standards which would have to be met before an Indian child could be ordered removed from the custody of his parents or Indian custodian. Court-appointed counsel would be available to the parent or custodian upon a finding of indigency by the court.

State courts would also be required, under the provisions of H.R. 12533, to apply preference standards set forth in section 105 in the placing of an Indian child. These preferences would strengthen the chances of the Indian child staying within the Indian community and growing up with a consistent set of cultural values.

Title II of H.R. 12533, entitled "Indian Child and Family Programs," would authorize the Secretary of the Interior to make grants to Indian tribes and organizations for the establishment of Indian family service programs both on and off the reservation. Section 204 would authorize \$26,000,000 for that purpose.

Title III of H.R. 12533, entitled "Recordkeeping, Information Availability, and Timetables," would direct the Secretary of the Interior to maintain records, in a single central location, of all Indian child placements affected by the Act. Those records would not be open, but information from them could be made available to an Indian child over age 18, to his adoptive or foster parent, or to an Indian tribe, for the purpose of assisting in the enrollment of that child in an Indian tribe.

Title IV of H.R. 12533, entitled "Placement Prevention Study," would direct the Secretary of the Interior to prepare and submit to Congress a plan, including a cost analysis statement, for the provision to Indian children of schools located near their homes.

Although we support the concept of promoting the welfare of Indian children, we urge that the bill be amended in the following ways.

Section 4(9) defines the term "placement". This definition is crucial to the carrying out of the provisions of Title I. We believe that custody proceedings held pursuant to a divorce decree and delinquency proceedings where the act committed would be a crime if committed by an adult should be excepted from the definition of the term "placement". We believe that the protections provided by this Act are not needed in proceedings between parents. We also believe that the standards and preferences have no relevance in the context of a delinquency proceeding.

Section 101(a) would grant to Indian tribes exclusive jurisdiction over Indian child placement proceedings. We believe that section 101(a) should be amended to make explicit that an Indian tribe has exclusive jurisdiction only if the Indian child is residing on the reservation with a parent or custodian who has legal custody. The bill does not address the situation where two parental views are involved. Therefore, the definition of domicile is inadequate and the use of the word "parent" as defined does not articulate the responsibilities of the courts to both parents.

We believe that reservations located in states subject to P.L. 83-280 should be specifically excluded from section 101(a), since the provisions of section 108, regarding retrocession of jurisdiction, deal with the reassumption of tribal jurisdiction in those states.

Section 101(b) should be amended to prohibit clearly the transfer of a child placement proceeding to a tribal court when any parent or child over the age of 12 objects to the transfer.

Section 101(e), regarding full faith and credit to tribal orders, should be amended to make clear that the full faith and credit intended is that which states presently give to other states.

Section 102(a) would provide that no placement hearing be held until at least thirty days after the parent and the tribe receive notice. We believe that in many cases thirty days is too long to delay the commencement of such a proceeding. We suggest that the section be amended to allow the proceeding to begin ten days after such notice with a provision allowing the tribe or parent to request up to twenty additional days to prepare a case. This would allow cases where the parents or tribe do not wish a full thirty days notice to be adjudicated quickly, while still affording time to the parent or tribe who needs that time to prepare a case. We also suggest that the section be amended to require the Secretary to make a good faith effort to locate the parent as quickly as possible and to provide for situations in which the parent or Indian custodian cannot be located.

We also believe that there is a need for specific emergency removal provisions in H.R. 12533. A section should be added allowing the removal of a child from the home without a court order when the physical or emotional well-being of the child is seriously and immediately threatened. That removal should not exceed 72 hours without an order from a court of competent jurisdiction.

Section 102(b) would provide the parent or Indian custodian of an Indian child the right to court-appointed counsel if the court determines that he or she is indigent.

We are opposed to the enactment of this section. We do not believe that there has been a significant demonstration of need for such a provision to justify the financial burden such a requirement would be to both the States and the Federal Government.

Section 102(c) would allow all parties to a placement to examine all documents and files upon which any decision with respect to that placement may be based. This provision conflicts with the Federal Child Abuse and Neglect Treatment Act, P.L. 93-247, which provides confidentiality for certain records in child abuse and neglect cases. We believe that such a broad opening of records would lead to less reporting of child abuse and neglect. However, we do recognize the right of the parent to confront and be given an opportunity to refute any evidence which the court may use in deciding the outcome of a child placement proceeding. We recommend that the Indian Child Welfare Act conform with the provisions of P.L. 93-247.

Section 102(e) of H.R. 12533 would require the state court to find beyond a reasonable doubt, before ordering the removal of the child from the home, that continued custody on the part of the parent or custodian will result in serious emotional or physical damage to the child. We believe that the burden of proof is too high. We would support the language found in section 101(b) of the Senate-passed S. 1214, which would impose a burden of clear and convincing evidence and would set down certain social conditions which could not be considered by the court as prima facie evidence of neglect or abuse. We also believe that the language "will result" in serious damage to the child should be amended to read "is likely to result" in such damage. It is almost impossible to prove at such a high burden of proof that an act will definitely happen.

Section 105 of H.R. 12533 would impose on State courts certain preferences in placing an Indian child. Subsection (c) would substitute the preference list of the Indian child's tribe where the tribe has established a different order of preference by resolution.

Language should be included in that subsection which would require that resolution to be published in the Federal Register and later included in the Code of Federal Regulations. This would allow the State court easy access to the preferences of the various tribes.

It is also unclear what the last sentence in subsection (c) means in allowing the preference of the Indian child or parent to be considered "where appropriate". We believe that the preference of the child and the parent should be given due consideration by the court regardless of whether that court is following the preferences set forth in section 105(a) or 105(b), or whether it is following a preference list established by an Indian tribe. Therefore, we recommend that a separate subsection be added to section 105 stating that the preferences of the Indian child and of the parent be given due consideration by the court whenever an Indian child is being placed.

Section 106 deals with failed placements and requires that, whenever an Indian child is removed from a foster home or institution in which the child was placed for the purpose of further placement, such removal shall be considered a placement for purposes of the Act. We see no reason for requiring a full proceeding every time a child is moved from one form of foster care to another. We do, however, recognize the need for notification of the parents and the tribe of such move and for applying the preferences set forth in section 105. Therefore, we recommend that subsection (b) of section 106 be amended to require the notice and preference provisions to apply when a child is moved from one form of foster care to another and to require the removal to be considered as a new placement only in the case where termination of parental rights is at issue.

Section 107 deals with the right of an Indian who has reached age 18 and who has been the subject of a placement to learn of his or her tribal affiliation. We believe that rather than apply to the court for such information, the individual involved should apply to the Secretary of the Interior. Under the provisions of Title III, the Secretary would maintain a central file with the name and tribal affiliation of each child subject to the provisions of the Act. Therefore, the Secretary would be more likely than the State court to have the information needed to protect any rights of the individual involved which may flow from his or her tribal affiliation.

Finally, with respect to Title I, we believe that a section should be added which would state that the provisions of the Act should apply only with respect to placement proceedings which begin six months after the date of the enactment of the Act. This would allow states some time to familiarize themselves with the provisions of the Act and would thus avoid the chance of having large numbers of placements invalidated because of failure to follow the procedures of the Act.

Such a section should also state that the intent of the Act is not the pre-emption by the Federal government of the whole area of Indian child welfare and placement. In any case where a state has laws which are more protective than the requirements of this Act, e.g., with regard to notice and enforcement, those laws should apply.

We believe that many of the authorities granted by Title II of the bill are unnecessary because they duplicate authorities in present law, and therefore, we recommend the deletion of Title II.

We find especially objectionable in Title II the following:

- the authorization for an unlimited subsidy program for Indian adoptive children. We believe that any such program should be limited to hard-to-place children or children who are or would be eligible for foster care support from the Bureau of Indian Affairs. We also believe that the amount of any such support would have to be limited to the prevalent state foster care rate for maintenance and medical needs.
- the authorization for grants to establish and operate off-reservation Indian child and family service programs.
- the new separate authorization of \$26,000,000 in section 203(b) of Title II.
- the provisions of section 201(c) which would authorize every Indian tribe to construct, operate, and maintain family service facilities regardless of the size of the tribe or the availability of existing services and facilities.
- the authorization for the use of Federal funds appropriated under Title II to be used as the non-Federal matching share in connection with other Federal funds.

However, we believe that the last sentence of section 201(b), providing that licensing or approval by an Indian tribe should be deemed equivalent to that done by a state, should remain in the bill under Title I as a separate section.

We have no objection to section 301 of Title III of H.R. 12533. We believe that requiring the Secretary to maintain a central file on Indian child placements will better enable the Secretary to carry out his trust responsibility, especially when judgment funds are to be distributed.

However, we object to the provisions of section 302(c), which would require the Secretary to present any proposed revision or amendment of rules and regulations promulgated under that section to both Houses of Congress. Any such proposed revision or amendment would be published in the Federal Register and we believe that placing this additional responsibility on the Secretary is both burdensome and unnecessary.

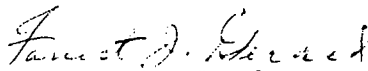
We believe that section 401 of Title IV should be amended to read as follows:

Sec. 401. (a) It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) The Secretary is authorized and directed to prepare and submit to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within one year from the date of this Act, a report on the feasibility of providing Indian children with schools located near their homes. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program, and that enactment of the House subcommittee's present version of H.R. 12533 would not be consistent with the Administration's objectives.

Sincerely,


 Assistant Secretary
 Forrest J. Gerard
 SECRETARY

ASSISTANT ATTORNEY GENERAL
 LEGISLATIVE AFFAIRS

Department of Justice
 Washington, D.C. 20530

MAY 23 1978

MAY 23 1978

Honorable Morris K. Udall
 Chairman, Committee on Interior
 and Insular Affairs
 House of Representatives
 Washington, D.C. 20515

Dear Mr. Chairman:

We would like to take this opportunity to comment on the House Subcommittee on Indian Affairs version of S.1214, the "Indian Child Welfare Act of 1978".

As you know, the Department presented at some length its views on one constitutional issue raised by S.1214 as it passed the Senate in a letter to you dated February 9, 1978. 1/ Briefly, that constitutional issue concerned the fact that S.1214 would have deprived parents of Indian children as defined by that bill of access to State courts for the adjudication of child custody and related matters based, at bottom, on the racial characteristics of the Indian child. We express in that letter our belief that such racial classification was suspect under the Fifth Amendment and that we saw no compelling reason which might justify its use in these circumstances. This problem has been, for the most part, eliminated in the Subcommittee draft, which defines "Indian child" as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe."

We are still concerned, however, that exclusive tribal jurisdiction based on the "(b)" portion of the definition of

1/ The views expressed in that letter were subsequently presented to the Subcommittee on Indian Affairs and Public Lands of your House committee in testimony by this Department on March 9, 1978.

"Indian child" may constitute racial discrimination. So long as a parent who is a tribal member has legal custody of a child who is merely eligible for membership at the time of a proceeding, no constitutional problem arises. Where, however, legal custody of a child who is merely eligible for membership is lodged exclusively with non-tribal members, exclusive tribal jurisdiction can not be justified because no one directly affected by the adjudication is an actual tribal member. We do not think that the blood connection between the child and a biological but non-custodial parent is a sufficient basis upon which to deny the present parents and the child access to State courts. This problem could be resolved either by limiting the definition of Indian child to children who are actually tribal members or by modifying the "(b)" portion to read, "eligible for membership in an Indian tribe and is in the custody of a parent who is a member of an Indian tribe."

A second constitutional question may be raised by §101(e) of the House draft. That section could, in our view, be read to require federal, State and other courts to give "full faith and credit" to the "public acts, records and judicial proceedings of any Indian tribe applicable to Indian child placements" even though such proceedings might not be "final" under the terms of this bill itself. So read, the provision might well raise constitutional questions under several Supreme Court decisions. E.g., Halvey v. Halvey, 330 U.S. 610 (1947). We think that problem can be resolved by amending that provision to make clear that the full faith and credit to be given to tribal court orders is no greater than the full faith and credit one State is required to give to the court orders of a sister State.

A third and more serious constitutional question is, we think, raised by §102 of the House draft. That section, taken together with §§103 and 104, deals generally with the handling of custody proceedings involving Indian children by State courts. Section 102 establishes a fairly detailed set of procedures and substantive standards which State courts would be required to follow in adjudicating the placement of an Indian child as defined by §4(4) of the House draft.

As we understand §102, it would, for example, impose these detailed procedures on a New York State court sitting in Manhattan where that court was adjudicating the custody of an Indian child and even though the procedures otherwise applicable in this State-court proceeding were constitutionally sufficient. While we think that Congress might impose such

requirements on State courts exercising jurisdiction over reservation Indians pursuant to Public Law No. 83-280, we are not convinced that Congress' power to control the incidents of such litigation involving non-reservation Indian children and parents pursuant to the Indian Commerce Clause is sufficient to override the significant State interest in regulating the procedure to be followed by its courts in exercising State jurisdiction over what is a traditionally State matter. It seems to us that the federal interest in the off-reservation context is so attenuated that the Tenth Amendment and general principles of federalism preclude the wholesale invasion of State power contemplated by §102. See Hart, The Relations Between State and Federal Law, 54 Colum. L. Rev. 489, 508 (1954). 2/

Finally, we think that §101(b) of the House draft should be revised to permit any parent or custodian of an Indian child or the child himself, if found competent by the State court, to object to transfer of a placement proceeding to a tribal court. Although the balancing of interests between parents, custodian, Indian children and tribes is not an easy one, it is our view that the constitutional power of Congress to force any of the persons described above who are not in fact tribal members to have such matters heard before tribal courts is questionable under our analysis of §102 above and the views discussed above in regard to §4(4).

II. Non-Constitutional Problems

There are, in addition, a number of drafting deficiencies in the House draft. First, we are concerned about some language used in §§2 and 3 regarding "the Federal responsibility for the care of the Indian people" and the "special responsibilities and legal obligations to American Indian people." The use of such language has been relied on by at least one court

2/ We note that we are aware of no Congressional findings which would indicate the inadequacy of existing State-court procedures utilized in these custody cases, even assuming that such findings would strengthen Congress' hand in this particular matter. As a policy matter, it is clear to us that the views of the States should be solicited before Congress attempted to override State power in this fashion, a position this Department took in testimony before the Senate Select Committee on Indian Affairs on S.J. Res. 102 on February 27, 1978.

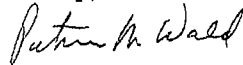
to hold the federal government responsible for the financial support of Indians even though Congress has not appropriated any money for such purposes. White v. Califano, 437 F. Supp. 543 (D.S.D. 1977). We fear the language in this bill could be used by a court to hold the United States liable for the financial support of Indian families far in excess of the provisions of Title II of the bill and the apparent intent of the drafters.

Second, §101(a) of the House draft, if read literally, would appear to displace any existing State court jurisdiction over these matters based on Public Law No. 83-280. We doubt that is the intent of the draft because, *inter alia*, there may not be in existence tribal courts to assume such State-court jurisdiction as would apparently be obliterated by this provision.

Third, the apparent intent of §4(10) is, in effect, to reestablish the diminished or disestablished boundaries of Indian reservations for the limited purpose of tribal jurisdiction over Indian child placements. We think that such reestablishment, in order to avoid potential constitutional problems, should be done in a straightforward manner after the reservations potentially affected are identified and Congress has taken into account both the impact on the residents of the area to be affected and any other factors Congress may deem appropriate.

The Office of Management and Budget has advised that there is no objection to the presentation of this letter and that enactment of the House Subcommittee on Indian Affairs version of S.1214 would not be consistent with the Administration's objectives.

Sincerely,



Patricia M. Wald
Assistant Attorney General

Mr. RONCALIO. This bill provides for the placement of Indian children in appropriate foster and adoptive homes when placement becomes necessary and insures that the person making such determination is either indigenous to the Indian community or has respect and understanding of the values of the Indian community of the child in question.

I want to commend my colleague, Jim Abourezk, for his work on this bill. I hope I can work with him when we are both out of the Congress next year, too.

We have counsel with us from the Senate committee, and the witness list is long.

We will begin, without further ado, by calling Mr. Rick Lavis.

[Prepared statement of Hon. Rick Lavis may be found in the appendix.]

STATEMENT OF RICK LAVIS, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY TED KRENZKE, DIRECTOR, OFFICE OF INDIAN SERVICES, BUREAU OF INDIAN AFFAIRS; RAY BUTLER, DIRECTOR, DIVISION OF SOCIAL SERVICES, BUREAU OF INDIAN AFFAIRS; CLAIRE JERDONE, CHILD WELFARE SPECIALIST, BUREAU OF INDIAN AFFAIRS; AND DAVE ETHRIDGE, ATTORNEY, SOLICITOR'S OFFICE

Mr. LAVIS. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate the opportunity to appear before the subcommittee today to present the Interior Department's testimony on S. 1214, "The Indian Child Welfare Act of 1977."

We agree that too often Indian children have been removed from their parents and placed in non-Indian homes and institutions. We also agree that the separation of an Indian child from his or her family can cause that child to lose his or her identity as an Indian, and to lose a sense of self-esteem which can, in turn lead to the high rates among Indian children of alcoholism, drug abuse, and suicide.

However, we do not believe that S. 1214, in its present form, is the vehicle through which the Congress should seek to remedy this situation. Therefore, the administration opposes enactment of S. 1214 as passed by the Senate and we ask the committee to defer consideration of the bill until such time as we have completed preparation of substitute legislation. We have already given the issue considerable thought, and we hope to have our substitute ready for submission by early March.

Title I of S. 1214 would establish child placement jurisdictional lines and standards. Although title I incorporates many child placement safeguard provisions that we believe are necessary, the administrative problems that would arise were that title in its present form to be enacted, do not allow us to support it. If this bill is enacted, before any State court judge can proceed with a child placement, a determination must be made as to whether the child before the court is an Indian. The bill contains no definition of the term "Indian child."

Mr. RONCALIO. Is anybody in the audience not able to hear? We will turn the PA system up.

Mr. CONKLIN. The witness does not need to turn it on.

Mr. RONCALIO. What does the witness need to do, just talk?

Mr. CONKLIN. Yes, Mr. Chairman.

Mr. LAVIS. We are assuming, however, that an Indian child is a person under 18 who is an Indian, rather than a child of an Indian.

To determine whether the child is an Indian, the judge must determine whether the child is a member of an Indian tribe, which we concede is not overly burdensome on the court, or whether the child is eligible for membership in an Indian tribe. The standards for membership in Indian tribes vary from tribe to tribe. Even if the court familiarizes itself with all these standards, it will also be necessary to examine the blood lines of the child.

Title I also is unclear in its use of the term "child placement." A child placement, according to the definition in section 4(h) includes any private action under which the parental rights of the parents or the custodial rights of an extended family member are impaired. Does this include the case where the mother of an Indian child freely asks a relative to take over the care of her child? Should not these be private actions not subject to invasion by outside parties? The definition of the term child placement remains unclear and the difficulty it has caused in discussion of this bill would be multiplied in the enforcement of the bill.

Another serious problem we have with title I of the bill is that the interest of the tribe seems to be paramount, followed by the interest of the biological parents of the Indian child. Nowhere is the best interest of the child used as a standard. Although the tribe is allowed to intervene in placements of children off the reservation as an interested party, nowhere is the child afforded the opportunity to be represented by counsel or even to be consulted as to where he or she wishes to be placed.

Certainly an adolescent should have a right to have his or her preference seriously considered by the court, especially in the case where the child is not living on the reservation.

The amount of notice that must be given before a child can be removed from the home also does not reflect the best interest of the child. Unless a determination is made that the "physical or emotional well-being of the child is immediately and seriously threatened," the parents must be given 30 days' notice before a child can be removed. There are no provisions in the bill allowing this notice to be waived by the parents. Thus, even in the case where the parent consents to the placement, and perhaps even welcomes it, the proceeding cannot begin until 30 days after notification of the parent.

We also recognize the potential this bill has of seriously invading the rights to privacy in the case of the parent of an off-reservation child who is the subject of a child placement. Under the provisions of section 102(c), if the State court determines that an Indian child living off the reservation has significant contacts with a tribe, that tribe must be notified of the proceeding, allowed to intervene as an interested party, and in some cases the proceeding must be transferred to the tribal court of that tribe.

Thus, even in the case of an unwed Indian mother living in an urban setting far from the reservation who does not wish the members of the tribe to know she has had a child, the interests of the individual are overlooked in deference to the interests of the tribe.

We are troubled by a requirement that without regard to the consent of the parents the child of one who has chosen a life away from the reservation must return to the reservation for a placement proceeding.

Although these are just a few of many problems we believe the enactment of this bill would create, we do not mean to imply by this testimony that the special problems of Indian child welfare should be ignored. We simply believe that the bill, as it is written, is cumbersome, confusing, and often fails to take into consideration the best interests of the Indian child.

As regards title II of the bill, we believe that it also needs to be rewritten. The Secretary of the Interior already possesses many of the authorities contained in title II. Our principal concern with the title, however, is that the Secretary of the Interior would be granted certain authorities that are now vested in the Secretary of Health, Education, and Welfare. We are unclear which Department would be required to provide what services; and we would be hesitant, without an increase in manpower and money, to assume responsibilities for providing services which are now being provided by the Department of Health, Education, and Welfare.

We have no objections to titles III and IV of the bill. We would suggest, however, that title III include the requirement that the Secretary of the Interior review the records compiled when preparing per capita judgment fund distribution roles to determine whether any of the placed children are entitled to share.

As I stated earlier, the administration proposes to offer substitute language for the bill. We recognize the urgency of addressing the problems of Indian child welfare in a timely manner. Therefore, we hope to present our substitute to the committee by early March.

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

Mr. RONCALIO. I have no questions.

Mr. Runnels?

Mr. RUNNELS. No questions, Mr. Chairman.

Mr. RONCALIO. Do any of the staff have questions?

[No response.]

Mr. RONCALIO. Thank you very much.

Mr. LAVIS. Thank you, Mr. Chairman.

Mr. RONCALIO. You realize that we are anxious to have you give us a draft on that, and we hope it will not be later than you say it will be.

Mr. LAVIS. Yes, sir.

Mr. RONCALIO. The next witness is Dr. Blandina Cardenas.

We are happy to have you here this morning.

Dr. Cardenas, I notice the statement is fairly long. If you want to read it, that is all right with us, but if you want us to insert it in the record and then just highlight it, you are welcome to do so.

[Prepared statement of Hon. Blandina Cardenas may be found in the appendix.]

STATEMENT OF DR. BLANDINA CARDENAS, COMMISSIONER FOR THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES; ACCOMPANIED BY JIM PARHAM, DEPUTY ASSISTANT SECRETARY, OFFICE OF HUMAN DEVELOPMENT SERVICES; AND FRANK FERRO, CHIEF, CHILDREN'S BUREAU, ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Dr. CARDENAS. We will be happy to have it put in the record.

Mr. RONCALIO. You have Mr. Parham and Mr. Frank Ferro with you?

Dr. CARDENAS. Yes.

Mr. RONCALIO. Thank you.

Dr. CARDENAS. Chairman Roncalio and members of the subcommittee: My name is Blandina Cardenas, and I am responsible for the Administration for Children, Youth and Families in the Department of Health, Education, and Welfare.

I am particularly pleased to participate in your hearing this morning, because it touches on a subject about which I have strong feelings: namely, the ability of our varied child welfare services to meet the needs of minority children.

I know that much time and careful consideration has gone into the preparation of S. 1214. I am particularly grateful for the cooperative spirit in which staff of the relevant subcommittees have worked with individuals at HEW. It has convinced me that however we might differ on details, we share the same goals. I am also appreciative of the fact that the Department has been invited to comment, even though HEW would not have primary responsibility for administering the provisions of this bill.

The legislation that is the subject of this morning's hearing has caused us to do some hard thinking about our role in relation to the child welfare services available for Indian children and their families. I wish I could tell you that we have definitive answers so what that role should be. What I have to say instead is that we find ourselves in agreement about the goals and impressed by the thoughtful deliberation that has gone into S. 1214, but we have some questions about the approach represented by S. 1214 and are taking a close look at how we could make existing HEW programs more responsive to Indians.

I realize that your hearings this morning reflect the subcommittee's willingness to hear all sides, and I would hope that we could continue to work together to sort out these very difficult issues.

During the Senate Select Committee's hearings last August 4, the Department testified that provisions of the bill which would provide funds for Indian children in need of child welfare services and establish certain procedures in Indian child welfare proceedings before State courts and tribal courts are, in fact, goals worth attaining—especially in light of the detailed findings of a recent study conducted by authority of HEW on the state of Indian child welfare.

However, we were of the opinion at the time that the administration's child welfare initiative, embodied in S. 1928, would be a more appropriate legislative vehicle for addressing the specific needs of

Indian children. While the Department feels that more needs to be done to make child welfare services more adequately address the needs of Indian children, we continue to have great concern about the provisions contained in S. 1214.

The Department's previous testimony pointed out our commitment to determine the best way to optimize the impact of HEW programs for Indian people. That commitment continues to be firm.

The Department promised the members of the Select Committee on Indian Affairs that we would work to secure changes that would make H.R. 7200 more responsive to the special needs of Indian children. We have worked, with the assistance of the committee's very able staff, and fulfilled our promise to help secure meaningful changes to H.R. 7200. That bill which is now on the Senate calendar, contains two provisions that should have significant implications for Indian child welfare services.

First, the bill provides that the decisions of Indian tribal courts on child custody matters be given full faith and credit by State courts. Second, the bill authorizes the Secretary of Health, Education, and Welfare, at his discretion, to make direct grants to Indian groups for the delivery of services to children and their families under title IV-B of the Social Security Act.

While the Department continues to feel that the administration's child welfare initiative, and specifically the two changes directly related to Indians, would improve the system of Indian child placements, we agree that more needs to be done.

We feel that the existence of legal and jurisdictional barriers to the delivery of services by State and county systems warrants a closer look at how these programs can become more responsive to Indians as well as other citizens, rather than creating programs that might duplicate existing authorities and have the potential of disrupting funds now provided to Indians under these and other HEW programs.

The National Tribal Chairman's Association and four other groups are now conducting a project to explore the desirability of amending the Social Security Act or alternative steps to more effectively provide social services for Indians. That project is being funded at more than one-quarter of \$1 million, and will also draft a tentative implementation plan.

The 1974 hearings before the Senate Select Committee on Indian Affairs made us more cognizant of the special needs and problems of Indians in trying to maintain family and tribal ties for their children. The Department has responded to the need to increase the level of understanding and knowledge of Indian child welfare problems and has caused us to reexamine how we might more effectively channel assistance to tribal governments through its existing authorities.

Recently, the Department reported on a 2-year, state-of-the-field survey of Indian child welfare services needs and service delivery. The survey examined the activities and policies of 21 States, and tried as well to review the training and employment opportunities for Indian professionals in child welfare.

The survey pointed to several of the factors that remain of concern to members of this subcommittee as well as others interested in the field, and to HEW.

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

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

Third, the need for trained Indian child welfare personnel.

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

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

At the same time, we are moving ahead with targeted efforts to assist tribes. We are providing technical assistance to aid the governing bodies of recognized Indian groups in the development and implementation of tribal codes and court procedures with relevance for child abuse and neglect. Under this 2-year project, training and technical assistance will be provided to from 10 to 20 Indian reservations.

Five projects are now being conducted to demonstrate methods by which Indian organization could deliver social services to Indian children and families.

Similar efforts will focus specifically on the delivery of child welfare services in Public Law 280 States, the design of day care standards appropriate to Indian children living on reservations.

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

While the Department supports the goals of S. 1214, we have several concerns with the bill and oppose its enactment. We understand that the Department of the Interior is preparing a substitute bill, and we would like to continue to work with the subcommittee in the development of a substitute bill.

Our concerns focus on the following:

First, the bill would seem to move in the direction of separate social services for Indians, on terms that may imply that State governments are no longer responsible for their Indian citizens. We are reluctant to tamper with the existing system in ways that run the risk of disrupting services now being provided to Indian children on and off reservations, or jeopardizing the full availability to Indian children of services intended for all children.

While we do not believe it is the intent of this legislation, or of those who have worked so hard on it, we think it would be unfortunate if the adoption of this legislation should lead to a cutback in State services to which Indian families are now entitled.

Mr. RONCALIO. Let me ask you a question now, and that is: Were those concerns expressed in the Senate before they passed their bill?

Dr. CARDENAS. Yes.

Mr. RONCALIO. And they passed it nevertheless?

Dr. CARDENAS. Yes.

Mr. RONCALIO. Do you anticipate working with the Indian Affairs people who just testified on the amendments?

Dr. CARDENAS. Yes.

Mr. RONCALIO. I am going to ask Congressman Runnels to chair for 5 minutes, because we have an emergency on the Sioux bill. I will be back in 5 minutes.

Mr. RUNNELS [presiding]. I will do it from here.

Mr. RONCALIO. I will be back in 5 minutes.

Dr. CARDENAS. A second concern of the Department is the need to assure that there is a match between the capability of Indian tribes and organizations to administer S. 1214, and the responsibilities they would assume. For example, the bill provides for the assumption of judicial responsibilities as well as the administration of social welfare agencies or "Indian Family Development Centers."

Because of past and present practices, Indian tribes have had little opportunity to acquire expertise in the development and administration of social welfare programs. Many HEW funding sources, for example, are tied to the provision of specific services designated in legislation, and are not generally available for designing and developing new service delivery capabilities. While some of our developmental and demonstration authorities have been used for these purposes, we are not confident that there has been enough time for them to make the difference that a bill such as this would require.

A third concern of the Department is the likelihood that S. 1214 discriminates in an unconstitutional fashion against Indians living off the reservation, who are not members of a tribe, by restricting access to State courts in the adjudication of child welfare matters. Indians residing on reservations, who are members of the tribe, can come under the exclusive or concurrent jurisdiction of tribal authority. However, with respect to nonmembers and Indians living off the reservation, there is some question as to whether the tribal courts can exert jurisdiction over these persons. Section 102(c) of the bill establishes procedures that courts must follow in considering cases involving Indian children who reside off the reservation. Indian tribes must be provided notice of the right to intervene in the proceeding, and are granted authority on a case-by-case basis to request the transfer of jurisdiction if they maintain tribal courts.

Our concern is that parents, particularly those of mixed backgrounds who may have few tribal contacts, will be compelled to fight for the custody of their children in perhaps distant and unfamiliar surroundings. This could represent a heavy emotional burden on the parent or parents, and an economic one as well. And it would be detrimental to the child to require that he or she be placed in a tribal setting if his or her only home has been in an off-reservation setting.

In this as in any other program for which the Federal Government shares responsibility, there will be a need for some mechanism to provide ongoing evaluation. Such evaluation data should help us better judge how changes like those being proposed are working, and how, or whether, they might be modified in the future.

One final issue is of concern to the Department.

We are concerned that the adoption process could be seriously affected by section 101(c), which permits final adoption decrees to be set aside at any time if it can be shown that the adoption did not comply