tion (b) of this section also amends rule 43 to eliminate in its entirety subparagraph 4 thereof with respect to certain foreign travel (now incorporated in subparagraph 6 of rule 51).

Subsection (c) of this section amends paragraph 1 of rule 46 on "Unofficial Office Accounts" by adding a new subparagraph (e) to make it clear that an unofficial office account does not include a reimbursement to the extent that it qualifies as a "reportable travel expense" within the meaning of new rule 51. Subparagraph (d) of rule 46 was retained, as there may continue to be other reimbursements from organizations for which services were performed.

Section 3 provides that new rule 51 is to take effect on the day after this resolution is agreed to, which means it shall apply to "reportable travel expenses" incurred on or after that date.

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Calendar No. 550

95TH CONGRESS, *1st Session* | SENATE | REPORT No. 95-597

THE INDIAN CHILD WELFARE ACT OF 1977

NOVEMBER 3 (legislative day, NOVEMBER 1), 1977.—Ordered to be printed

Mr. ABOUREZK, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1214]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1214) 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, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert instead the following:

That this Act may be cited as the "Indian Child Welfare Act of 1977".

FINDINGS

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

(a) An alarming high percentage of Indian children living within both urban communities and Indian reservations, are separated from their natural parents through the actions of nontribal government agencies or private individuals or private agencies and are placed in institutions (including boarding schools), or in foster or adoptive homes, usually with non-Indian families.

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

(c) The separation of Indian children from their natural parents, especially their placement in institutions or homes which do not meet their special needs, is socially and culturally undersirable. For the child, such separation can cause

a loss of identity and self-esteem, and contributes directly to the unreasonably high rates among Indian children for dropouts, alcoholism and drug abuse, suicides, and crime. For the parents, such separation can cause a similar loss of self-esteem, aggravates the conditions which initially gave rise to the family breakup, and leads to a continuing cycle of poverty and despair. For Indians generally, the child placement activities of nontribal public and private agencies undercut the continued existence of tribes as self-governing communities and, in particular, subvert tribal jurisdiction in the sensitive field of domestic and family relations.

DECLARATION OF POLICY

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

DEFINITIONS

SEC. 4. For purposes of this Act:

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

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

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

(d) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

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

(f) "Nontribal public or private agency" means any Federal, State or local government department, bureau, agency or other office, including any court other than a tribal court, and any private agency licensed by a State or local government, which has jurisdiction or which performs functions and exercises responsibilities in the fields of social services, welfare and domestic relations, including child placement.

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

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

(i) "Parent" means the natural parent of an Indian child or any person who has adopted an Indian child in accordance with State, Federal, or tribal law or custom.

(j) "Extended family member" means any grandparent, aunt, or uncle (whether by blood or marriage), brother or sister, brother or sister-in-law, niece

or nephew, first or second cousin, or stepparent whether by blood, or adoption, over the age of eighteen or otherwise emancipated, or as defined by tribal law or custom.

TITLE I—CHILD PLACEMENT JURISDICTION AND STANDARDS

SEC. 101. (a) No placement of an Indian child, except as provided in this Act shall be valid or given any legal force and effect, except temporary placements under circumstances where the physical or emotional well-being of the child is immediately and seriously threatened, unless (1) his parent or parents and the extended family member in whose care the child may have been left by his parent or parents or who otherwise has custody according to tribal law or custom, has been accorded not less than thirty days prior written notice of the placement proceeding, which shall include an explanation of the child placement proceedings, a statement of the facts upon which placement is sought, and a right: (A) to intervene in the proceedings as an interested party; (B) to submit evidence and present witnesses on his or her own behalf; and (C) to examine all reports or other documents and files upon which any decision with respect to child placement may be based; and (2) the party seeking to effect the child placement affirmatively shows that available remedial services and rehabilitative programs designed to prevent the breakup of the Indian family have been made available and proved unsuccessful.

(b) Where the natural parent or parents of an Indian child who falls within the provisions of this Act, or the extended family member in whose care the child may have been left by his parent or parents or who otherwise has custody in accordance with tribal law or custom, opposes the loss of custody, no child placement shall be valid or given any legal force and effect in the absence of a determination, supported by clear and convincing evidence, including testimony by qualified expert witnesses, that the continued custody of the child by his parent or parents, or the extended family member in whose care the child has been left, or otherwise has custody in accordance with tribal law or custom, will result in serious emotional or physical damage. In making such determination, poverty, crowded or inadequate housing, alcohol abuse or other nonconforming social behaviours on the part of either parent or extended family member in whose care the child may have been left by his parent or parents or who otherwise has custody in accordance with tribal law or custom, shall not be deemed prima facie evidence that serious physical or emotional damage to the child has occurred or will occur. The standards to be applied in any proceeding covered by this Act shall be the prevailing social and cultural standards of the Indian community in which the parent or parents or extended family member resides or with which the parent or parents or extended family member maintains social and cultural ties.

(c) In the event that the parent or parents of an Indian child consent to a child placement, whether temporary or permanent, such placement shall not be valid or given any legal force and effect, unless such consent is voluntary, in writing, executed before a judge of a court having jurisdiction over child placements, and accompanied by the witnessing judge's certificate that the consent was explained in detail, was translated into the parent's native language, and was fully understood by him or her. If the consent is to a nonadoptive child placement, the parent or parents may withdraw the consent at any time for any reason, and the consent shall be deemed for all purposes as having never been given. If the consent is to an adoptive child placement, the parent or parents may withdraw the consent for any reason at any time before the final decree of adoption: Provided, that no final decree of adoption may be entered within ninety days after the birth of such child or within ninety days after the parent or parents have given written consent to the adoption, whichever is later. Consent by the parent or parents of an Indian child given during pregnancy or within ten days after the birth of the child shall be conclusively presumed to be involuntary. A final decree of adoption may be set aside upon a showing that the child is again being placed for adoption, that the adoption did not comply with the requirements of this Act or was otherwise unlawful, or that the consent to the adoption was not voluntary. In the case of such a failed adoption, the parent or parents or the extended family member from whom custody was taken shall be afforded an opportunity to reopen the proceedings and petition for return of custody. Such prior parent or custodian shall be given thirty days notice of any

proceedings to set aside or vacate a previous decree unless the prior parent or custodian waives in writing any right to such notice.

(d) No placement of an Indian child, except as otherwise provided by this Act, shall be valid or given any legal force and effect, except temporary placements under circumstances where the physical or emotional well-being of the child is immediately threatened, unless his parent or parents, or the extended family member in whose care the child may have been left or who otherwise has custody in accordance with tribal law or custom, has been afforded the opportunity to be represented by counsel or lay advocate as required by the court having jurisdiction.

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

SEC. 102. (a) In the case of any Indian child who resides within an Indian reservation which maintains a tribal court which exercises jurisdiction over child welfare matters, no child placement shall be valid or given any legal force and effect, unless made pursuant to an order of the tribal court. In the event that a duly constituted Federal or State agency or any representation thereof has good cause to believe that there exists an immediate threat to the emotional or physical well-being of an Indian child, such child may be temporarily removed from the circumstances giving rise to the danger provided that immediate notice shall be given to the tribal authorities, the parents, and the extended family member in whose care the child may have been left or who otherwise has custody according to tribal law or custom. Such notice shall include the child's exact whereabouts and the precise reasons for removal. Temporary removals beyond the boundaries of a reservation shall not affect the exclusive jurisdiction of the tribal court over the placement of an Indian child.

(b) In the case of an Indian child who resides within an Indian reservation which possesses but does not exercise jurisdiction over child welfare matters, no child placement, by any nontribal public or private agency shall be valid or given any legal force and effect, except temporary placements under circumstances where the physical or emotional well-being of the child is immediately and seriously threatened, unless such jurisdiction is transferred to the state pursuant to a mutual agreement entered into between the State and the Indian tribe pursuant to subsection (j) of this section. In the event that no such agreement is in effect, the Federal agency or agencies servicing said reservation shall continue to exercise responsibility over the welfare of such child.

(c) In the case of any Indian child who is not a resident of an Indian reservation or who is otherwise under the jurisdiction of a state, if said Indian child has significant contacts with an Indian tribe, no child placement shall be valid or given any legal force and effect, except temporary placements under circumstances where the physical or emotional well-being of the child is immediately and seriously threatened, unless the Indian tribe with which such child has significant contacts has been accorded thirty days prior written notice of a right to intervene as an interested party in the child placement proceedings. In the event that the intervening tribe maintains a tribal court which has jurisdiction over child welfare matters, jurisdiction shall be transferred to such tribe upon its request unless good cause for refusal is affirmatively shown.

(d) In the event of a temporary placement or removal as provided in subsections (a), (b), and (c) above, immediate notice shall be given to the parent or parents, the custodian from whom the child was taken if other than the parent or parents, and the chief executive officer or such other person as such tribe or tribes may designate for receipt of notice. Such notice shall include the child's exact whereabouts, the precise reasons for his or her removal, the proposed placement plan, if any, and the time and place where hearings will be held if a temporary custody order is to be sought. In addition, where a tribally

operated or licensed temporary child placement facility or program is available, such facilities shall be utilized. A temporary placement order must be sought at the next regular session of the court having jurisdiction and in no event shall any temporary or emergency placement exceed 72 hours without an order from the court of competent jurisdiction.

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

(f) For the purposes of this Act, whether or not a nonreservation resident Indian child has significant contacts with an Indian tribe shall be an issue of fact to be determined by the court on the basis of such considerations as: Membership in a tribe, family ties within the tribe, prior residency on the reservation for appreciable periods of time, reservation domicile, the statements of the child demonstrating a strong sense of self-identity as an Indian, or any other elements which reflect a continuing tribal relationship. A finding that such Indian child does not have significant contacts with an Indian tribe sufficient to warrant a transfer of jurisdiction to a tribal court under subsection (c) of this section does not waive the preference standards for placement set forth in section 103 of this Act.

(g) It shall be the duty of the party seeking a change of the legal custody of an Indian child to notify the parent or parents, the extended family members from whom custody is to be taken, and the chief executive of any tribe or tribes with which such child has significant contacts by mailing prior written notice by registered mail to the parent or parents, or extended family member, and the chief executive officer of the tribe, or such other persons as such tribe or tribes may designate: *Provided*, that the judge or hearing officer at any child placement proceeding shall make a good faith determination of whether the child involved is Indian and, if so, whether the tribe or tribes with which the child has significant contacts were timely notified.

(h) Any program operated by a public or private agency which removes Indian children from a reservation area and places them in family homes as an incident to their attendance in schools located in communities in off-reservation areas and which are not educational exemptions as defined in the Interstate Compact on the Placement of Children shall not be deemed child placements for the purposes of this Act. Such programs shall provide the chief executive officer of said tribe with the same information now provided to sending and receiving states which are members of the Interstate Compact on the Placement of Children. This notification shall be facilitated by mailing written notice by registered mail to the chief executive officer or other such person as the tribe may designate.

(i) Notwithstanding the Act of August 15, 1953 (67 Stat. 588), as amended, or any other Act under which a state has assumed jurisdiction over a child welfare of any Indian tribe, upon sixty days written notice to the State in which it is located, any such Indian tribe may reassume the same jurisdiction over such child welfare matters as any other Indian tribe not affected by such acts. *Provided*, That such Indian tribe shall first establish and provide mechanisms for implementation of such matters which shall be subject to the review and approval of the Secretary of the Interior. In the event, the Secretary does not approve the mechanisms which the tribe proposes within sixty days, the Secretary shall provide such technical assistance and support as may be necessary to enable the tribe to correct any deficiencies which he has identified as a cause for disapproval. Following approval by the Secretary, such reassumption shall not take effect until sixty days after the Secretary provides notice to the State which is asserting such jurisdiction. Except as provided in section 102(c), such reassumption shall not affect any action or proceeding over which a court has already assumed jurisdiction and no such actions or proceeding shall abate by reason of such reassumption.

(j) State and tribes are specifically authorized to enter into mutual agreements or compacts with each other, respecting the care, custody and jurisdictional authority of each party over any matter within the scope of this Act, including agreements which provide for transfer of jurisdiction on a case by case basis, and agreements which provide for concurrent jurisdiction between the states and the tribes. The provisions of the act of August 15, 1953 (67 Stat. 588), as amended by title IV of the act of April 11, 1968 (82 Stat. 78) shall not limit

the powers of states and tribes to enter into such agreements or compacts. Any such agreements shall be subject to revocation by either party upon sixty days written notice to the other. Except as provided in section 102(c), such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction and no such action or proceeding shall abate by reason of such revocation, and, *Provided further*, such agreements shall not waive the rights of any tribe to notice and intervention as provided in this act nor shall they alter the order of preference in child placement provided in this title. The Secretary of the Interior shall have sixty days after notification to review any such mutual agreements or compacts or any revocation thereof and in the absence of a disapproval for good cause shown, such agreement, compact or revocation thereof shall become effective.

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

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

(b) In any nonadoptive placement of an Indian child, every nontribal public or private agency, in the absence of good cause shown to the contrary, shall grant preferences in the following order: (1) to the child's extended family; (2) to a foster home, if any, licensed or otherwise designated by the Indian tribe occupying the reservation of which the child is a resident or with which the child has significant contacts; (3) to a foster home, if any, licensed by the Indian tribe of which the child is a member or is eligible for membership; (4) to any other foster home within an Indian reservation which is approved by the Indian tribe of which the child is a member or is eligible for membership in or with which the child has significant contacts; (5) to any foster home run by an Indian family; and (6) to a custodial institution for children operated by an Indian organization: *Provided, however*, That each Indian tribe may modify or amend the foregoing order of preferences, and may add or delete perference categories, by resolution of its government body.

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

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

SEC. 104. In order to protect the unique rights associated with an individual's membership in an Indian tribe, after an Indian child who has been previously placed attains the age of eighteen, upon his or her application to the court which entered the final placement decree, and in the absence of good cause shown to the contrary, the child shall have the right to learn the tribal affiliation of his parent or parents and such other information as may be necessary to protect the child's rights flowing from the tribal relationship.

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

TITLE II—INDIAN FAMILY DEVELOPMENT

SEC. 201. (a) The Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to carry out or make grants to Indian tribes and Indian organizations for the purpose of assisting such tribes or organizations in the establishment and operation of Indian family development programs on or near reservations, as described in this section, and in the preparation and implementation of child welfare codes. The objective of every Indian family development program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or parents, or the custody of any extended family member in whose care he has been left by his parent or parents, or one who otherwise has custody according to tribal law or custom, shall be effected only as a last resort. Such family development programs may include, but are not limited to, some or all of the following features:

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

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

(3) family assistance, including homemakers and home counselors, day care, after school care, and employment, recreational activities, and respite services;

(4) provision for counseling and treatment of Indian families and Indian children;

(5) home improvement programs;

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

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

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

(9) guidance, legal representation and advice to Indian families involved in tribal or non-tribal child placement proceedings.

(b) Any Indian foster or adoptive home licensed or designated by a tribe (1) may accept Indian child placements by a non-tribal public or private agency and State funds in support of Indian children; and (2) shall be granted preference in the placement of an Indian child in accordance with title I of this Act. For purposes of qualifying for assistance under any federally assisted program, licensing by a tribe shall be deemed equivalent to licensing by a state.

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

(1) facilities for counseling Indian families which face disintegration and, where appropriate, for the treatment of individual family members;

(2) facilities for the temporary custody of Indian children whose natural parent or parents, or extended family member in whose care he has been left by his parent or parents or one who otherwise has custody according to tribal law or custom, are temporarily unable or unwilling to care for them or who otherwise are left temporarily without adequate adult supervision by an extended family member.

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

(b) Off-reservation Indian family development programs, operated through grants with local Indian organizations, may include, but shall not be limited to, the following features:

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children are provided the same support as Indian foster children;

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

(3) family assistance, including homemakers and home counselors, day care, after school care, and employment, recreational activities, and respite services;

(4) provision for counseling and treatment both of Indian families which face disintegration and, where appropriate, of Indian foster and adoptive children; and

(5) guidance, representation, and advice to Indian families involved in child placement proceedings before non-tribal public and private agencies.

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

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

TITLE III—RECORD KEEPING, INFORMATION AVAILABILITY AND TIMETABLES

SEC. 301. (a) The Secretary of the Interior is authorized and directed under such rules and regulations as he may prescribe, to collect and maintain records in a single, central location of all Indian child placements which are effected after the date of this Act which records shall show as to each such placement the name and tribal affiliation of the child, the names and addresses of his natural parents and the extended family member, if any, in whose care he may have been left, the names and addresses of his adoptive parents, the names and addresses of his natural siblings, and the names and locations of any tribal or nontribal public or private agency which possess files or information concerning his placement. Such records shall not be open for inspection or copying pursuant to the Freedom of Information Act (80 Stat. 381), as amended, but information concerning a particular child placement shall be made available in whole or in part, as necessary to an Indian child over the age of eighteen for the purpose of identifying the court which entered his final placement decree and furnishing such court with the information specified in section 104 or to the adoptive parent or foster parent of an Indian child or to an Indian tribe for the purpose of assisting in the enrollment of said Indian child in the tribe of which he is eligible for membership and for determining any rights or benefits associated with such membership. The records collected by the Secretary pursuant to this Section shall be privileged and confidential and shall be used only for the specific purposes set forth in the Act.

(b) A copy of any order of any nontribal public or private agency which effects the placement of an Indian child within the coverage of this Act shall be filed with the Secretary of the Interior by mailing a certified copy of said order within ten days from the date such order is issued. In addition, such public or private agency shall file with the Secretary of the Interior any further information which the Secretary may require by regulations in order to fulfill his record keeping functions under this Act.

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

(b)(1) Within six months from the date of this Act, the Secretary shall consult with Indian tribes, Indian organizations, and Indian interest agencies in the consideration and formation of rules and regulations to implement the provisions of this Act.

(2) Within seven months from the date of enactment of this Act, the Secretary shall present the proposed rules and regulations 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, respectively.

(3) Within eight months from the date of enactment of this Act, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this Act.

(c) The Secretary is authorized to revise and amend any rules and regulations promulgated pursuant to this section: *Provided*, That prior to any revision or amendment to such rules or regulations, the Secretary shall present the proposed revision or amendment 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, respectively, and shall, to the extent practicable, consult with the tribes, organizations, and agencies specified in subsection (b)(1) of this section, and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

TITLE IV—PLACEMENT PREVENTION STUDY

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

(b) The Secretary is authorized and directed to prepare and to submit to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs and Committee on Education and Labor of the United States House of Representatives, respectively, within one year from the date of enactment of this Act, a plan, including a cost analysis statement, for the provision to Indian children of schools located near the students home. In developing this plan, the Secretary shall give priority to the need for educational facilities for children in the elementary grades.

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PURPOSE

S. 1214, the Indian child Welfare bill of 1977 is a multipurpose piece of legislation. Title I is designed to clarify who has jurisdiction over Indian child placements and establish standards for child placement proceedings which will insure that Indian parents will be accorded a fair hearing when child placement is at issue. When foster home and adoptive placement of an Indian child becomes necessary, the bill provides that a preference should be given to the child's extended family and if such placement is not facilitated to Indian homes and institutions. The bill states that it is the duty of the U.S. Government to protect the special relationship which exists between an Indian child and his tribe. In order to protect this unique relationship and to insure that a previously placed Indian child is accorded those benefits which he may receive as a tribal member, the bill requires that all nontribal public or private agencies shall make available, upon request by a previously placed Indian child over the age of 18, all information which he needs to establish enrollment and obtain those benefits to which he is entitled as a tribal member. Finally, the legislation requires all states, the United States and federally recognized tribal governments to accord full faith and credit to the laws of any Indian tribe applicable to a proceeding under this act and to any tribal court orders relating to the custody of a child who is the subject of such a proceeding.

Title II authorizes the Secretary of the Interior to make grants directly to Indian tribes and organizations for the purpose of establish-

ing Indian family development programs both on and off the reservation. These program funds may be used for such purposes as hiring child welfare staffs, construction of child welfare facilities, providing counseling and legal representation to Indian children and families involved in a placement proceeding and developing and licensing Indian foster and adoptive homes.

Title III authorizes and directs the Secretary of the Interior to collect and maintain records of all Indian child placements from the enactment of this act forward and provides the timetables for implementation of this bill.

Title IV requires the Secretary of Interior to do a study of the impact that the absence of locally convenient day school facilities has on Indian children. A large number of Indian children are forced to leave their family homes and reside in boarding school facilities many miles from home because the law requires them to attend school and no local program is available. Title IV requires the Secretary to report on the number of Indian children affected in this way and provide a plan for redial action in this area.

Summary of Major Provisions

This legislation will, for the first time, establish legislative standards to govern the placement of Indian children in foster or adoptive care settings. The act establishes an order of preferences to be accorded Indian children in placing them in foster care or adoptive settings, specifically, first preference to be accorded members of the child's extended family, then to Indian homes on reservations where the child may reside, or to tribally licensed homes. The act provides that tribes may alter this statutory order of preference by enacting ordinances of their own establishing alternative preference orders.

The act statutorily defines the respective jurisdiction of State and tribal governments in matters relating to child placements. To the extent the act provides for jurisdictional division between States and tribes, it is declarative of law as developed by judicial decision. However, there are new provisions too. The act provides that tribes may request transfers of placement cases from State to tribal courts and that in the absence of good cause to the contrary such transfers shall be ordered; it authorizes tribes presently under State civil and criminal jurisdiction by virtue of Federal law to apply to the Secretary of Interior for return of jurisdiction over child placement matters to the tribes (this includes tribes whose reservations have been disestablished or diminished by virtue of Federal law, or who are otherwise under State jurisdiction, including tribes in Oklahoma); it authorizes States and tribes to enter into mutual agreements regarding the care, custody and jurisdiction over Indian children; and it provides for full faith and credit to be accorded the laws and court orders of Indian tribes relevant to child placement matters.

The act also provides that tribes shall receive the same information regarding informal child placements for educational programs operated by non-governmental entities across state lines or outside reservation boundaries as is now provided to States who are members of the Interstate Compact on the Placement of Children. It establishes procedural safeguards for parents or extended family members in

child placement proceedings by nontribal public or private agencies; establishes a right of tribes to receive notification of placement proceedings in state or local courts and provides for a right of tribal intervention in such proceedings. An Indian child who has been placed in adoptive, foster care or other setting is authorized upon attaining the age of eighteen to obtain information regarding his or her placement as may be needed to qualify for enrollment in his or her tribe of origin and for other benefits and property rights to which he or she may be entitled because of Indian status.

Title II of this act authorizes the Secretary of the Interior to make grants to Indian tribes and Indian organizations to carry out Indian family development programs. Some of the programs for which funding is authorized by this legislation are already provided either by the BIA or the Indian Health Service, but other program authorizations are new. Of particular significance are the authorizations of grants to tribes and Indian organizations to provide legal representation to families involved in child placement proceedings, the authorization of funds for the establishment of tribal licensing procedures for Indian foster care homes, and the authorization of funds to aid in the support of Indian children placed in the adoptive or foster care of extended family members. The authorization of the Secretary of the Interior to make grants to Indian organizations to carry out family development programs in off-reservation settings is also new.

Title III of the act authorizes and directs the Secretary of the Interior to collect and maintain records relating to future adoptive and foster care placements of Indian children. These records are confidential and exempt from the application of the Freedom of Information Act. These records will enable Congress and the Executive to monitor the application of this act and also provide an alternative system for the Secretary to assist in the establishment of Indian eligibility for tribal enrollment and qualification for other benefits and property rights when such children reach the age of 18.

Finally, title IV directs the Secretary to conduct a study on the impact which results from a lack of locally convenient day school facilities and file a report to Congress which shall contain a plan for remediation of the problem.

Background

As early as 1973, the Senate Committee on Interior, Subcommittee on Indian Affairs, began to receive reports that an alarmingly high percentage of Indian children were being separated from their natural parents through the actions of nontribal government agencies. Studies by the Association on American Indian Affairs, State Welfare offices and private child welfare groups indicated that in some areas as high as 25 percent of all Indian children are being placed in institutions or in foster or adoptive homes, usually with non-Indian families. The studies also indicated that such family breakups frequently occur as a result of conditions which are temporary or remedial and where the Indian people involved do not understand the nature of the legal actions involved.

In 1974, the Senate Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs held an oversight hearing on Indian

child placement. At this time testimony was received from the administration, Indian people, State representatives, tribal leaders, medical and psychiatric professionals and child welfare groups. Their statements served to solidify the above mentioned findings as well as to point out that serious emotional problems often occur as a result of placing Indian children in homes which do not reflect their special cultural needs.

Two basic concepts surfaced at the hearings. First, Indian people and child welfare experts stressed the need for adequately funded, tribally controlled family development programs which would function at the local level and would be able to exhibit a deeper cultural sensitivity toward the Indian people they serve. Second, Indian tribal leaders pointed out that Indian tribes were recognized as by the United States as sovereign governmental units and as such the final decision making powers in areas as basic as child welfare should rest within the relm of tribal jurisdiction.

Task Force IV of the American Indian Policy Review Commission addressed the issue of Indian child placement. Its findings supported the comments made by child welfare experts and Indian people at the 1974 oversight hearings. The Task Force recommenations stressed the two points previously stated in the oversight transcripts: return total jurisdiction over child welfare matters involving children from reservation areas when a tribe expresses a desire to exercise such jurisdiction and provide adequate financial assistance to tribes and organizations to allow them to establish Indian controlled family development programs at the local level. In discussing the issue and defending its recommendations the Task Force pointed to the lack of cultural sensitivity on the part of Federal, State and local agencies and to their poor record for returning Indian children to their natural parents.

The Final Report of the American Indian Policy Review Commission includes a number of recommendations which are addressed in S. 1214. It calls for exclusive jurisdiction over the welfare of those Indian children who are domiciled on an Indian reservation. The report indicates that numerous court decisions have affirmed the tribe's right to exercise jurisdiction in these areas, but States that at this time many State officials are not honoring the tribes right to act exclusively. Finally the report calls for the tribe right to notice and intervention in any nontribal placement proceeding involving one of its juvenile members.

On August 4, 1977, the Senate Select Committee on Indian Affairs held an open public hearing on S. 1214. Testimony was again received from the Administration, Indian tribes and organizations, child welfare specialists and church groups. The statements presented by these individuals pointed out that the problems which were discussed and documented in 1974 still have not been solved. Indian people again called for tribal jurisdiction in Indian child placement matters and requested congressional support in the way of increased appropriations for child welfare services. They requested that these appropriations be made directly available to the tribes to reduce unnecessary overhead costs and stressed the fact that adequate funding would have a major impact on improving the situation. Tribal witnesses indicated that some tribes such as the Quinault Nation in Washington, have

begun work in this area and have been extremely successful. Quinault and others have shown major increases in the number of available Indian foster and adoptive homes and they have greatly decreased the number of children now in placement by as much as 40 percent.

Legislative History

S. 1214 was introduced on April 1, 1977, sponsored by Senator James Abourezk and cosponsored by Senator Hubert Humphrey and Senator George McGovern.

Senator Abourezk sponsored a similar proposal, S. 3777, in the 94th Congress which was referred to the Senate Committee on Interior and Insular Affairs and later referred to the Subcommittee on Indian Affairs where no action was taken on it.

Hearings on S. 1214 were held on August 4, 1977, before this committee. Representatives from the National Congress on American Indians, the National Tribal Chairman's Association, various Indian tribes, the American Civil Liberties Union, the American Academy of Child Psychiatry, and the Friends Committee on National Legislation testified in support of S. 1214. Representatives of the Church of Jesus Christ of Latter-Day Saints opposed certain aspects of the private placement section of the bill which have been addressed by committee amendment. The Department of Interior and the Department of Health, Education, and Welfare, while agreeing with the concepts of S. 1214 suggested that S. 1928, a national child welfare bill proposed by the administration obviated the need for separate legislation.

The committee has taken the position that S. 1928 is not designed to address the specific needs of Indian people in the child welfare area. Because of the extreme poverty which exists on reservation areas and the unique Indian cultural differences, Indian children require special types of programs. Indian tribes have indicated a desire to play a major role in these areas, but they require technical assistance and adequate funding if they are to do an effective job. S. 1928 does not contain basic Indian provisions such as direct funding to Indian tribes and recognition of tribal courts. Even with such provisions S. 1928 still fails to address the basic jurisdictional and placement preference problems which are basic elements of S. 1214. It is a different bill designed for a different purpose.

Committee Recommendation and Tabulation of Votes

The Senate Select Committee on Indian Affairs, in open business session on October 28, 1977, by majority vote of a quorum present recommends that the Senate pass S. 1214 if amended as described herein.

Committee Amendments

For general purposes of reorganization and clarity, the committee amended the bill by way of substitution. Listed below are the similarities and dissimilarities section by section between the committee's substitute amendment and the original printed version of S. 1214. A detailed discussion of the significant changes is given in the section-by-section analysis.

S. 1214

Section 1 is similar to Section 1 of the original version.
Section 2 is similar to Section 2 of the original version.
Section 3 is similar to Section 3 of the original version.
Section 4 is similar to Section 4 of the original version, except that:
(g) has been added to clearly define "reservation".
(h) is similar to Section 4(g) of the original version.
(i) is similar to Section 4(h) of the origial version.
(j) is similar to Section 4(i) of the original version.

TITLE I—CHILD PLACEMENT JURISDICTION AND STANDARDS

Section 101:
(a) is similar to Section 102(a) of the original version.
(b) is similar to Section 102(b) of the original version.
(c) is similar to Section 102(c) of the original version, but has been widened to address the issue of failed adoptions.
(d) is similar to Section 102(d) of the original version, but eliminates the original provision making a mandatory requirement that child and parent be accorded separate counsel.
(e) has been added to clearly address the issue of notification rights in such situations as juvenile delinquency and other temporary or foster placements.
Section 102:
(a) is similar to Section 101(a) of the original version.
(b) is similar to Section 101(b) of the original version.
(c) is similar to Section 101(c) of the original version.
(d) has been added to clarify the notification procedures in event of a temporary placement or removal.
(e) has been added to clarify the residency status of an Indian child.
(f) has been added to set forth in part the element or elements of an Indian child's significant contacts relationship with an Indian tribe.
(g) is similar to Section 101(e) of the original version.
(h) is similar to Section 101(d) of the original version.
(i) has been added to allow tribes to reassume jurisdiction over child welfare matters.
(j) has been added to authorize states and Indian tribes to enter into mutual agreements on jurisdictional issues.
(k) has been added to limit any changes in jurisdiction over child welfare matters to those expressly provided for in this Act.
Section 103:
(a) is similar to Section 103(a) of the original version.
(b) is similar to Section 103(b) of the original version.
(c) has been added to require an adequate record keeping of compliance with the order of placement preferences.
(d) is similar to Section 103(c) of the original version.
Section 104 is similar to but more limited than Section 104 of the original version.
Section 105 is similar to Section 105 of the original version.

TITLE II—INDIAN FAMILY DEVELOPMENT

Sections 201, 202, and 203 have been entirely reorganized for purposes of clarity from Sections 201, 202, 203, and 204 (b, d) of the original version.

TITLE III—RECORD KEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

Section 301:
(a) is similar to Section 204(c) of the original version.
(b) has been added to require all nontribal public or private agencies to file the necessary Indian child placement information with the Secretary of the Interior.
Section 302:
(a) is similar to Section 205(a) of the original version.
(b) is similar to Section 205(b) of the original version.
(c) is similar to Section 205(c) of the original version.

TITLE IV—PLACEMENT PREVENTION STUDY

Section 401:
(a) has been added to address the lack of local and convenient day schools for Indian children.
(b) has been added to require a plan to be drawn up to provide for local and convenient day schools for Indian children.
It should be noted that the provisions of section 204(a) of the original version directing a 16-year review of all Indian child placements, and authorizing secretarial proceedings in Federal court have been entirely deleted. Also, the provisions of section 204(b) of the original version authorizing the Secretary to operate or make grants or contracts with Indian tribes or organizations to provide legal representation have been merged into the provisions of sections 201 and 202 of the committee's substitute bill, to limit such activity to grants to Indian tribes and organizations. Further, a significant reduction (approximately $12 million) in first year atuhorization levels is achieved by the committee's substitute bill.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

Section 2—Findings

The intent of this section is clear.

Section 3—Declaration of policy

The intent of this section is clear.

Section 4—Definitions

Subsections (a), (b), (c), and (d).—The intent of these subsections is clear.

Subsection (e).—The definition of "tribal court" is written to include administrative tribunals. This is intended to include tribally established administrative boards, commissions or other alternative tribal mechanisms which exercise adjudicatory powers or jurisdiction over child welfare matters in the name of the tribe.

Subsection (*f*).—The intent of the subsection is clear.

Subsection (*g*).—The definition of "reservation" includes Indian country as defined in title 18 United States Code, section 1151 and, for purposes of this Act, includes lands within former reservations which have been disestablished by Federal enactment or which have been judicially determined to have been diminished by an allotment or opening statute. The purpose of this definition is to include within the provision of this act tribes within the State of Oklahoma some of whose reservations may have been totally disestablished, as well as tribes such as the Sisseton-Wahpeton or the Rosebud Sioux whose reservations have recently been found by Federal court decisions to have been diminished by virtue of Federal allotment and opening statutes enacted at the turn of the century. The definition states that the territory to which the tribal authority will be recognized to extend under this act extends to the last boundaries of the reservation which were recognized immediately prior to the act which caused the diminishment or disestablishment of said reservation. The definition also includes lands held by Alaska Native villages under the Alaska Native Claims Settlement Act (89 Stat. 688).

Subsection (*h*).—The definition of "child placement" is intended to include proceedings against juveniles which may lead to foster care and proceedings against status offenders, i.e., juveniles who have not committed any act which would be a criminal act if they were an adult, such as truancy. It shall also include juveniles charged with minor misdemeanant behavior who would be covered by the prohibitions against incarceration in secure facilities by the Juvenile Justice and Delinquent Prevention Act of 1974 (Public Law 93-415, 41 U.S.C. 5601 et. seq.). It is not intended that the definition of "child placement" in this subsection apply to juveniles who have committed serious offenses which are a threat to the public.

Subsection (*i*) *and* (*j*).—The intent of these subsections is clear.

TITLE I—CHILD PLACEMENT JURISDICTION AND STANDARDS

Section 101

Subsection (*a*).—The intent of this subsection is clear.

Subsection (*b*).—The intent of this subsection is to establish standards and guidelines to given the placement of Indian children when the parents or extended family member oppose the loss of custody. The court, in considering whether to order a nonvoluntary placement, must determine on the basis of clear and convincing evidence that continued custody by the parent or other family member will result in serious emotional or physical damage to the child. Further, the physical and social conditions surrounding such custody are to be evaluated in the context of the prevailing social and cultural standards of the Indian community. Indian community standards regarding emotionally or physically harmful conditions for a child may be significantly different, and assumption subject to the judgment of the court.

Subsection (*c*).—The intent of this subsection is clear.

Subsection (*d*).—The intent of this subsection is to establish the minimum permissible procedural safeguards to be afforded parents and children in child placement proceedings before nontribal courts. It is not the intent of this subsection to in any way waive or diminish the procedural safeguards which would otherwise be applicable under the laws governing such courts.

Subsection (*e*).—The intent of this subsection is clear.

Section 102

Subsection (*a*).—Except for the provision regarding temporary removal of an Indian child in circumstances in which there is a serious and immediate threat to the emotional or physical well being of said child, the intent of this subsection is clear. The exclusive jurisdiction of the tribe is well founded in the law, *Fisher* v. *District Court*, 424 U.S.C. 382 (1976). The provision regarding temporary removal must be read in conjunction with (1) the last sentence in this subsection providing for continued exclusive jurisdiction of the tribe even where the child is removed beyond the boundaries of the reservation, and (2) the provision of subsection (d) which requires immediate notification to the chief executive officer of the tribe or his designate, utilization of tribally operated or licensed placement facilities, and requires a proceeding in tribal court within 72 hours of such removal unless the child is returned.

Subsection (*b*).—The provisions of this subsection are also declarative of existing law which excludes Indians within federally recognized reservations from the application of State laws.

Subsection (*c*).—The intent of this subsection is clear. The provisions are new to the law and establish the right of a tribe to participate in proceedings in State courts involving placement of a child who has significant contacts with said tribe, and also authorizes such tribe to seek transfer of jurisdiction to its own courts.

Subsection (*d*) *and* (*e*).—The intent of these subsections is clear.

Subsection (*f*).—The intent of this subsection is to supply guidelines to courts in determining the application of the jurisdictional provisions of subsection (c). The "significant contact" test coupled with the "good cause for refusal" provisions of subsection (c) are designed to provide State courts with a degree of flexibility in determining the disposition of a placement proceeding involving an Indian child.

Subsection (*g*).—The provisions of this subsection require notification to the tribe or tribes with which an Indian child has significant contacts. It is very possible for a child to have significant contacts with more than one tribe. In such a case, notice must be given to each of the tribes with which the child has such contacts, and each such tribe shall be entitled to the rights of intervention provided for in this act.

Subsection (*h*).—This section requires those programs which remove Indian children from reservation area and place them in private homes located in other jurisdictional areas as an incident to their attendance in school, and which are not educational exemptions under article II(d) of the Interstate Compact on the Placement of Children, to provide the Chief Executive Officer of the tribe occupying the reservation from which said Indian child is removed with the information specified in Regulation II of the Interstate Compact on the Placement of Children (a copy of which is printed in the appendix of this report). In the event that a question arises as to who is the Chief Executive Officer of a given reservation the information shall be provided to the person who the Secretary of the Interior or his representative certifies to be the Chief Executive Officer. The intent of this sec-

tion is to exempt placements under these programs from the application of all other provisions of this act except those explicitly provided for in this subsection.

Subsection (i).—The intent of this subsection is clear. This subsection affects existing statutory law in that it authorizes tribes which have been placed under the civil jurisdiction of a state by the act of August 15, 1953 (67 Stat. 588) or any other Federal act under which a state has assumed civil jurisdiction, to reassume the same jurisdiction over child welfare matters as any other Indian tribe not affected by such acts possesses. The provisions of this section include tribes in Oklahoma.

Subsection (j).—The intent of this subsection is to give to states and tribes the broadest possible latitude in the types of agreements they may enter into. It is the intent of this subsection to free the tribes and states from the rigid requirements of Public Law 83-280 (67 Stat. 588) as amended by title IV of the Act of April 11, 1968 (82 Stat. 78), (*See, Kennerly* v. *District Court*, 400 U.S. 423 (1971). The language authorizing tribes and states to enter into agreements regarding transfer of jurisdiction on a case by case basis is intended to provide a sound legal basis for tribes to authorize transfers of jurisdiction of specific offenders to states for custodial or rehabilitative services. The legal authority of tribes and states to enter into such cooperative agreements is legally questionable at this time. (*See, Blackwolf* v. *District Court*, 158 Mont. 523 (1972).

Subsection (k).—The intent of this subsection is clear.

Section 103

Subsections (a), (b), (c), and (d).—The intent of these subsections is clear.

Section 104

This section has been amended to provide that the child shall have a right to learn the tribal affiliation of his parent or parents and such other information as may be necessary to protect the child's rights flowing from the tribal relationship. As originally drafted, this section automatically entitled the child to learn the actual names and addresses of his natural parent or parents. It is the intent of this section as amended to authorize the release of only such information as is necessary to establish the child's rights as an Indian person. Upon a proper showing to a court that knowledge of the names and addresses of his or her natural parent or parents is needed, only then shall the child be entitled to the information under the provision of this section.

Section 105

The intent of this section is clear.

TITLE II—INDIAN FAMILY DEVELOPMENT

Section 201

Subsections (a), (b), and (c).—The intent of these subsections is clear.

Section 202

Subsections (a) and (b).—The intent of these subsections is clear.

Section 203

Subsections (a) and (b).—The intent of these subsections is clear.

TITLE III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

Section 301

Subsection (a).—This subsection authorizes and directs the Secretary of the Interior to collect and maintain records relating to future adoptive and foster care placements of Indian children. These records are to be confidential and exempt from the application of the Freedom of Information Act. Such records will enable Congress and the Executive to monitor the application of this act and also provide an alternative system for the Secretary to assist in the establishment of Indian eligibility for tribal enrollment and qualification for other benefits and property rights when such children reach the age of 18.

Subsections (b) and (c).—The intent of these subsections is clear.

TITLE IV—PLACEMENT PREVENTION STUDY

Section 401

Subsections (a) and (b).—The intent of these subsections is clear. It is the expectation of the committee that the Secretary of the Interior or his representative will work directly with the staffs of the appropriate Senate and House committees to determine the particulars of said plan and its report form.

Cost and Budgetary Considerations

The cost estimate for S. 1214 as provided by the Congressional Budget Office is outlined below:

Congressional Budget Office—Cost Estimate

1. Bill number: S. 1214.
2. Bill title: Indian Child Welfare Act of 1977.
3. Bill status: As reported by the Senate Select Committee on Indian Affairs, October 28, 1977.
4. Bill purpose: The purpose of this bill is to establish standards for placement of Indian children in foster or adoptive homes and authorizes grants to Indian tribes and Indian organizations for the establishment and operation of Indian family development centers. This bill is subject to subsequent appropriation action.
5. Cost estimate:

[By fiscal years, in millions of dollars]

Authorization levels:	
1979	26.0
1980	30.7
1981	39.7
1982	50.2
1983	62.0
Projected total outlays:[1]	
1979	6.4
1980	33.5
1981	39.6
1982	46.8
1983	55.2

[1] Outlays assume authorization levels are fully funded.

The costs of this bill fall within budget function 500.

6. Basis for estimate: The authorization level for fiscal year 1979 is as stated in S. 1214. That level assumed the building of 30 family development centers at a cost of $610 thousand each as well as $7.1 million to cover costs of family development services such as legal services and home repairs. The Bureau of Indian Affairs has indicated that there are 150 eligible Indian tribes and Indian organizations eligible for family development centers. Therefore, the authorization levels in the outyears assume that 30 new centers will be authorized annually. In addition, it is assumed that each center will be operated by 15 professional and support personnel in order to carry out the provisions of this bill.

The building costs were inflated by the CBO projection for cost increases in the residential building industry. The other expenses were inflated by the CBO projection for increases in the CPI.

The spendout on the development center construction is spread over three years, while the spendout on the other services is over a two year period. The fiscal year 1979 outlays are relatively low, reflecting a lag time in starting up the program.

All outlays associated with S. 1214 assume enactment of the bill by January 1978 with regulations and appropriations completed by October 1, 1979.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Deborah Kalcevic.

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

The pertinent legislative reports and communications received by the committee from the Department of the Interior and the Department of Health, Education, and Welfare, setting forth Executive agency recommendations relating to S. 1214 are set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., October 28, 1977.

Hon. JAMES ABOUREZK,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request of October 7, 1977, for our views on the technical sufficiency of S. 1214, a bill 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.

We are pleased to be of assistance to you in your request for technical advice for your marking-up of S. 1214. We are providing these technical comments in response to that request. You will understand, I am sure, that while we continue to believe that stability of Indian family life should be fostered through the preservation of their cultural identity, the provision of these comments does not change the Administration's position on this bill.

Subsection (c) of section 4 of S. 1214 contains a definition of the term "Indian tribe" which does not restrict the term to federally recognized Indian tribes. However, section 4(b), in the definition of the term "Indian", refers to "a federally recognized Indian tribe, so defined in subsection (c) hereof".

The term "Indian child" whihc is used throughout the bill, is not defined and it could be construed to mean any child of an "Indian", whether or not the child is eligible for enrollment in the tribe. Thus the bill could affect many children who are not now considered to be Indians. Subsection 4(d) defines "Indian organization" and appears thereby to include any Indian business within the definition of an Indian tribe set out in subsection 4(c).

Section 4(f) defines the term "nontribal public or private agency". This term includes "any court". Language should be added to exempt tribal courts.

Section 4(j) defines "extended family member" so as to include a variety of relatives. It is unclear whether the relatives therein described are relatives of the parent or of the child. The extended family member is not required to be an Indian to be eligible for preference in custody proceedings.

Section 101(b) requires clear and convincing evidence from "professional witnesses". This should be changed to "expert witnesses".

Section 101(e) of S. 1214 refers to "placement by any nontribal authority". It is not clear whether the parents of an Indian child are considered to be "nontribal authority". It doesn't appear to be the intent of the section to include them in that term but, on its face, the language is unclear.

Subsection 102(e) is somewhat ambiguous since a child's domicile is generally determined by the domicile of the father. We suggest the term "domicile" be substituted for "resident" and that the subsection be clarified to cover the situation where a child's parents live apart.

Subsection 102(f) is incorrect when it refers to preference standards set out in section 102, since the standards are set out in section 103.

In section 102(h) of S. 1214, regulation II of the Interstate Compact on the Placement of Children is cited. According to the version of the compact with which we are working, the cite should be to regulation III, not regulation II.

Section 102(j) of S. 1214 states that "the provisions of title IV of the act of April 11, 1968 (82 stat. 78) shall not apply to or limit the power of States and tribes to enter into such agreements or compacts". This language refers to agreements and compacts which provide for the transfer of jurisdiction between the States and the tribes. Section 404 of the act of April 11, 1968 (25 U.S.C. 1324 authorizes any State to assume criminal and civil jurisdiction over Indians even if the enabling act of the State prohibits such assumption. By stating that section 404 of the act of April 11, 1968 doesn't apply to the power of the States, section 102(j) will essentially disallow those States with enabling acts prohibiting assumption of Indian civil jurisdiction from entering into agreements or compacts in which any such jurisdiction would be assumed by a State.

With respect to title II of S. 1214, the possibility of a duplicity of programs exists between programs presently being carried out or authorized to be carried out by HEW, BIA, and HUD and programs authorized by section 201 of the bill. An example of this is the fact that BIA is presently involved in Indian home improvement, an aspect of the family development programs discussed in section 201 of S. 1214.

We appreciate the opportunity to express our views on the technical sufficiency of S. 1214. If you are in need of further assistance by this Department, please feel free to contact us.

Sincerely,

FORREST J. GERARD,
Assistant Secretary for Indian Affairs.

S. 1214—Indian Child Welfare Act (10/7 Revision) Suggested Technical Amendments.

1. Page 1, section 2. Delete "Reorganizing" and insert "Recognizing".

2. Page 4, section 4(a). On line 7, delete "Secretary of Interior" and insert "Secretary of the Interior".

3. Page 4, section 4(b), (c), (d) and (e). Delete lines 8 thru 25 and insert the following:

> (b) "Indian" means any person who is a member of, or who is eligible for membership in, an Indian tribe.
>
> (c) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians which is recognized as eligible for the special programs and services provided by the Bureau of Indian Affairs to Indians because of their status as Indians. The term includes each Alaska Native village listed in section 11(b)(1) of the Alaska Native Claims Settlement Act (85 Stat. 688, 697).
>
> (d) "Indian organization" means any group, association, partnership, corportion, or other legal entity owned or controlled (including control by a majority of eligible votes) by Indians.
>
> (e) "Tribal court" means any court or administrative tribunal exercising jurisdiction over child welfare matters on behalf of an Indian tribe. The term includes any Court of Indian Offenses established by the Secretary.

4. Page 5, section 4(f). On line 3 delete "including any court," and insert "including any court other than a tribual court".

5. Page 5, section 4(g). On line 16 delete "term 'reservation' shall include" and insert "term includes".

6. Page 5, section 4(h). Delete lines 20 through 22 and insert—

> (h) 'Child placement' means any public or private action (whether voluntary or involuntary), including any judicial, quasi-judicial, or administrative proceeding, order, or action.

7. Pages 5 and 6, section 4(h). On page 5, lines 23, 24, and 25 and on page 6, line 3, respectively, delete "(a)", "(b)", "(c)", and "(d)" and insert "(1)", "(2)", "(3)", and "(4)".

STATEMENT OF NANCY AMIDEI, DEPUTY ASSISTANT SECRETARY FOR LEGISLATION/WELFARE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Senator Abourezk, members of the committee, I am pleased to be able to be here this morning to testify on the subject of Indian child welfare, and your bill, S. 1214. We realize that your proposal does not directly involve HEW, and we appreciate your taking our views into account.

Your request for testimony from the Department of Health, Education, and Welfare, came at a particularly timely moment. As you no doubt know, the administration has recently undertaken a major review of foster care, adoptions, and other child welfare services, and just last week a bill reflecting the results of that review, S. 1928, was introduced by Senator Alan Cranston. Having your proposal before us, S. 1214, has prompted some soul-searching with respect to that proposal, and a new look at our own initiatives from the perspective of their value to Indian children in need of protective or other child welfare services.

In my statement this morning, I would like to deal with two things. First, for the committee's information, I would like to report on several of the Department's activities with relevance to services for Indian children, that were prompted in large part by hearings that this committee conducted in 1974. And then I should like to take up the subject of child welfare—particularly as it relates to S. 1214.

RECENT HEW ACTIVITIES RELATED TO INDIAN CHILD WELFARE SERVICES

Since the 1974 hearings, the Department has conducted and reported on the findings of, a state-of-the-field survey of Indian child welfare 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.

In reporting on the policy implications of its findings, that survey pointed to several of the factors that remain of concern to members of this committee as well as others interested in the field:

> The need to support increased involvement by tribal governments and other Indian organizations in the planning and delivery of child welfare-related services;
>
> The need to encourage States to deliver services to Indians without discrimination and with respect for tribal culture;
>
> The need for trained Indian child welfare personnel;
>
> 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;
>
> The need to find ways to insure adequate funding for services;
>
> 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.

Negotiations are underway now with the National Tribal Chairman's Association for a project that would explore the desirability of

amending the Social Security Act—to more effectively operate title XX social services programs for Indians. That project is being funded at more than a quarter of a million dollars, and is being conducted because we believe that further documentation of the need for services is of less importance at this point than the development of programmatic alternatives.

At the same time, we are reviewing proposals for a technical assistance contract designed 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.

In the current fiscal year, the Secretary has exercised his authority to conduct research and demonstration projects on terms that will provide for a test of alternative methods to improve the ways in which state agencies deliver social services to Indians.

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, and the designation of reservations as State planning areas for purposes of the title XX program.

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 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.

Child welfare initiatives

But individual projects, however sensitively designed cannot take the place of support for an adequately financed, officially backed, ongoing system to address the needs of children, and to support the rights of their families.

As the Secretary pointed out in announcing the Department's recent child welfare initiatives, none of those desirable features could be said to characterize the present situation in child welfare, for children of whatever race or ethnic group. Until now, the Federal Government has not done enough in the areas of foster care and adoption—providing minimal support for the efforts of individuals throughout the States who care about children, and who have been willing to fight the battles against out-moded and sometimes conflicting laws.

The situation across the country is not a pretty one. Too many children have been taken from their homes when supportive and preventive services might have allowed them to remain with their families. Those children who have been appropriately placed in others' homes, may be assigned to families too far away to make regular contact a possibility. Too little has been done to work with natural parents after a temporary placement in foster care—thus almost ensuring that the children will never be able to come home. For many children, the decision whether to return the children to their natural families, or, when appropriate, free them for adoption, is not made in a reasonable amount of time. Some children simply float in a kind of legal limbo because their foster parents cannot afford to lose the financial support that ends where legal adoption begins.

We have learned that parents and children alike have suffered from the lack of adequate protection against the inappropriate removal of children from their homes, against the sometimes uninformed decisions that determine the placement outside their homes, and the nature of the judicial proceedings that may determine the fate of children who come into the orbit of the juvenile courts.

We have seen that there are too few trained workers available, too little guidance for over-worked staff, and even some perverse incentives that would seem to encourage social agencies to favor foster care over more permanent, more child-focused solutions.

It was for reasons such as these that the administration proposed two weeks ago to reorganize this Nation's system of child welfare services in ways that would provide more adequate funding and a better-integrated, more rational approach to the kinds of problems that have plagued the families of children in need of temporary or permanent care.

Everything we found in relation to child welfare services could be said about services for Indian children—and more. This committee has remarked on the higher-than-normal rate of foster care and other placement outside the home experienced by Indian children, the services that are provided in culturally insensitive ways, the placement of Indian children in settings that do not meet their special needs, the failure of public policies to recognize the unique character of many Indian families' lives.

Thus, while we recognize the concerns which have prompted you to propose a separate program exclusively devoted to the provision of Indian child welfare services, it is precisely because we also recognize the need for a better service system for all children that we would urge you to consider, together with us, how we might make that larger system serve their needs.

As I mentioned earlier in my remarks, your request for administration testimony was a timely one. It has caused us to consider whether the bill that we sent up to Congress, as drafted, would respond to the kinds of concerns that this committee, and S. 1214, have raised. You will perhaps not be surprised to learn that we found some gaps that had not been so apparent before. However, we now believe that we may be able to accomplish some of what you would want to see achieved.

We will want to be careful not to further duplicate either funding sources or administrative structures, but we think it may be possible to help Indian children through S. 1928.

The bill that we sent up to Congress would, for example:

State a clearer test for involuntary removal of children from their families;

Create financial incentives (in the form of extra child welfare funds) to:

Provide due process protections for child, birth parents, and foster parents;

Provide services that would enable children to remain home or to return home;

Call for a one-time review of all children in foster care for 6 months;

Create in each State an information system that will aid in case management and provide on-going oversight of children placed outside their homes;

Establish a new program of federally supported adoption subsidies to enable children with special needs to be adopted;

Create financial disincentives for the inappropriate use of foster care as a "holding action" for children.

Many of these provisions are not so very different from the provisions set out in S. 1214, particularly in title I, which speaks most directly to matters surrounding the procedures that have led in the past to the arbitrary and sometimes inappropriate removal of children from their homes. But we believe that in S. 1928 we have a suitable vehicle for serving the needs of Indian children as well as the needs of others.

We may have to make some changes in our proposal, but with changes, what we hope will be a more adequately funded, more comprehensive system of child welfare services will also be more responsive to the needs of Indian children.

I don't have any legislative language with me to propose this morning; we have not settled on any details. But we would like to work together with the staff of this committee and individuals whom you might recommend to try and meet some of your most serious concerns within the context of S. 1928. For example:

We share your objectives concerning the need for better safeguards and procedures to protect Indian children and their families. To provide those safeguards we might consider conforming language in the administration's bill that would take into account the role of tribal courts and tribal governments in the procedures that surround the placement of children outside their natural homes.

And, we are persuaded that the moneys available for child welfare services have in the past been uncertain, with gaps resulting from the Federal, State, and county systems. We believe we could rethink that as well so that, where appropriate, the new moneys that will become available under the administration's proposal would also become available for Indian children.

We intend to work closely with the BIA and the staff of this committee to determine what changes in S. 1928 might be needed to assure the full participation of, and safeguards for, Indians, under the administration's proposal.

With my testimony this morning, I am submitting a section-by-section analysis of the administration's child welfare proposals so that you can see the parallels where they occur.

I will, of course, be pleased to try and answer any questions that the committee may have.

Thank you.

SECTION-BY-SECTION SUMMARY

The first section of the draft bill would provide the short title of the Act—the "Child Welfare Amendments of 1977".

Section 2 of the draft bill would amend title IV of the Social Security Act by adding at the end of that title a new part which would authorize a program of Federal financial assistance to States for foster care and adoption assistance. Currently, State foster care programs are assisted with Federal funds available under the aid to families with dependent children (AFDC) program, and there is no Federal program designed specifically to help States encourage adoptions. Following is a summary of each section which would be contained in the new part E.

Section 470(a) of the part would provide the State plan requirements which must be satisfied for participation in the foster care and adoption assistance programs. Most of the provisions parallel requirements currently applicable to foster care programs under the State plan provisions for AFDC. They include requirements pertaining to "statewideness" (the programs must be in effect throughout the State), personnel standards based on merit, State reports to the Secretary, periodic evaluations of the programs, and confidentiality of individual records.

There are also several new provisions. They include the requirements (1) that the State agency which is responsible for the child welfare service program (authorized by title IV–B of the Social Security Act) and the social services program (authorized by title XX of the Social Security Act) also administer the new part E programs; (2) that the State will assure appropriate coordination between the new programs and other related programs; (3) that the State agency will bring to the attention of the appropriate court or law enforcement agency conditions which would endanger any child assisted under the part E programs; (4) that the title XX standards which apply to child-care institutions and foster care homes would also apply to such entities when assisted under part E; (5) that an individual denied benefits offered under the programs will be informed of the reason for the denial; and (6) that the State will arrange for periodic independent audits of its programs under part E.

Section 470(b) of that part would require the Secretary to approve a State plan which met the statutory conditions. In the case of a State which later fell out of compliance with the statutory requirements, the Secretary would have the flexibility to reduce the Federal payment to the State under part E by an appropriate amount, or cease making the payments entirely, until the State corrected its failure.

Section 471 of part E would describe the foster care maintenance program which a State must provide under its State plan. In many respects, the program would not differ from the one currently authorized as part of the AFDC program under section 408 of the Social Security Act. Following are the major innovations which would characterize the revised program: (1) Federal reimbursement would be provided with respect to children voluntarily placed in foster care or placed initially on an emergency basis; (2) findings to be included in judicial determinations which serve as the basis for placement in foster care would be specified; (3) the requirements for the individual case plan for each child in foster care would be strengthened; and (4) federal reimbursement would be permitted with respect to foster care provided by public institutions, so long as any such institution accommodated no more than 25 children. As under current law, children receiving foster care under part E would retain their Medicaid eligibility.

Section 472 of part E would describe the adoption assistance program which a State must provide under its State plan. Under the program, a State would be responsible for determining which children in the State in foster care would be eligible for adoption assistance because of special needs which have discouraged their adoption. The State would have to find that any such child would have been receiving AFDC but for the child's removal from the home of his relatives: that the child cannot or should not be returned to that home; and that, after making a reasonable effort consistent with the child's needs, the child was not adopted without the offering of financial assistance. In the case of any such child, the State would be able to offer adoption assistance to parents who adopt the child, so long as their income does not exceed 115 percent of the median income of a family of four in the State, adjusted to reflect family size.

The agency administering the program could make exceptions to the income limit where special circumstances in the family (as defined by regulation) warrant adoption assistance. The amount of the adoption assistance would be agreed upon between the parents and the agency, could not exceed foster care maintenance payment that would be paid if the child were in a foster family home, could be readjusted by agreement of the parents and the local agency to reflect any changed circumstances, and could initially include an additional payment to cover the non-recurring expenses associated with the adoption of the child. Adoption assistance payments would not be paid after the child reached maturity, or for any period when the family income rose above the specified limits. Finally, a child who the State determines has a medical condition, which contributed to the finding that he is a child with special needs, would retain his Medicaid eligibility until he reached maturity. It should be noted that, as is the case with other Medicaid recipients under current law, if there is a family insurance contract that covers the child, Medicaid would only provide coverage in excess of what is covered by the insurance policy. Furthermore, the Administration continues to favor the provision in H.R. 3 that would prohibit discrimination against insured medicaid recipients by their insurance providers.

Section 473(a) of part E would authorize appropriations for carrying out the programs authorized by part E. In the first two fiscal years of the program, 1978 and 1979, there would be authorized an appropriation of a sum necessary to pay each State the Federal share of whatever expenses are incurred in establishing and maintaining the part E programs.

During the five succeeding fiscal years, the authorization level would go up by ten percent each year, and beginning in fiscal year 1985 would be maintained at the fiscal year 1984 level.

Section 473(b) of part E would provide for the allotment to States of the funds appropriated. For the first two fiscal years of the program, there would be no limitation to the allotment—a State would be paid the Federal share of its expenditures under its State plan approved under part E. For the next five succeeding fiscal years a State would be entitled to an allotment each year which would be ten percent higher than the previous year's allotment. Beginning with fiscal year 1985, there would be no automatic annual increase in allotments.

Section 474 of part E would provide for payments to the States. For the first two fiscal years of the program, a State with an approved plan under part E would be paid the Federal share (as determined for purposes of the Medicaid program) of the cost of the program. For each fiscal year thereafter, the payment to a State would be limited by the amount of its allotment. Two other modifications would become effective beginning in fiscal year 1980—the Federal payment with respect to expenditures for child-care institutions which accommodate more than 25 children would be reduced to eighty percent of the payment as calculated in the first two fiscal years and sums allotted to a State for purposes of part E which the State does not claim under part E could bet claimed by the State under part B. As is currently the case under AFDC foster care, the Federal government would provide 75 percent reimbursement for training State employees to administer the plan, and 50 percent reimbursement for other administrative expenses.

Section 475 of part E would provide the definitions of certain terms used in part E or part B of title IV. Terms which are defined include "administrative review", "case plan", "voluntary placement agreement", "adoption assistance agreement", and "foster care maintenance payment".

Section 476 of part E would authorize an appropriation of $1.5 million annually to permit the Secretary to provide technical assistance to States to assist them in developing the programs called for in part E, to make grants to, or enter contracts with, the State agencies to develop interstate systems for the exchange of information pertaining to foster care and adoptions; and to evaluate the programs authorized under part B and part E of title IV. The Secretary, pursuant to this section, would publish periodically data pertaining to foster care and adoptions.

Section 477 of part E would limit the time period for the filing of claims for reimbursement by the Federal Government to two fiscal years following the fiscal year in which the expenditure was made.

Section 2 of the draft bill would also repeal section 408 of the Social Security Act, the provision of law which currently authorizes Federal reimbursement for State foster care programs.

Section 3 of the draft bill would amend part B of title IV of the Social Security Act—the part which authorizes Federal reimbursement for State child welfare services programs. The amendment would limit the amount of a State's payment under part B which the State could spend for foster care maintenance payments, adoption assistance payments, and employment related day care services to the amount which the State was actually paid under part B for expenditures in fiscal year 1977.

Section 4 of the draft bill would amend part B to convert the child welfare services program under that part to a State "entitlement" program, based upon the current annual approprations authorization level of $266 million (but limited by certain conditions specified in section 6 of the draft bill). During this fiscal year, $56.5 million will be paid to the States pursuant to part B.

Section 5 of the draft bill would amend part B to modify the Federal share of State costs under the child welfare services program. Currently, the rate of federal reimbursement is related to the per

capita income in each State, and generally ranges between about 40 percent and 60 percent. Under the amendment which would be made by section 5, Federal reimbursement would be 75 percent of expenditures for each State.

Section 6 of the draft bill would amend part B to specify the conditions under which States would be paid the additional sums, which would be authorized by the draft bill, beyond the amounts available for fiscal year 1977. Thirty percent of the additional sums would be available beginning in fiscal year 1978. States would be able to use that money for any purposes permitted under part B. However, the intent is to provide increased sums to the States to enable them to give priority to establishing certain systems and procedures—including information systems, case review systems, service programs to help children stay with, or return to, their families, and procedural safeguards to protect the rights of parents, children, and foster parents. States would also be expected to conduct a one time inventory of children in foster care.

Once these steps have been accomplished, but not before fiscal year 1979, a State would be eligible for the full amount of its allotment under part B, based on an appropriation of $266 million. A State eligible for its full payment would be required to meet two conditions: (1) an amount equal to at least 40 percent of the money it is paid in excess of the amount it received for fiscal year 1977 would need to be spent for services designed to help children stay with, or be returned to, their families, and (2) in any fiscal year, a State may not be paid in excess of the amount it was paid in fiscal year 1977 if the State spends less from State sources in that year for child welfare services than it spent from State sources in fiscal year 1977.

Section 7 of the draft bill would make two conforming changes to the State plan requirements for part B. It would require (1) that once a State had met the conditions for receipt of its full allotment under part B, the State would maintain the systems and procedures it had developed, and (2) that any requirements applicable to foster care maintenance payments or adoption assistance payments under part E would also be applicable to payments under part B which are used for those purposes. The purpose of the latter amendment is to assure that children in foster care, or who are adopted, with assistance under part B will be treated the same as children in foster care, or who are adopted, with assistance under part E.

Section 8 of the draft bill would repeal the reallotment provision currently in part B of title IV.

Section 9 of the draft bill contains some technical conforming changes. For example, whereas current law requires a State to have a foster care program under section 408 of the Social Security Act as a condition for participation in AFDC, under the draft bill the reference in the State plan for AFDC would be to foster care and adoption assistance payments in accordance with part E.

Section 9 of the draft bill would also require the Secretary to submit a report on the implementation of the amendments contained in the draft bill by March 1, 1980, and would provide an effective date for the draft bill of October 1, 1977. Finally, section 9 would provide that funds appropriated and allotted to States under part B for fiscal year

1978 would remain available for expenditure by the States through fiscal year 1979.

Changes in Existing Law

In compliance with subsection (4) of the rule XXIX of the standing Rules of the Senate, the committee notes that no changes in existing law are made by the bill S. 1214 as reported.

Appendix S. 1214 Legislative Report

State of Nebraska,
Department of Public Welfare,
October 25, 1977.

Ms. Patricia Marks,
Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

Dear Ms. Marks: Senator James Abourezk requested that Nebraska Governor J. James Exon examine S. 1214 and submit any comments he might have. Governor Exon asked my department to review the bill and report to you. We find the philosophy and suggested system of placing Indian children with their Indian tribes to be very acceptable and exemplary. Our activities in child welfare indicate that a child is most responsive to remedial services if provided in the community and associated with normal family situations.

S. 1214 very clearly focuses the basic concept that Indian children should be cared for by Indian adults in an environment of the tribal culture. This concept is paramount to success.

We would like to stress two specific concerns which may be contained in the legislation.

1. It is essential that adequate training funds be provided to insure the development of resources in the Indian community and facilitate the transfer of the program from the state to the reservation. Without adequate training, this bill will fail.

2. It is important that the systems which are envisioned in S. 1214 would be supported by compatible philosophies and support systems currently provided by the Bureau of Indian Affairs. The Bureau and this welfare proposal must have a singular purpose of supporting the child in his community.

We appreciate the opportunity to review and comment on this legislation and look forward to the opportunity to assist in its implementation.

Sincerely,

Eldin J. Ehrlich,
State Drector.

State of California,
Health and Welfare Agency,
Sacramento, Calif., October 21, 1977.

Hon. James Abourezk,
Member of the U.S. Senate,
Select Committee on Indian Affairs, Washington, D.C.

Dear Senator Abourezk: Governor Brown has received your letter of October 7, 1977.

We are in support of the legislation but wish to add the following for your consideration:

(1) Legal counsel should be provided to the child—independent of parents.

(2) Consent should be received from the child if over the age of, say, 12 years. If under 12, perhaps his or her opinion should be considered in the proceedings.

Thank you for the opportunity to offer comments.

Sincerely,

MARIO G. OBLEDO,
Secretary.

STATE OF OKLAHOMA,
OFFICE OF THE GOVERNOR,
Oklahoma City, October 21, 1977.

MR. MICHAEL COX,
Minority Counsel, Select Committee on Indian Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. COX: At the request of Senator Dewey F. Bartlett, I have received a copy of S. 1214, the "Indian Child Welfare Act of 1977." I have reviewed the original and redrafted bill thoroughly. I believe this bill merits full endorsement. The guarantees provided in this bill merits full endorsement. The guarantees provided in S. 1214 for Indian children will contribute to maintaining the stability of Indian families. In addition, the bill recognizes the special "nonreservation" condition which exists in Oklahoma.

I commend the Select Committee on Indian Affairs for its work. If my office can assist you further, please contact Mrs. Gail Scott. I am pleased to lend my support to the passage of this important legislation.

Sincerely yours,

DAVID L. BOREN.

OCTOBER 26, 1977.

MR. PETER TAYLOR,
Special Consul, Senate Select Committee on Indian Affairs, 5331 Dirksen Building, Washington, D.C.

DEAR MR. TAYLOR: The Indian Health Policy Panel is an advisory body to the California State Health Department. At a recent meeting the body went on record of supporting the Indian Child Welfare Bill, S.B. 1214.

California, like other States, had a long history of being unaware and unresponsive to the special needs of Indian children and families; in particular the placement and adoption of Indian children. There are no rules or guidelines in effect for the policy of attempting to place Indian children with Indian families.

The entire area of social services to Indians in California is in need of scrutiny and upgrading. There should be an Indian Division in the Department of Social Welfare to accommodate the special needs of Indians, in particular those in rural areas, on reservations and on rancherias.

The adoption of a federal bill such as Senator Abourezk's Bill S.B. 1214 on the entire protection of Indian children and families rights, will greatly assist in bringing about a response and action plan at the State level.

Sincerely,

H. D. TIMM WILLIAMS,
Chairperson, Indian Health Policy Panel.

OFFICE OF THE GOVERNOR,
Phoenix, Ariz., October 28, 1977.

HON. JAMES ABOUREZK,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ABOUREZK: The Governor's office has reviewed the reference bill and offers the following comments for your consideration:

There is some concern regarding the provisions in section 101(c) allowing that the child's parent may withdraw voluntary consent to adoption "for any reason at any time before the final decree of adoption." This injects a new and significant risk in placing Indian children for adoption, and will limit the opportunity for a stable secure family for some children.

We are pleased that title II, section 204(a) has been deleted, we could not have supported the provisions for review and possible reversal of placements over the past 16 years.

Clarification is needed either in the bill or in guidelines, regarding relationships between State and tribal court systems, and establishing the child's tribal identity if there are ties to several tribes, and also significant ties to the Anglo community through an Anglo parent and the related rights of the Anglo parent.

The provision in section 104, ensuring the child's right to know his birth identity at age 18, is of interest, and could become a catalyst for legislation specifying rights of all adult adoptees.

Thank you for the opportunity to comment on this bill.

Sincerely,

ROBERT HATHAWAY,
Special Assistant.

DEPARTMENT OF HUMAN RESOURCES,
CHILDREN'S SERVICES DIVISION,
Salem, Oreg., October 18, 1977.

SENATOR MARK O. HATFIELD,
U.S. Senate, Select Committee on Indian Affairs,
Washington, D.C.

DEAR MARK: Thank you very much for sending me a copy of the Indian child welfare bill which is being reviewed by the Senate Select Committee on Indian Affairs. As you are well aware, Oregon is one of the States in the Nation which has an Indian population both on reservations and absorbed into our general State population.

I am pleased that the thrust of this piece of legislation is to promote the stability and security of the Indian family. The bill is in concert

with other social legislation which is aimed at preventing placements in long term foster care, and maintaining children in their own homes where services can be provided in the least restrictive environment.

I believe it is imperative that we begin working with families in crisis, not by removing children and treating them in isolation, but by dealing with the total family to insure that the family unit can be maintained and that a child will not have to face the trauma of being removed from his own home. This bill provides that the child's parents be involved and that any placement of the child will be only after the family has been tried as a treatment resource and is found incapable of meeting the needs of the child. I am further pleased that this piece of legislation will clarify the role of state, public and private agencies when dealing with children who reside on an Indian reservation.

Questions or comments on specific provisions of the bill are as follows:

1. Section 4(b)—Definitions

It is the intent of this bill to provide recognition, protection and privileges to only those who can be affiliated with a tribe? If this is the case, adoptive homes of Indian heritage for Indian children would be more limited than they already are. BIA has advised that a home where one parent is one-fourth or more Indian descent is Indian and, even so, these homes are hard to find. If I read it right, the strict definition will make location of Indian homes more difficult.

2. Section 101(c)

Section 101(c) attempts to provide protections when parents voluntarily consent to placement by signing before a judge and providing the consent be explained. This is good and provides protections which would be good for all parents.

Administration of this might be difficult, as all state laws do not provide for such a system. Oregon does not. The provision that consents for adoption may be withdrawn any time prior to legal adoption is contrary to Oregon law which provided that no surrender for the purpose of adoption to an adoption agency can be revoked once the child is placed in an adoptive home. The provision for setting aside an adoption decree is also contrary to Oregon law, which provided that no adoption decree shall be questioned for any reason after expiration of one year from entry of the decree.

3. Section 103 (a)

Section 103 (a) that provides the order in which adoptive homes are to be considered for children has some merit by assuring more effort to find Indian homes for Indian children. I question the order, as it appears the requirement would be to evaluate first extended family then a home on the reservation, tribal members and finally a home approved by the tribe.

By having to go in order, time delays are possible, which can deny a child permanence. The goal should be to seek the best possible home regardless of order. I would suggest the words "in following order" be removed and add instead, "these kinds of homes should be evaluated."

I am pleased to find that the major thrust of this bill is in line with child welfare reform which is being proposed for all children, and that its strengths lie in its increased efforts to maintain children in their own home. I would be pleased if you would keep me informed of this bill as it progresses through legislative steps.

Sincerely,

(For J. N. Peet, Administrator).

REGULATION II

1. Programs of public or private agencies in which children are placed in family homes as an incident to their attendance at schools in communities in other States are foster care placements within the meaning of the compact. They do not fall within the educational exception resulting from the definition of placement in article II(d) of the compact. The home rather than the educational institution provides child care and supervision during the time when the child is not in attendance at the school program.

2. To facilitate the conduct of such a program, the agency administering it may investigate or make arrangements for such investigations and prepare reports on homes in advance and may offer such reports to compact administrator as part of the information supplied in connection with an intended placement, provided that any such report is current to within 6 months of the date of its submission in connection with an intended placement.

3. Any home in which a child is placed or proposed to be placed pursuant to this regulation shall obtain and maintain such license or approval as a child care or foster home as the laws and implementing regulations of the receiving State may require. The license or approval shall be in full force and effect at the time when the sending agency gives notice of the intended placement and at all times during the continuance of the placement. Failure to meet this condition shall be sufficient ground for denial of an affirmative notice pursuant to article III(d) of the compact.

4. The operator of a program which uses family homes to provide board and lodging, child care and supervision or foster care in order to facilitate the securing of education by children in communities other than their own may consolidate notifications of intended placements provided that all of the information reasonably required pursuant to article III of the compact is contained in or accompanies the consolidated submission. The information and documents shall include:

(a) Name of child, together with age, sex and such other basic identifying information as may be appropriate.

(b) Name of parents, responsible relative or guardian and address.

(c) Identification by name and address of family home in which the child is intended to be placed, together with a copy of the child caring or foster care license or approval, if any is required pursuant to the laws of the receiving state.

(d) A statement that the sending agency is familiar with the conditions in the home and with the family members and that, on the basis

of such familiarity, has determined that having the child there for the school year does not appear to be contrary to the best interests of the child.

(e) A statement from the sending agency that it undertakes to return any child to its parents or guardian or to make an alternative arrangement for the child whenever and if the then current arrangement becomes inadequate or when the parent or guardian requests return.

(f) A copy of the agreement between the parent or guardian and the sending agency pursuant to which the child is received into and maintained in the program.

(g) A statement of the sending agency detailing the manner in which the regular and any special or extraordinary medical care needs of the child will be met.

(h) Such supporting or additional information as may be requested pursuant to article III(c) of the compact.

5. The operator of a program to which this regulation applies shall:

(a) Notify the compact Administrator of the receiving state promptly if the child is returned to his parental or guardian home or sent to another home during the school year as part of an arrangement to facilitate continuance in the program.

(b) Notify the compact Administrator of the receiving State promptly upon the child's return to his parental or guardian home at end of the school year.

(c) Send promptly to the compact administrator of the State from which the child was placed a copy of any notice sent pursuant to subparagraphs (a) or (b) hereof, if the laws or regulations of that State so require.

6. If a child in the program is replaced from one home to another the action shall be considered a new placement and shall require the same notifications, furnishing of information and documentation, and receipt of a notice pursuant to article III(d) of the compact as an initial placement.

7. The special procedures of this regulation shall be available only for programs in which the parents or guardian retain full custodial rights to affect by the giving or withholding of consent or otherwise, the place of abode and participation in the program of the child. Further, this regulation applies only to programs a purpose of which is to afford children educational opportunities but in which residential schools or other residential institutions are not utilized to provide the educational program.

[COMMITTEE PRINT]

AMERICAN INDIAN POLICY REVIEW COMMISSION

FINAL REPORT

SUBMITTED TO CONGRESS
MAY 17, 1977

VOLUME ONE OF TWO VOLUMES

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tion of welfare assistance; but instead, the BIA uses it to declare all Indians in certain geographic areas ineligible for BIA General Assistance. The BIA relies on this rule, as well as on other factors, in deciding whether or not to operate its general assistance program in a specific location. For example, since Arizona and its counties refuse general assistance to Indians living on a reservation, the BIA operates its general assistance program on Arizona reservations, but since Utah permits eligible Indians on reservations to receive State general assistance, the BIA has no general assistance program in that state.[112]

These authors point out, this policy discriminates against reservation Indians living in States with general assistance programs which include Indians. State programs are generally less beneficial than the BIA program. Moreover, inclusion in State programs precludes Indian recipients from benefits under the BIA program.

According to Barlow and Blue, "although the exclusion of reservation Indians from State (or local) general assistance poses constitutional problems, raising these issues would only harm Indians, because virtually all State and local general assistance programs provide less money to recipients and are more restrictive in their coverage than BIA general assistance." [113]

BIA has ignored the reality of welfare "benefits" by its refusal to supplement State categorical welfare when such benefits do not meet 100 percent of BIA established needs.[114] To say that participation in any program, no matter how inadequate, supplants the goal of the higher standards established by BIA, subverts the clear intent of the Snyder Act.

CHILD PLACEMENT

The policy of removing Indian children from their homes and tribal settings to "civilize" them began in the 1880's with the advent of boarding schools. Indian children are still being removed from their tribal culture. Today, however, this is done through the adoption of Indian children by non-Indian families and their placement in non-Indian foster care homes and institutions.

Two basic jurisdictional questions exist: who decides whether an Indian child needs to be removed from home; and where and how that child is to be raised. Until very recently, such decisions have been made by non-Indians without tribal input. Today, the tribes are beginning to reassert their historical role in the care and protection of Indian children.

While both Indians and non-Indians are concerned with child placement, social workers without training or understanding of Indian lifestyle or culture are ill-equipped to make judgments about the adequacy of the Indian child's upbringing. Even if one assumes the social worker is making the right decision, there should be an effort to maintain the family unit while problems are being solved.

RECOMMENDATIONS

The Commission recommends that:

Congress hold oversight hearings to clarify the division of responsibility between Federal and State agencies involved with Indian af-

[112] 51 N. Dak. L. Rev. 31 at 41–42.
[113] *Id.*
[114] 66 I.A.M. 3.1.4(B).

fairs; including BIA, HEW, IHS, Office of Civil Rights, and Social and Rehabilitation Services; and direct these agencies to consult with State agencies to determine the causes of the breakdown in the delivery of services to Indians by the States.

The BIA and HEW promulgate regulations to clarify that Indian trust money and land is not to be considered an asset by State and county governments in determining eligibility for welfare programs.

BIA be required to publish in the Federal Register and in the Code of Federal Regulations their procedures and guidelines for general assistance under the Snyder Act.

Procedures and practices used in the BIA's 64 local welfare offices should be standardized and made uniform, ending the practice of discretionary action on the part of the local BIA caseworkers.

Receipt of State or local general assistance should not make an Indian ineligible for BIA assistance when supplemental aid is needed.

CHILD PLACEMENT

The Commission recommends that:

Congress. by comprehensive legislation, directly address the problems of Indian child placement and the legislation adhere to the following principles:

a. The issue of custody of an Indian child domiciled on a reservation is the subject of the exclusive jurisdiction of the tribal court where such exists.

b. Where an Indian child is not domiciled on a reservation and subject to the jurisdiction of non-Indian authorities, the tribe of origin of the child be given reasonable notice before any action affecting his/her custody is taken.

c. The tribe of origin have the right to intervene as a party in interest in child placement proceedings.

d. Non-Indian social service agencies, as a condition to the Federal funding they receive, have an affirmative obligation—by specific programs—to:

(i) provide training concerning Indian culture and traditions to all its staff;

(ii) establish a preference for placement of Indian children in Indian homes;

(iii) evaluate and change all economically and culturally inappropriate placement criteria;

(iv) consult with Indian tribes in establishing (i), (ii), and (iii).

e. Significant Federal financial resources should be appropriated for the enhancement or development, and maintenance of mechanisms to handle child custody issues, including but not limited to Indian operated foster care homes and institutions. In reservation areas such resources should be made directly available to the tribe.

[COMMITTEE PRINT]

REPORT ON FEDERAL, STATE, AND TRIBAL JURISDICTION

TASK FORCE FOUR: FEDERAL, STATE, AND TRIBAL JURISDICTION

FINAL REPORT TO THE AMERICAN INDIAN POLICY REVIEW COMMISSION

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the building of a dam, there should be provision which will contemplate such impact. Ad hoc compensation is simply not appropriate or sufficient where such impact may totally wipe out an economic base or cultural structure when prior review could obviate such a result. Provisions for review such as are found in section 102(C) of the National Environmental Policy Act [43 U.S.C. 4332] would require investigation and research into possible infringements with notice and opportunity to the potentially affected tribe for input.

As a corollary to the above provisions, enactments by the various States which directly or indirectly impact on the exercise of Indian rights should be subjected to similar review provisions. Such enactments by States are forbidden when they interfere with Indian rights. Emergency provision should be made for those situations which present exigent circumstances with additional provision for speedy review.

(d) In recognition of the significant impact which international considerations have on Indian rights, specific provision should be made for Indian representation on such bodies: for example, International Pacific Salmon Fisheries Commission and the National Marine Fisheries Services of the United States.

Of significant importance is congressional cognizance and recognition of the importance of equal participation by Indian tribes in implementing plans for enforcement, management, and enhancement of fisheries. It is appropriate and consistent with Indian needs and their relative role in this area that they be an integral part of the management and enforcement implementation. Congressional action should so reflect.

B. Child Custody

*** * * I can remember [the welfare worker] coming and taking some of my cousins and friends. I didn't know why and I didn't question it. It was just done and it had always been done * * *[1]**

It is still being done, but now it is being aggressively questioned and fought, and hopefully in some places, the frequency of removing Indian children from their homes to non-Indian adoptive or foster care homes has lessened.

The issue is a crucial one in Indian country, and its ramifications are many. Removal of Indians from Indian society has serious long- and short-term effects, both for the tribe and for the individual child removed from his/her home environment who may suffer untold social and psychological consequences. Louis La Rose, chairman of the Winnebago Tribe, expressed the anger of many when commenting on the debacle of the Indian child placement situation:

I think the cruelest trick that the white man has ever done to Indian children is to take them into adoption courts, erase all of their records and send them off to some nebulous family that has a value system that is A–1 in the State of Nebraska and that child reaches 16 or 17, he is a little brown child residing in a white community and he goes back to the reservation and he has absolutely no idea who his relatives are, and they effectively make him a non-person and I think . . . they destroy him. And if you have ever talked to an individual like that when he comes to a reservation . . . I get depressed.[2]

One of the most pervasive components of the various assimilation or termination phases of American policy has been the notion that the

[1] Testimony of Valancia Thacker, southern California transcript at 88.
[2] Midwest transcript at 424–25.

way to destroy Indian tribal integrity and culture, usually justified as "civilizing Indians," is to remove Indian children from their homes and tribal settings. This effort began in earnest in the 1880's when Indian children were removed from their homes and sent to distant boarding schools. The Indian people fought this removal with whatever means were at their disposal. It is not necessary here to recount the horror stories, reams of which are well documented—suffice to say that the resultant mortalities were incredible and the brutality against Indian students belies any notion of civilization. Many current tribal leaders still bitterly remember their own experiences. Peter MacDonald, Chairman of the Navajo Nation, related tales of corporal punishment administered for speaking Navajo in school.[3] Although boarding schools still are in existence and still present major problems, many of the more perverse practices, fortunately, appear to have receded.

Current issues focus more on the problems of the adoption of Indian children by non-Indian families and the temporary and permanent placement of Indian children in non-Indian foster care homes and institutions. It is a curious paradox that many early, non-Indian commentators, observing Indian culture, praised familial and tribal devotion to their children, yet now, after generations of contact and conflict with Western civilization, so many Indian families are perceived as or found to be incapable of child rearing. The practices of assimilation and removal have had their impact.

The jurisdictional questions are fairly simple: who decides whether an Indian child needs to be removed from his or her home, and who decides where and how that child is to be raised? In America today, these decisions are made by a combination of public and private social service agencies and court systems. The question further refined becomes: Do tribal authorities make these decisions for dependent Indian children, or do non-Indian authorities make these decisions? In this century, most decisions have been made by non-Indian authorities. The pattern, however, is beginning to shift, as tribes, through their court systems, and developing tribal social service agencies, reassert their historical role in the care and protection of Indian children.

One might ask, since both Indian and non-Indian systems should act in the best interests of the child, what difference it makes which court has jurisdiction. The difference is that these decisions are inherently biased by the cultural setting of the decisionmaker and the history as to what has happened to Indian children when decisions are made by non-Indian authorities. Several years ago, it was estimated on the best available data that 25 to 35 percent of all Indian children are being raised by non-Indians in homes and institutions.[4]

An Indian family's initial contact with these non-Indian institutions is usually the "welfare worker." Given the destitute and impoverished conditions extant on many reservations and in the urban areas to which Indians were relocated, public assistance is a painful but necessary reality. The social workers, who are usually untrained [5] and have little or no understanding of Indian lifestyle or culture, make judgments concerning the adequacy of the Indian child's upbringing.

[3] Transcript of hearings before the U.S. Commission on Civil Rights, Window Rock, Ariz., Oct. 22–24, 1973, at 18.
[4] Indian Family Defense, Winter, 1974.
[5] Untrained is defined as lacking an M.S.W. Unfortunately, most M.S.W. programs do not include any training with respect to Indians.

Even assuming that the judgment is correct and that the welfare worker has not imposed inapplicable social-cultural values, if the judgment is negative, then the social worker should attempt to provide counsel to the family. The effort should be made to maintain an intact family unit while problems are being resolved. Unfortunately, given cultural barriers, this effort is often not possible.

The next step is frequently termination of parental rights. Economically dependent parents are often urged to consent to the removal of their child. The termination of parental rights is done through a court proceeding. Once parental rights are terminated, the court, again relying on the poorly trained, often biased or judgmental social worker, then decides the question of the custody [placement] of the child. If custody is given to public or private social service agencies, they then decide the actual placement of the child. In adoption proceedings, the court will rule on the actual adoptive family.

Within these systems, two levels of abuse can and do occur. In the initial determination of parental neglect [6] the conceptual basis for removing a child from the custody of his/her parents is widely discretionary and the evaluation process involves the imposition of cultural and familial values which are often opposed to values held by the Indian family. Second, assuming that there is a real need to remove the child from its natural parents, children are all too frequently placed in non-Indian homes, thereby depriving the child of his or her tribal and cultural heritage. Non-Indian institutions apparently have a very difficult time finding Indian foster homes and adoptive parents. In recent years, some States are making concentrated efforts to improve; [7] however, many of the home approval criteria are rigid and inappropriate for the economy and lifestyle of many Indian families. Because of this, many fine potential Indian adoptive and foster care families are rejected or, fearing rejection, do not apply. This process can eliminate blood relatives of the child.

Unless a tribe is actively involved with child welfare issues through its court system and its social service agencies, it has almost no way of knowing what is occurring with respect to its minor tribal members.[8] Even where a tribe is actively involved with these issues, there are substantial difficulties, particularly when events occur outside of its territorial jurisdiction. There is no existing requirement that public or private social service agencies, whether they are close by or in distant cities, have to notify a tribe when they take action with respect to any tribal member.[9] Even when a tribe seeks to aggressively assert its interests in child custody proceedings in non-Indian forums, it cannot do so as a matter of right.[10]

A particular problem also exists where the child is entitled to moneys based on tribal membership—either on a yearly per capita basis or

[6] Few Indian children are brought to court based on "abuse".
[7] Testimony of Gerald Thomas, Director of Social Services, Washington State, Northwest transcript at 499.
[8] Because of the lack of any systematic and comprehensive recordkeeping, even the non-Indian agencies which are removing Indian children on a daily basis do not know the full dimensions of the problem. Several State social service agency officials who were contacted as part of the data collection process (presented in the following section) expressed surprise at the statistics they gathered.
[9] Although the Washington State social service agency stated that it was their practice to notify tribal officials whenever it took any action involving tribal members, this policy is, however, not codified. Northwest transcript at 501. Tribal frustration with the general pattern of nonnotice is reflected by a Gila River ordinance which makes it a criminal offense to remove an Indian child from the reservation without the consent of the tribal court.
[10] Matter of Greybull, 543, P. 2d 1079 (1975).

otherwise—and the tribe is required to turn these moneys over to agencies and placement families.

1. THE DEMOGRAPHY OF THE PROBLEM [11]

Because of the various recordkeeping systems of States and counties, it is difficult to obtain a picture of the full dimensions of this problem. Data is often grossly incomplete, omitting crucial information such as whether placements are made to Indian or non-Indian homes. Information is often not available on all the factors which affect the placement issue, such as private agencies.

The data in this section has been calculated on the most conservative basis possible; the figures presented therefore reflect the most minimal statement of the problem. Adoption statistics are calculated by using the child's age at adoption and projecting pattern based on available yearly placement patterns. Foster care figures are derived from the most recent yearly statistics available. All statistics are from 1973–1976 unless otherwise indicated.

Statistics are presented for those States where a significant Indian population resides.

Alaska

There are 28,334 Alaskan Natives under 21. Of these, 957 (or 1 out of every 29.6) Alaskan Native children has been adopted; 93 percent of these were adopted by non-Native families. The adoption rate for non-Native children is 1 out of 134.7. By proportion, there are 4.6 times (460 percent) as many Native children in adoptive homes as there are non-Native children.

There are 393 (or 1 out of every 72) Alaskan Native children in foster care. The foster care rate for non-Natives is 1 out of every 219. There are, therefore, by proportion, 3 times (300 percent) as many Native children in foster care as non-Native children. No data was available on how many children are placed in non-Native homes or institutions.

Arizona

There are 54,709 Indian children under 21 in Arizona. Of these, 1,039 (or 1 out of every 52.7) Indian children has been adopted. The adoption rate for non-Indian children is 1 out of every 220.4. There are therefore, by proportion, 4.2 times (420 percent) as many Indian children in adoptive homes as there are non-Indian children.

There are 558 (or 1 out of every 98) Indian children in foster care.[11a] The foster care rate for non-Indians is 1 out of every 263.6. There are therefore, by proportion, 2.7 times (270 percent) as many Indian children in foster care as there are non-Indian children.

California

There are 39,579 Indian children under 21 in California. Of these, 1,507 (or 1 out of every 26.3) Indian children has been adopted; 92.5 percent of these were adopted by non-Indian families. The adoption

[11] Much of this section is based on Indian Child Welfare Statistical Survey, July 1976, prepared for the Task Force by the Association on American Indian Affairs, Inc.; all data unless otherwise indicated is from this survey.

[11a] Absolute minimal estimate.

rate for non-Indian children is 1 out of every 219.8. There are therefore, by proportion, 8.4 times (840 percent) as many Indian children in adoptive homes as there are non-Indian children.

There are 319 (or 1 out of every 124) Indian children in foster care. The foster care rate for non-Indians is 1 out of every 366.6. There are therefore by proportion 2.7 times (270 percent) as many Indian children in foster care as there are non-Indian children. No data was available on how many Indian children are placed in non-Indian homes or institutions.

Idaho

There are 3,808 Indian children under 21 in Idaho. The figures on adoptions are too small to be statistically significant.

There are 296 (or 1 out of every 12.9) Indian children in foster care. The foster care rate for non-Indians is 1 out of every 82.7. There are therefore by proportion, 6.4 times (640 percent) as many Indian children in foster care as there are non-Indian children.

Maine

There are 1,084 Indian children under 21 in Maine. Of these, 0.4% were placed for adoption during 1974–75.

There are 82 (or 1 out of every 13.2) Indian children in foster care. The foster care rate for non-Indians is 1 out of every 251.9. There are therefore by proportion, 19.1 times (1,910 percent) as many Indian children in foster care as there are non-Indian children; 64 percent of the Indian children are in non-Indian foster care homes.

Michigan

There are 7,404 Indian children under 21 in Michigan. Of these, 912 (or 1 out of every 8.1) Indian children has been adopted. No data was available on adoptions by non-Indians. The adoption rate for non-Indian children is 1 out of every 30.3. There are therefore by proportion, 3.7 times (370 percent) as many Indian children in adoptive homes as there are non-Indian children.

There are 82 (or 1 out of every 90) Indian children in foster care. The foster care rate for non-Indians is 1 out of every 641. There are therefore by proportion, 7.1 times (710 percent) as many Indian children in foster care as there are non-Indian children. No data was available on how many Indian children are placed in non-Indian homes and institutions.

Minnesota

There are 12,672 Indian children under 21 in Minnesota. Of these, 1,594 (or 1 out of every 7.9) Indian children has been adopted; 97.5 percent of these were adopted by non-Indian families. The adoption rate for non-Indian children is 1 out of every 31.1. There are therefore by proportion, 3.9 times (390 percent) as many Indian children in adoptive homes as there are non-Indian children.

There are 737 (or 1 out of every 17.2) Indian children in foster care. The foster care rate for non-Indians is 1 out of every 283.8. There are therefore by proportion, 16.5 times (1,650 percent) as many Indian children in foster care as there are non-Indian children. No data was available on how many Indian children are placed in non-Indian homes or institutions.

Montana

There are 15,124 Indian children under 21 in Montana. Of these, 541 (or 1 out of every 30) Indian children has been adopted; 87 percent of these were adopted by non-Indian families. The adoption rate for non-Indian children is 1 out of every 144.6. There are therefore by proportion, 4.8 times (480 percent) as many Indian children in adoptive homes as there are non-Indian children.

There are 534 (or 1 out of every 28.3) Indian children in foster care. The foster care rate for non-Indians is 1 out of every 363.5. There are therefore by proportion, 12.8 times (1,280 percent) as many Indian children in foster care as there are non-Indian children. No data was available on how many Indian children are placed in non-Indian homes or institutions.

Nevada

There are 3,739 Indian children under 21 in Nevada. The figures on adoptions are too small to be statistically significant.

There are 79 (or 1 out of every 47.3) Indian children in foster care. The foster care rate for non-Indians is 1 out of every 333.8. There are therefore by proportion, 7.0 times (710 percent) as many Indian children in foster care as there are non-Indian children. No data was available on how many Indian children are placed in non-Indian homes and institutions.

New Mexico

There are 41,315 Indian children under 21 in New Mexico. The figures on adoptions are too small to be statistically significant.

There are 287 (or 1 out of every 147) Indian children in foster care. The rate for non-Indians is 1 out of every 343. There are therefore by proportion, 2.4 (240 percent) as many Indian children in foster care as there are non-Indian children. No data is available on how many Indian children are placed in non-Indian homes and institutions.

New York

There are 10,627 Indian children under 21 in New York. The figures on adoptions are too small to be statistically significant.

There are 142 (or 1 out of every 74.8) Indian children in foster care. The foster care rate for non-Indians is 1 out of every 222.6. There are therefore by proportion, 3 times (300 percent) as many Indian children in foster care as there are non-Indian children. An estimated 96.5 percent are placed in non-Indian foster homes.

North Dakota

There are 8,126 Indian children under 21 in North Dakota. Of these, 269 (or 1 out of every 30.4) Indian children has been adopted. Seventy-five percent of these were adopted by non-Indian families. The adoption rate for non-Indian children is 1 out of every 86.2. There are therefore by proportion, 2.8 times (280 percent) as many Indian children in adoptive homes as there are non-Indian children.

There are 296 (or 1 out of every 27.7) Indian children in foster care. The foster care rate for non-Indians is 1 out of every 553.8. There are therefore by proportion, 20.1 times (2,010 percent) as many Indian children in foster care as there are non-Indian children. No data was available on how many Indian children are placed in non-Indian homes and institutions.

Oregon

There are 6,839 Indian children under 21 in Oregon. Of these 402 (or 1 out of every 17) Indian children has been adopted. No data was available on adoptions by non-Indian families. The adoption rate for non-Indian children is 1 out of every 19.2. There are therefore by proportion, 1.1 times (110 percent) as many Indian children in adoptive homes as there are non-Indian children.

There are 247 (or 1 out of every 27.7) Indian children in foster care. The foster care rate for non-Indians is 1 out of every 228.5. There are therefore by proportion, 8.2 times (820 percent) as many Indian children in foster care as there are non-Indian children. No data was available on how many Indian children are placed in non-Indian homes and institutions.

Oklahoma

There are 45,511 Indian children under 21 in Oklahoma. Of these, 1,116 (or 1 out of every 40.8) Indian children has been adopted. No data was available on adoption by non-Indians. The adoption rate for non-Indian children is 1 out of every 188.1 There are therefore by proportion 4.4 times (460 percent) as many Indian children in adoptive homes as there are non-Indian children.

There are 337 (or 1 out of every 135) Indian children in foster care. The foster care rate for non-Indians is 1 out of every 551. There are therefore by proportion 3.9 times (410 percent) as many Indian children in foster care as there are non-Indian children. No data was available on how many Indian children are placed in non-Indian homes and institutions.

South Dakota

There are 18,322 Indian children under 21 in South Dakota. Of these, 1,019 (or 1 out of every 18) Indian children has been adopted. No data was available on adoptions by non-Indians. The adoption rate for non-Indian children is 1 out of every 32.4. There are therefore by proportion, 1.6 times (180 percent) as many Indian children in adoptive homes as there are non-Indian children.

There are 832 (or 1 out of every 22) Indian children in foster care. The foster care rate for non-Indians is 1 out of every 492.1. There are therefore by proportion 22.4 times (2,040 percent) as many Indian children in foster care as there are non-Indians. No data was available on how many Indian children are placed in non-Indian homes.

Washington

There are 15,980 Indian children under 21 in Washington. Of these, 740 (or 1 out of every 21.6) Indian children has been adopted. No data was available on adoptions by non-Indians. The adoption rate for non-Indian children is 1 out of every 407. There are therefore by proportion, 18.8 times (1,900 percent) as many Indian children in adoptive homes as there are non-Indian children.

There are 559, or 1 out of every 28.9 Indian children in foster care. The foster care rate for non-Indians is 1 out of every 275. There are therefore by proportion, 9.6 times (960 percent) as many Indian

children in foster care as there are non-Indian children. Eighty percent of these were placed in non-Indian homes.[12]

Wisconsin

There are 10,456 Indian children under 21 in Wisconsin. Of these, 733 (or 1 out of every 14.3) Indian children has been adopted. No data was available on adoptions by non-Indians. The adoption rate for non-Indian children is 1 out of every 251.5. There are therefore by proportion, 17.9 times (1,760 percent) as many Indian children in adoptive homes as there are non-Indian children.

There are 545 (or 1 out of every 19) Indian children in foster care. The foster care rate for non-Indians is 1 out of every 252. There are therefore by proportion, 13.4 times (1,330 percent) as many Indian children in foster care as there are non-Indian children. No data was available on how many Indian children are placed in non-Indian homes and institutions.

Wyoming

There are 2,832 Indian children under 21 in Wyoming. The figures on adoptions are too small to be statistically significant.

There are 98 (or 1 out of every 28.9) Indian children in foster care. The foster care rate for non-Indians is 1 out of every 301.6 There are therefore by proportion, 10.4 times (1,040 percent) as many Indian children in foster care as there are non-Indian children. Fifty-seven percent of the Indian children in State foster care are in non-Indian homes; and 51 percent of the children in BIA foster care are in non-Indian homes.

Utah

There are 6,690 Indian children under 21 in Utah. Of these, 328, (or 1 out of every 20.4) Indian children has been adopted. No data was available on adoptions by non-Indians. The adoption rate for non-Indian children is 1 out of every 68.5. There are therefore by proportion 3.4 times (340 percent) as many Indian children in adoptive homes as there are non-Indian children.

There are 249 (or 1 out of every 26.4) Indian children in foster care. The foster care rate for non-Indians is 1 out of every 402.9. There are therefore by proportion, 15 times (1,500 percent) as many Indian children in foster care as there are non-Indian children. No data was available on how many Indian children are placed in non-Indian homes and institutions.

2. LEGAL STATUS—WHO DECIDES?

The Federal courts, as well as some State courts, have generally recognized the crucial place which the issue of child custody holds in the framework of tribal self-determination.

> If tribal sovereignty is to have any meaning at all at this juncture of history, it must necessarily include the right within its own boundaries and membership to provide for its young, a *sine qua non* to the preservation of its identity.[13]

The most recent Supreme Court case on the subject, *Fisher* v. *District Court*,[14] affirmed the jurisdiction of the Northern Cheyenne

[12] Northwest transcript, exhibit 14.
[13] *Wisconsin Potowatomies of Hannahville Indiana Community* v. *Houston*, 396 F. Supp. 719, 730 (W.D. Mich., 1973).
[14] 47 L.Ed. 2d 106 (1976).

Tribal Court to make custody determinations in the face of a challenge to have such jurisdiction taken by Montana State courts. Since Montana had not acquired any jurisdiction over Indian country pursuant to Public Law 280, and the action arose on the reservation, the Supreme Court characterized the tribal court's jurisdiction as exclusive.

Many Indian child placement issues do not necessarily arise in such clean-cut fashion. Frequently, the physical location of the child affects whether the tribal court has jurisdiction. *Decoteau* v. *The District Court*,[15] is a case involving a conflict between State and tribal jurisdiction, where the pertinent acts occurred on both trust land and non-trust land. The Supreme Court upheld State jurisdiction based on a finding that the non-trust portion of the "former" reservation had been terminated. In that case, the tribal interest in the welfare of its minor member, however, cannot be as a practical matter any less than where geography assures jurisdiction.

Although *Decoteau* did not deal with the issue of "domicile," it is pertinent to child welfare jurisdiction. "Domicile" is a legal concept that does not depend exclusively on one's physical location at any one given moment in time, rather it is based on the apparent intention of permanent residency. Many Indian families move back and forth from a reservation dwelling to border communities or even to distant communities, depending on employment and educational opportunities. The domicile of a child is often viewed as a basis for a court's jurisdiction to determine his/her custody. In these situations where family ties to the reservation are strong, but the child is temporarily off the reservation, a fairly strong legal argument can be made for tribal court jurisdiction. In a recent New Mexico case involving a Navaho child situated off reservation in Gallup, N. Mex., it was argued that the Navajo tribal court is the appropriate forum to determine custody.[16]

> Child rearing and the maintenance of tribal identity are "essential tribal relations" [citation omitted]. By paralyzing the ability of the tribe to perpetuate itself, the intrusion of a State in family relationships within the Navaho Nation and interference with a child's ethnic identity with the tribe of his birth are ultimately the most severe methods of undermining retained tribal sovereignty and autonomy.[17]

This concept of court jurisdiction is based on the tribal status of the individual rather than the mere geography of the child and recognizes that the tribal relationship is one of *parens patriae* to all its minor tribal members. It is an attractive formulation, considering that in reality, Indian children are usually culturally and tribally terminated by placements to non-Indian homes when they are subject to State court systems.[18] This has not been given substantial recognition by the courts.[19] As a practical matter, this construction seems limited to situations where the Indian child is in reasonable proximity to the tribal court, such as in a border town. Applying this construction to an Indian child living in Chicago who is an enrolled

[15] 420 U.S. 425 (1975).
[16] See *e.g.*, *Wisconsin Potowatomies of the Hannahville Indian Community* v. *Houston*, *supra*; and *Shaving Bear* v. *Pearson*, et al., S.D. Cir. Ct., 6th Jurisdiction Cir. June 21, 1974 (unreported).
[17] In the matter of the Adoption of Randall Nathan Swanson, Amicus Curae Brief, No. 2407.
[18] *Ibid* at 8.
[19] See, Matter of Greybull, 543 P.2d 1079 (1975).

member of the Yakima Nation would create major practical difficulties without a well-defined operating system for effectuating tribal jurisdiction.

Just as mobility will frequently remove Indian children from reservation systems and bring them into initial contact with non-Indian systems, so mobility will also remove a child subject to a tribal court's jurisdiction into another geographic jurisdiction. This can create the following problem: After a tribal court determines child custody, the child leaves the reservation, and the issue of custody is relitigated in a non-Indian court. Generally, between the States, the constitutional standard of "full faith and credit" governs the way one court will treat the decisions of another. This standard is not constitutionally required of State courts with respect to the judgments of tribal courts. State courts can (and some do)—under the principle of comity—respect between sovereigns—recognize the determinations of tribal courts. Recently the Maryland Court of Appeals refused to allow Maryland courts to determine the custody of a Crow child where that determination had been made by the Crow Tribal Court.[20]

Findings

1. The removal of Indian children from their natural homes and tribal setting has been and continues to be a national crisis.
2. Removal of Indian children from their cultural setting seriously impacts a long-term tribal survival and has damaging social and psychological impact on many individual Indian children.
3. Non-Indian public and private agencies, with some exceptions, show almost no sensitivity to Indian culture and society.
4. Recent litigation in attempting to cure the problem of the removal of Indian children, although valuable, cannot affect a total solution.
5. The current systems of data collection concerning the removal and placement of Indian children are woefully inadequate and "hide" the full dimension of the problems.
6. The U.S. Government, pursuant to its trust responsibility to Indian tribes, has failed to protect the most valuable resource of any tribe—its children.
7. The policy of the United States should be to do all within its power to insure that Indian children remain in Indian homes.

Recommendations

1. Congress should, by comprehensive legislation, directly address the problems of Indian child placement. The legislation should adhere to the following principles:

a. The issue of custody of an Indian child domiciled on a reservation shall be subject to the exclusive jurisdiction of the tribal court where such exists.

b. Where an Indian child is not domiciled on a reservation and subject to the jurisdiction of non-Indian authorities, the tribe of origin of the child shall be given reasonable notice before any action affecting his/her custody is taken.

[20] *Wakefield* v. *Little Light*, 276 Md. 333, 347 A 2d 228 (1975).

c. The tribe of origin shall have the right to intervene as a party in interest in child placement proceedings.

d. Non-Indian social service agencies, as a condition to the Federal funding they receive, shall have an affirmative obligation—by specific programs—to:

(i) provide training concerning Indian culture and traditions to all its staff;

(ii) establish a preference for placement of Indian children in Indian homes;

(iii) evaluate and change all economically and culturally inappropriate placement criteria;

(iv) consult with Indian tribes in establishing (i), (ii), and (iii).

e. Significant Federal financial resources should be appropriated for development and maintenance of Indian operated foster care homes and institutions:

(i) in reservation areas such resources should be made directly available to the tribe;

(ii) in off-reservation areas, such resources should be available to appropriate local Indian organizations.

f. The Secretary of the Interior should be authorized to:

(i) undertake a detailed study of the manner and form of child placement records;

(ii) to definitely determine the full statistical picture of child placement as it currently exists;

(iii) to require standardized child placement recordkeeping systems from all agencies receiving Federal moneys;

(iv) to require annual reports from such agencies pursuant to the mandatory recordkeeping system;

(v) to review all rules and regulations of the Federal Government with respect to child placement, and revise such, in consultation with Indian tribes and child placement agencies to reflect Federal policy of retaining Indian children in Indian homes.

C. Jurisdiction Over Non-Indians

This area must be approached on several levels. There is widespread apprehension in the non-Indian community residing on or near Indian reservations concerning the exercise or potential exercise of tribal jurisdiction over non-Indians. This feeling appears to be, at least in part, based on a major nonunderstanding in the non-Indian community about the legal status of Indian tribes and their historical-constitutional relationship with the Federal Government. Complicating this vacuum of knowledge is an implicit, and sometimes explicit, viewpoint that while it might be permissible for Indian tribes to have power over Indians, it is somehow morally inappropriate to have such power over non-Indians within their territories. In this furor over the exercise of power, Indian governments are, in the political arena, being held to higher standards of performance than Americans generally expect from their public institutions—it is as if competence of non-Indian governments is assumed and that of Indian governments must be demonstrated.

AMERICAN CIVIL LIBERTIES UNION,
New York, N.Y., August 8, 1977.

Senator JAMES G. ABOUREZK,
Chairman, Select Committee on Indian Affairs,
Washington, D.C.

(Attention of Tony Strong).

DEAR SENATOR ABOUREZK: Thank you for the opportunity to testify before your committee on August 4 regarding S. 1214. At the conclusion of my testimony Senator Hatfield, who was then presiding, requested that I provide the committee with proposed statutory language that reflect my testimony and the written statement I previously provided, a copy of which is attached hereto.

My first recommendation was that the bill should provide for notice to the tribe and/or natural parents whenever an Indian child, previously adopted or in foster care by order of a nontribal authority, is either institutionalized or transferred to a new foster home. (See page 4 of my written statement, pars. 1 and 2.) Accordingly, I propose the following new section:

"Whenever an Indian child previously placed in foster care or for adoption by any non-tribal authority is committed or placed, either voluntarily or involuntarily, in any public or private institution, including but not limited to a correctional facility, institution for juvenile delinquents, mental hospital, or halfway house, or is transferred from one foster home to another, notification shall forthwith be made to the child's tribe of origin and to his or her natural parents. Such notice shall include the exact location of child's present placement and the reasons for that placement. Notice shall be made before the transfer of the child is effected, if possible, and in any event within 72 hours thereafter."

My second concern was that the bill does not limit the exercise by non-tribal authorities of temporary placement power in circumstances of imminent danger (see p. 3 of my written statement).

Accordingly, a new section should provide:

"In the event that a duly constituted state agency or any representative thereof has good cause to believe that the life or health of an Indian child is in imminent danger, the child may be temporarily removed from the circumstances giving rise to the danger provided that notice shall be given to the tribal authorities and the natural parents, if the latter can be located, within 24 hours of the child's removal. Notice shall include the child's exact whereabouts and the precise reasons for his or her removal. Within 48 hours of removal a hearing shall be held to determine whether good cause for the removal does in fact exist and whether the tribal authorities or the natural parents can provide for the child's care until a further custody determination can be made."

Finally, I expressed concern that the bill's language does not adequately reflect its intention to regulate only placements made by non-tribal authorities. The bill does not intend to interfere with tribal or parental placement decisions. (See my written statement, p. 3.) Accordingly, in the definition of "child placement" on line 3 of the bill at page 5, after the word "private," the following should be inserted: "other than custody arrangements made by a natural parent or a tribal authority."

I also noted in my testimony (p. 3, last paragraph) that section 101(d) appears to give private individuals, groups or institutions the authority to seize Indian children for 30 days without even notifying the parents or the tribe. I understand, however, that your committee is in the process of either eliminating, modifying or clarifying this section.

I hope these suggestions are useful, I am pleased to be of service to the committee.

Yours sincerely,

RENA K. UVILLER,
Director, Juvenile Rights Project.

ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC.,
New York, N.Y., October 20, 1977.

Senator JAMES ABOUREZK,
Chairman, Select Committee on Indian Affairs, U.S. Senate,
Washington, D.C.
(Attention of Ms. Patty Marks).

DEAR PATTY: Steve Unger of our office suggested that I send you suggestions on the master plan for the construction of locally convenient day schools to afford Indian parents an opportunity to educate their children without exposing them to the hazards of the boarding school living arrangements.

I am enclosing a draft proposal that this association, Chet Sprague of the Massachusetts Institute of Technology School of Architecture and Planning and Dillon Platero of the Navajo Office of Education worked out several months ago. It seems to me that a national plan would follow along similar lines.

The master plan proposal that we had sketched out is based upon a 6-month work schedule and was necessarily less detailed than the kind of detail that could be provided in a master plan developed over a 12-month-period.

As page 1, item 6, indicates in our proposal, a method of approximating costs would be developed. A master plan developed over a 12-month-period should include not merely a method, but the application of this method, so that the final master plan includes reasonably close cost approximations. (I should also add that our proposal was based on a projected cost of approximately $70,000 and this, too, made it necessary to reduce the specificity of costs for each of the schools. Without a great deal of additional expense, the congressionally authorized master plan could provide this specificity.)

Steve suggested that S. 1214 be amended to stipulate the time period during which correcting the situation should be accomplished. We believe that a 5- to 7-year-period is a reasonable time. Unless there is some kind of time limit, I am afraid that the BIA will develop a master plan that stretches its program out over a generation or two.

Sincerely yours,

WILLIAM BYLER,
Executive Director.

Proposal—Master Plan for Navajo School Facilities

The Navajo Nation and the Bureau of Indian Affairs have determined that it is sound educational and social policy to afford all Navajo students the opportunity to attend locally convenient day schools and to have access to long-term or emergency boarding facilities that are closer to home.

At present, approximately half of all Navajo students—constituting almost 90 percent of those attending BIA schools—attend boarding schools, usually at inconvenient distances from their homes; and large numbers of day students attending public and BIA schools are bused over excessively long distances.

A master plan must be developed to provide a sound basis for decisionmaking, funding, and other action to implement Federal and tribal policy in a cost-effective and timely manner. The plan must reflect Navajo community standards and aspirations and provide for maximum-local community participation in the governance of schools.

The Navajo Division of Education staff and Consultants proposes to prepare a master plan that will indicate and map:

(1) Proposed location of all schools;
(2) How and where existing facilities and roads might be utilized to serve more children better;
(3) Where new facilities and/or roads are needed and desired;
(4) The geographical area and approximate number of students that each school would serve; and
(5) Approximate busing distances and times.

In addition, the master plan would provide:

(6) A method of approximating costs regarding the construction of new, and the rehabilitation of existing, facilities and roads and the cost of busing;
(7) An exposition of the arguments behind the decisions made in preparing the plan;
(8) A tabulation of changes necessary to achieve the conditions proposed in the plan, given the present situation as the starting condition;
(9) A description of various alternatives for implementing the proposed plan;
(10) An analysis of each alternative in terms of degree and type of change necessary over various timeframes; and
(11) An analysis, in some detail, of the impact of the plan on selected local communities.

In order to produce the master plan, we will gather information that can answer the following questions:

(1) What is the population distribution reservation-wide of school-age Navajos? What have been population changes, both as to size and location, over the past 10 to 20 years, and what are future projections? What factors are causing these changes? How has home location changed in relation to school location over recent years?

(2) Where are existing and appropriate school facilities now located? How large are these facilities? What is their present use? What are future plans for school construction?
(3) Where is housing located that can be used by teachers? What are future plans?
(4) What is the road network of the entire reservation? What are future plans for improvement and expansion?
(5) Where is water available and acceptable in appropriate quality and quantity?
(6) Where are fuel sources and where are utilities available including power and communications? What are future plans for expanding distribution?
(7) What are reservation-wide patterns of weather differences (i.e., the occurrence frequency and amount of snow, ice, and rain)? What are subsoil and drainage conditions such as affect road passability?
(8) What are applicable codes, laws and regulations that govern location and condition of education facilities? How flexible are these?
(9) Where are all Head Start, kindergarten, special education, prevocational, and secondary vocational programs, located? How do these handle problems of scheduling, transportation equipment, and teacher recruitment and housing? How many students attend these programs? What inhibits attendance and to what extent? Where do these students live—that is, how far from school? What type of roads do they travel over, and in what kind of weather?

Our preliminary reconnaisance has determined that the information necessary to answer the above questions for BIA schools is largely available at BIA offices in Gallup, Albuquerque, Window Rock, and local BIA agencies.

Public school information is located in two respective state education offices and in the public school districts. The Navajo Division of Education has collected information on both the above.

There are additional factors that will also need to be assessed. The Navajo Nation, the BIA, the Indian Health Service, the public school districts, and local communities, each has its own history, policies, attitudes, and plans regarding school locations, school types and sizes, roads, the busing of students and/or teachers, the role of local parents in the governance of schools, and the proper relationship of elementary schools to high schools and to other educational, cultural and recreation programs that exist or are needed in each area of the Navajo Nation.

Understanding these factors is necessary in order to determine optimum numbers of students per school, travel time to school, safety standards, transportation modes, and housing for teachers.

The information regarding the above factors will be gathered through an early stage of the project and combined with the data gathered under questions numbered 1 to 9 above in order to produce maps that will analyze the interplay of all factors and finally will describe proposed geographic distribution of primary, elementary, a

junior high, high school, special and vocational schools that are large enough to be socially, economically, and educationally valid, and at the same time, convenient to student homes and sites for future economic development and planning.

The attempt will be to maximize student options for attending these schools—or close-to-home boarding schools—while minimizing the dependence on long distance busing or on distant boarding schools. The master plan will attempt to maximize the use of existing facilities and roads, where these meet local acceptance, and minimize the need for new school and road construction. Finally, future construction will take into account centers for economic development, should these arise.

Because of time constraints and the great size of the Navajo Reservation, the studies that are made to prepare the master plan and the master plan itself cannot focus reservation-wide on local detail, such as the specific location of needed road improvement or the specific nature and itemized cost of necessary facilities renovation. However, to overcome the effect of some of these limitations, the master plan will be supplemented by an analysis focusing in some detail in one or two small segments of the reservation and study and describe the ramifications of the proposed approach in two or more local areas.

The final product, constituting a master plan with accompanying maps and supporting data and analysis, will be useful to the Navajo Nation, BIA and to other agencies in identifying and initiating procedures and funding proposals that can achieve over the short term and over an extended period of time the goals mentioned above in the preamble. It can be completed in time to develop specific funding proposals for fiscal year 1978.

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