

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

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

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

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

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

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

TITLE II - SOCIAL SECURITY ACT AMENDMENTS
SEC. 201

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

Act (42 U.S.C. 608(a)) to include in the definition of "dependent child" any Indian child placed in foster care whose placement and care are the responsibility of his or her tribe. This amendment is designed to make clear that children placed by tribal social services agencies in licensed or approved facilities are eligible for funding under the Social Security Act. Currently, the statute seems to require that placement be made by a state agency, state approved agency or other public agency with which the state has an agreement. Many tribal programs do not fall into these categories. See Native Village of Stevens v. Smith, 770 F.2d 1486 (9th Cir. 1985), cert. den. 106 S.Ct. 1514 (1986).

SEC. 202

Amends section 422 of Title IV of the Social Security Act (42 U.S.C. 622) to require States to include as part of their Title IV-B child welfare plans, a comprehensive plan to ensure State compliance with ICWA developed in consultation with all tribes and Indian organizations with child welfare programs within the state. By including this provision in the Social Security Act, thereby requiring that compliance be measured in the periodic audits conducted by HHS, it is hoped that compliance with the ICWA will improve.

SEC. 203

Amends section 471 of Title IV of the Social Security Act (42 U.S.C. 671) to require States to include as part of their Title IV-E foster care and adoption assistance plans, a comprehensive plan to ensure State compliance with ICWA developed in consultation with all tribes and Indian organizations with child welfare programs within the state. As part of this plan, states must recruit and license Indian foster homes and place (and reimburse for) children in tribally licensed and approved facilities. Again, by including this provision in the Social Security Act, thereby requiring that compliance be measured in the periodic audits conducted by HHS, it is hoped that compliance with the ICWA, particularly the foster home reimbursement and placement provisions, will improve.

TITLE III - MISCELLANEOUS

SEC. 301

These amendments take effect 90 days after enactment.

SEC. 302

Requires that the amendments be circulated to states and tribes within 45 days.

SEC. 303

Provides that the unconstitutionality of one provision in this Act will not affect the remaining provisions.

APPENDIX C

THE INDIAN SOCIAL SERVICES ASSISTANCE ACT OF 1987

A BILL to amend the Social Services Block Grant, Adoption Assistance and Child Welfare Act of 1980, and the Alcohol, Mental Health and Drug Abuse Act, to authorize the consolidation of certain block grants to Indian tribes, to provide for the collective operation of programs by Indian tribes, to provide grant protection to Indian tribes and for other purposes.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That this Act may be cited as the "Indian Social Services Assistance Act of 1987".

TITLE I - SOCIAL SERVICES BLOCK GRANT AMENDMENTS

SEC. 101. Section 2001 of the Social Security Act (42 U.S.C. 1397) is amended--

(1) by adding after the phrase "encouraging each State" the phrase "and Indian tribe",

(2) by adding after the phrase "in that State" the phrase

"(or in the case of Indian tribes, within the Indian community)".

(3) by striking out "and" at the end of clause (4),

(4) by striking out the comma at the end of clause (5) and inserting instead "; and", and

(5) by adding after and below clause (5) the following new clause:

"(6) alleviating poverty."

SEC. 102. Section 2002 of the Social Security Act (42 U.S.C. 1397a) is amended--

(1) by adding after the word "State" each place that it appears in subsection (a)(1) the phrase "and Indian tribe", and

(2) by adding after the word "State" each place that it appears in subsections (c) and (e) the phrase "or Indian tribe".

SEC. 103. (a) Section 2003(b) of the Social Security Act (42 U.S.C. 1397b(b)), is amended --

(1) by adding after "than" the following clause: "Indian tribes and",

(2) by striking "subsection" after the word "under" and inserting instead "subsections", and

(3) by adding after "(a)" the clause "and (e)".

(b) Section 2003 of that Act (42 U.S.C. 1397b) is amended by adding at the end the following new subsection:

"(e) A sum shall be reserved for the direct provision of funds to the governing bodies of Indian tribes. The per centum of the sums appropriated under this title to be set aside for Indian tribes shall be calculated by the following formula:

Indian population residing on or near the reservation	per centum of Indian population residing on the reservation below the poverty level		x			

U. S. population	per centum of U. S. population below the poverty level"					

SEC. 104 Section 2004 of the Social Security Act (42 U.S.C. 1397c) is amended--

(1) by adding after the word "State" the first two times that it appears in that section the phrase "or Indian tribe", and

(2) by adding after the word "State" the third time it appears in that section the phrase "(or in the case of Indian tribes, within the Indian community)".

SEC. 105 Section 2005 of the Social Security Act (42 U.S.C. 1397d) is amended--

(1) by adding after the phrase "the State" each place it appears in subsection (a) the phrase "or Indian tribe",

(2) by adding after the phrase "of State and local law" in subsection (a)(7) the phrase "or, where it applies, tribal law", and

(3) by adding after the word "State's" each place it appears in subsection (b) the phrase "or Indian tribe's".

SEC. 106 Section 2006 of the Social Security Act (42 U.S.C. 1397e) is amended--

(1) by adding after the phrase "Each State" in subsection (a) the phrase "and Indian tribe",

(2) by adding after the phrases "as the State" and "The State" in subsection (a) the phrase "or Indian tribe",

(3) by adding after the phrase "within the State" in subsection (a) the phrase "(or, in the case of an Indian tribe, within the Indian community)"

(4) by adding at the end of subsection (b) the following new sentence:

"Tribal audits shall be conducted in accordance with procedures established by the Secretary."

SEC. 107 Section 2007 of the Social Security Act (42 U.S.C. 1397f) is amended by adding after the word "State" each place it appears in that section the phrase "or Indian tribe".

SEC. 108 (a) Title XX of the Social Security Act (42 U.S.C. 1397 et seq.) is amended by adding at the end the following new section:

"DIRECT GRANTS TO INDIAN TRIBES

SEC. 2008. (a) The Secretary shall make payments under section 2002 to an Indian tribe which undertakes to operate a program under this title. Each tribe shall be entitled to an allotment which bears the same ratio to the amount set aside for Indian tribes under section 2003(e) of this title (42 U.S.C. 1397b(e)) as the ratio determined by the following formula:

Indian population residing on or near the reservation	per centum of Indian population residing on the reservation below the poverty level
----- x -----	
total Indian population residing on or near a reservation	per centum of total Indian population residing on the reservation below the poverty level"

If any Indian tribes choose not to operate a program under this Title, the sums that would be payable to those tribes shall be reallocated to the tribes that are operating programs under this Title in accordance with the per centum of the total set aside to which each tribe is entitled pursuant to the above formula.

(b) For purposes of this title, the term 'Indian tribe' means any Indian tribe, band, nation, or organized group or community of Indians, including any Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. In Alaska, regional associations defined in section 7(a) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(a)) shall be treated as tribes for the purposes of funding under this Title provided that such an association may not receive funding for any village within its region that (1) applies separately for direct funding under this Title or (2) notifies the Secretary that it does not want its regional

association to apply for social services funding on its behalf.

(c) Notwithstanding direct grants to Indian tribes pursuant to this Act, States, in their allocation of money from the Social Services Block Grant shall not discriminate against Indian-controlled off-reservation programs serving Indian people."

TITLE II - ADOPTION ASSISTANCE AND CHILD WELFARE ACT AMENDMENTS

SEC. 201 Section 422 (b)(7) of Part B of title IV of the Social Security Act (42 U.S.C. 622(b)(7)) is amended by inserting after the phrase "as authorized by the State" the phrase ", including the funding of Indian-controlled off-reservation programs serving Indian children, wherever possible."

SEC. 202 Section 428 of Part B of title IV of the Social Security Act (42 U.S.C. 628) is amended --

(1) by striking out in subsection (a) "may, in appropriate cases (as determined by the Secretary)" and inserting instead "shall".

(2) by striking out in subsection (a) "approved under" and inserting instead "which meets the requirements of subsections 422(a) and (b)(2) through (b)(8)"

(3) by striking out the second sentence in subsection (a) and inserting instead "A sum shall be reserved for the direct provision of funds to the governing bodies of Indian tribes. The per centum of the sums appropriated under this title to be set aside for Indian tribes shall be equal to the amount which bears the same ratio to the amount appropriated for the fiscal year as the ratio determined by the following formula:

$$\frac{\text{Indian population residing on or near the reservation}}{\text{U. S. population}} \times \frac{\text{per centum of Indian population residing on the reservation below the poverty level}}{\text{per centum of U. S. population below the poverty level}}$$

(4) by striking out everything in subsection (b) and inserting instead:

"(b)(1) Each tribe shall be entitled to an allotment which bears the same ratio to the amount set aside for Indian tribes under subsection (a) (42 U.S.C. 628(a)) as the ratio determined by the following formula:

Indian population of tribe residing on or near the reservation

per centum of Indian population of tribe residing on the reservation below the poverty level

$$\frac{\text{Indian population of tribe residing on or near a reservation}}{\text{total Indian population residing on a reservation or near a reservation}} \times \frac{\text{per centum of Indian population of tribe residing on the reservation below the poverty level}}{\text{per centum of total Indian population residing on a reservation below the poverty level}}$$

If any Indian tribes choose not to operate a program under this Title, the sums that would be payable to those tribes shall be reallocated to the tribes that are operating programs under this Title in accordance with the per centum of the total set aside to which each tribe is entitled pursuant to the above formula.

(2) Subject to the conditions set forth in subsections (a) and (b)(1), the Secretary shall pay an amount equal to either (A) 75 per centum of the total sum expended under the plan (including the cost of administration of the plan) or (B) the per centum derived by utilizing the formula provided in section 474(e)(3)(A) of this Act (42 U.S.C. 674(e)(3)(A)), whichever is greater.

(3) A tribe shall be permitted to use Federal or State funds to match payments for which tribes are eligible under this Section, provided that the Federal or State funds are authorized for purposes related to the goals and objectives of this Part.

(4) In any case where a satisfactory plan under section 422 has been submitted by an Indian tribe, the Secretary shall reduce the tribal share otherwise required under subsection (b)(2) upon a showing by the tribe that it does not have adequate financial

resources to provide the required match due to a lack of comparable Federal and State funds, inadequate tribal resources, an inadequate tax base, or any other factor giving rise to financial hardship. The Secretary shall construe this section liberally with the goal of ensuring that all tribes submitting the required plan receive the funding provided for by this Act."

SEC. 202 Section 474 of Part E of Title IV of the Social Security Act (42 U.S.C. 674) is amended by adding at the end the following new subsection:

"(e) The Secretary shall make payments to an Indian tribe which undertakes to operate a program under this Part.

(1) The provisions and requirements of sections 471, 472, 473 and 475 of this Act (42 U.S.C. 671, 672, 673 and 676) shall be applicable to Indian tribes except as follows:

(A) Subsections 10, 14 and 16 of section 471 of this Act (42 U.S.C. 671 (10), (14) and (16)) shall not apply. Instead, Indian tribes shall develop systems for foster care licensing and placement, development of case plans and case plan review consistent with tribal standards and the Indian Child Welfare Act (25 U.S.C. 1901 et seq.).

(B) The Secretary may reasonably alter the requirements of other sections of this Part for the purpose of relieving any unreasonable hardships upon the Indian tribes that might result, due to their unique needs, from a strict application of a

particular requirement.

(2) For purposes of this Part, the term "Indian tribe" means any Indian tribe, band, nation or organized group or community of Indians, including any Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. In Alaska, regional associations defined in section 7(a) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(a)) shall be treated as tribes for the purposes of funding under this Title provided that such an association may not receive funding for any village within its region that (1) applies separately for direct funding under this Title or (2) notifies the Secretary that it does not want its regional association to apply for social services funding on its behalf.

(3) (A) The payment of funds to Indian tribes shall be calculated by the same formula applicable to states in subsection (a) of this section except that tribes shall be entitled to 100 per centum of the expenditures necessary for the proper and efficient administration of the plan as enumerated in subsection (a)(3). Per capita income shall be calculated by including only Indians who reside on the tribe's reservation.

(B) A tribe shall be permitted to use Federal or State funds to match payments for which tribes are eligible under this section, provided that the Federal or State funds are authorized for adoption assistance, foster care maintenance payments or administration of the tribal plan developed pursuant to this

Part.

(C) In any case where a satisfactory plan has been submitted by an Indian tribe, the Secretary shall reduce the tribal share otherwise required under subsection (a) upon a showing by the tribe that it does not have adequate financial resources to provide the required match due to a lack of comparable Federal and State funds, inadequate tribal resources, an inadequate tax base, or any other factor giving rise to financial hardship. The Secretary shall construe this section liberally with the goal of ensuring that all tribes submitting the required plan receive the funding provided for by this Act, provided that

(i) In any case where the Secretary reduces the tribal share calculated pursuant to subsection (a)(1) of this section, he shall have the authority to review and approve the tribal payment schedule for foster families and child-care institutions, except that in no case shall he disapprove any schedule which proposes payments that do not exceed the amount provided for any State wherein the reservation is located, and

(ii) In any case where the Secretary reduces the tribal share calculated pursuant to subsection (a)(2) of this section, he shall have the authority to review and approve the tribal payment schedule provided for in adoption assistance agreements, except that in no case shall he disapprove any schedule which proposes payments at a level that does not exceed the amount provided for any State wherein the reservation is located."

TITLE III - ALCOHOL, MENTAL HEALTH AND DRUG ABUSE BLOCK GRANT
AMENDMENTS

SEC. 301 Section 1913(b) of the Public Health Service Act (42 U.S.C. 300x-1a(b)) is amended --

(1) by striking out subsections (1) and (2) and inserting instead

"(1) A sum shall be reserved for the direct provision of funds to the governing bodies of Indian tribes. The per centum of the sums appropriated under this title to be set aside for Indian tribes shall be equal to the amount which bears the same ratio to the amount appropriated for the fiscal year as the ratio determined by the following formula:

$$\frac{\text{Indian population residing on or near the reservation}}{\text{U. S. population}} \times \frac{\text{per centum of Indian population residing on the reservation below the poverty level}}{\text{per centum of U. S. population below the poverty level}}$$

(2) Each tribe shall be entitled to an allotment which bears the same ratio to the amount set aside for Indian tribes under clause (1) of this subsection (42 U.S.C. 300x-1a(b)(1)) as the

ratio determined by the following formula:

$$\frac{\text{Indian population of tribe residing on or near the reservation}}{\text{total Indian population residing on or near a reservation}} \times \frac{\text{per centum of Indian population of tribe residing on the reservation below the poverty level}}{\text{per centum of total Indian population residing on a reservation below the poverty level}}$$

provided that no tribe or tribal organization shall receive less than the amount that it received during any of the fiscal years from 1982 through 1988. If any Indian tribes choose not to operate a program under this Title, the sums that would be payable to those tribes shall (A) be utilized to make payments to those tribes that are entitled to additional amounts by reason of having received grants during any of the fiscal years from 1982 through 1988, and (B) be reallocated, if there are sums remaining following the distribution under clause (A), to tribes that are operating programs under this Title in accordance with the per centum of the total set aside to which each tribe is entitled pursuant to the above formula. If the unclaimed sums are insufficient to fully fund the tribes eligible for the extra payments provided for in clause (A), any additional sums that are needed shall be deducted from the allotments of the State in which the tribes are located.

TITLE IV - CONSOLIDATED FUNDING FOR INDIAN TRIBES

SEC. 401 (a) Notwithstanding any other provision of law, upon the application of an Indian tribe under this title, the Secretary of Health and Human Services shall consolidate the grants made by that Department directly to an Indian tribe under titles XX and IV-B of the Social Security Act, Title XIX of the Public Health Service Act and under the Low-Income Home Energy Assistance Act of 1981.

(b) Any consolidated grant for any Indian tribe shall not be less than the sum of the separate grants which that tribe would otherwise be entitled to receive for such fiscal year.

(c) The funds received under a consolidated grant shall be expended for the programs and purposes authorized under any or all of the grants which are being consolidated, in accordance with all conditions and requirements which would be applicable to grants for those programs and purposes in the absence of the consolidation, but each Indian tribe shall determine the allocation of the funds granted to each such program and purpose.

(d) (1) Notwithstanding any other provision of law, an Indian tribe shall be entitled to submit a single (A) application for a consolidated grant in accordance with this title for any

fiscal year, and (B) preexpenditure report with respect to each such consolidated grant received for any fiscal year, in accordance with regulations promulgated by the Secretary.

(2) Notwithstanding any other provision of law, an Indian tribe which elects to expend none of its consolidated grant funds for any one grant program shall not be required, as a condition of receiving a consolidated grant, to comply with the conditions or to make the reports or assurances applicable to that program.

(3) Nothing in this title shall preclude the Secretary from providing procedures for accounting, auditing, evaluating, and reviewing any programs or activities receiving funding under any consolidated grant.

TITLE V - COLLECTIVE OPERATION OF PROGRAMS AND GRANT PROTECTION FOR INDIAN TRIBES

SEC. 501 For any of the programs covered by any of the Titles in this bill, an Indian tribe may--

(a) enter into agreements with other Indian tribes for the provision of services by a single organizational unit providing for centralized administration of services for the region served by the Indian tribes so agreeing. In the case of such an agreement, the organizational unit may submit a single

application on behalf of all of the tribes which are a party to the agreement and, unless the organizational agreement provides otherwise, shall receive an amount equal to the amount to which the tribes would have been entitled had they applied individually;

(b) contract with qualified providers for the delivery of services.

SEC. 502. All funds and programs provided for under all Titles in this bill shall be considered as supplemental or in addition to all other programs, grants, contracts or funds provided by any federal, state, county government, department or other agency now serving Indian tribes, their service populations or off-reservation Indian people. No such funds or programs may be reduced or eliminated as a result of funds or programs provided by this Part except in the case where direct funds are already being provided to tribes pursuant to Titles XX or IV-B of the Social Security Act or Title XIX of the Public Health Service Act and the continuation of those direct grants in addition to the grants provided by this Act would be duplicative.

TITLE VI - CENSUS BUREAU STATISTICS

SEC. 601 The Census Bureau shall hereafter--

(a) include calculations of the nationwide poverty level for Indians residing on or near a reservation in its yearly report on income and poverty,

(b) prepare a uniform national estimate of the yearly population growth rate expected for Indians living on or near reservations based upon data collected in the previous two decennial censuses relating to population growth, birth rates, death rates, and other relevant indicia of population trends, provided, however, that if the Census Bureau hereafter decides to include reservation-specific population estimates for Indians residing on or near each reservation in its yearly population updates, it shall no longer be required to calculate an estimated national growth rate for Indian reservations.

TITLE VII - DEFINITIONS, EFFECTIVE DATE, AND AUTHORIZATION OF APPROPRIATIONS

SEC. 701 For the purposes of this Act, the term--

(a) "Indian" means a person who is either (1) a member of an Indian tribe or (2) is eligible for membership in an Indian tribe.

(b) "Poverty level" means the per centum of the relevant population below the poverty thresholds set by the Census Bureau

on a yearly basis. In determining the per centum, the calculation based upon family aggregate cash income shall be utilized.

(c) "Reservation" means Indian country as defined in section 4(10) of P.L. 95-608 (25 U.S.C. 1903(10)), as well as Alaska Native villages and the traditional Indian areas of Oklahoma.

(d) "Population" means the most recent available population statistics compiled by the Census Bureau. In calculating population on or near a tribe's reservation, the Secretary shall utilize the population statistics included in the last decennial census as updated by application of the growth rate calculated by the Census Bureau pursuant to section 601(b) of this Act (unless the Census Bureau hereafter includes reservation-specific population estimates in its yearly population updates, in which case those estimates shall be utilized by the Secretary).

(e) "Per capita income" means the per capita income statistics included in the last decennial census.

(f) "Near reservation" means those areas, communities and counties adjacent or contiguous to reservations. In the case where more than one reservation is adjacent or contiguous to an area, community or county, the Secretary shall confer with the affected tribes and determine the allocation of the near

reservation Indian population as between the affected tribes. In the case where an adjacent or contiguous area, community or county includes a municipality with a population in excess of 50,000, the Secretary shall confer with the adjacent or contiguous tribes to determine the part of the population in such community that should be classified, for the purposes of funding, as residing near the reservation of the affected tribe.

(g) "Secretary" means the Secretary of Health and Human Services.

SEC. 702 The provisions of this bill shall be effective with respect to fiscal year 1989 and succeeding fiscal years.

SEC. 703 There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

APPENDIX D

SUMMARY OF THE INDIAN SOCIAL SERVICES ASSISTANCE ACT OF 1987

TITLE I - SOCIAL SERVICES BLOCK GRANT AMENDMENTS

Section 101 This section adds "alleviating poverty" to the purposes of the Social Services Block Grant (Title XX) and includes Indian tribes in the category of those who are encouraged to furnish social services to meet the goals specified in Title XX.

Section 102 This section adds Indian tribes to sections relating to eligibility for Title XX funds, timing of expenditures and purchase of technical assistance.

Section 103 This section sets aside a portion of the funds appropriated under Title XX for the direct payment of grants to Indian tribes. The amount of the set aside is determined by a formula which takes into account the Indian population residing on or near the reservation (the likely service area for the tribal social services program) and the nationwide percentage of on reservation Indians below the poverty level (which reflects the notion that given economic conditions on and near reservation, a larger percentage of the total population is likely to make use of social services; the choice of this particular multiplier is in part a reflection

of the correlation between poverty and service population and in part based upon a desire to use criteria in the formula for which adequate data is available.) The amount payable to tribes is deducted from the total amount available to the States under the Social Services Block Grant.

Section 104 This section adds Indian tribes to a section of Title XX relating to the preparation of plans specifying the intended use of Block Grant funds.

Section 105 This section adds Indian tribes to a section which places limitations upon the use of Title XX grants.

Section 106 This section adds Indian tribes to a section dealing with reports and audits and specifies that tribal audits shall be conducted in accordance with procedures established by the Secretary of Health and Human Services.

Section 107 This section adds Indian tribes to a section dealing with the provision of Child Day Care services.

Section 108 This section authorizes Title XX payments to Indian tribes based upon a formula which takes into account the Indian population residing on or near the tribe's reservation and the percentage of Indians residing on the reservation with incomes below the poverty level. The rationale for this formula is the same as in section 103.

This section defines Indian tribes to include all federally recognized tribes, including Alaska Native villages and, except in certain circumstances, the definition also includes Alaska regional associations. This last clause recognizes that the regional associations are, in many cases, currently the social service providers for the villages in their geographic area. In addition, this section provides that States may not discriminate in their allocation of Title XX money against Indian-controlled programs serving Indian people living off-reservation.

TITLE II - ADOPTION ASSISTANCE AND CHILD WELFARE ACT AMENDMENTS

Section 201 This section requires States to include in their State plan provisions relating to the funding of Indian-controlled programs serving off-reservation Indians wherever possible. This is designed to ensure that the passage of this Act will not cause off-reservation programs (urban programs in most instances) to lose the opportunity to contract with States for the provision of services to Indian people.

Section 202 This section sets aside a portion of the funds appropriated under Title IV-B for the direct payment of grants for child welfare services to Indian tribes. The amount of the set aside is determined by a formula which

takes into account the Indian population residing on or near the reservation and the nationwide percentage of on reservation Indians below the poverty level. The rationale for this formula is explained in section 103. All tribes who submit an acceptable plan are eligible for the direct federal payments. This is designed to reverse the Secretary's current interpretation of Title IV-B requiring as a prerequisite for funding that a tribe contract with the BIA, pursuant to P.L. 95-638, to provide social services directly to its people. Each tribe's allotment is based upon the population and poverty level criteria included in the set aside formula. The amount payable to tribes is deducted from the total amount available to the States under Title IV-B. Tribes are permitted to use Federal and State funds to satisfy the match requirement under Title IV-B provided that the Federal and State funds may be used for purposes which relate to the goals and objectives of Title IV-B. The matching fund formula provides for a reduction for most tribes below the 25 per centum match generally required under Title IV-B. This reflects the fact that most tribes have inadequate resources at present to fully fund these programs. All tribes may apply to the Secretary of Health and Human Services for further reductions in the matching share requirement in cases of financial hardship.

Section 203 This section would entitle tribes to receive direct federal reimbursement under Title IV-E of the Social

Security Act for foster care payments and adoption assistance. At present, only those tribes who are licensed state placing agencies or who have an agreement with the state may receive payment for foster care payments. See Native Village of Stevens v. Smith, 770 F.2d 1486 (9th Cir. 1985), cert. den. 106 S.Ct. 1514 (1986). The percentage of the payment to be reimbursed by the federal government would be based upon a weighted formula which takes into account per capita income of Indians on the reservation of the tribe relative to national per capita income. This is the same formula applicable to the states. 100% of tribal administrative costs would be paid (an increase over the State allotment -- States generally have more of a preexisting infrastructure than do tribes). Tribes are permitted to use Federal and State funds to satisfy the match requirement under Title IV-E provided that the Federal and State funds may be used for the activities funded by Title IV-E. In any case where, by tribal certification of financial hardship, the match is reduced in regard to the actual payments to be made (as opposed to administrative costs), the Secretary would have the authority to approve or disapprove the tribal payment schedule for foster families, child-care institutions and adoption assistance, although he would not have the right to disapprove of any schedule which sets payments at a level which does not exceed that of any state in which the tribe is located. This ensures fiscal accountability notwithstanding the waiver or reduction of the

matching requirement.

This section also provides that the requirements of the Adoption Assistance and Child Welfare Act shall be applicable to tribes receiving these payments except for the provisions of that Act relating to foster care licensing, development of case plans and a case plan review system. In regard to these issues, tribes are instead required to develop systems that are consistent with tribal standards and the Indian Child Welfare Act. There are some potential inconsistencies between the ICWA and P.L. 96-272 as applied and differences between resources available to state and tribal social services agencies. For example, the permanency planning provision in P.L. 96-272 is sometimes interpreted as placing strict limits on the length of foster care. Under the ICWA, it may sometimes be that a long-term arrangement is the only way to preserve the child's connection with his or her tribe and heritage. Moreover, the review system required by 96-272 may not make sense in the context of a small, personalized tribal program. Tribes should have the flexibility to structure child placements and their child welfare programs in general notwithstanding their receipt of funds pursuant to this Title.

TITLE III - ALCOHOL, MENTAL HEALTH AND DRUG ABUSE BLOCK GRANT AMENDMENTS

Section 301 This section would provide for direct grants to

tribes under the Alcohol, Mental Health and Drug Abuse Block Grant. It sets aside a portion of the funds appropriated under this block grant based upon a formula which takes into account the Indian population residing on or near the reservation and the nationwide percentage of on reservation Indians below the poverty level (see section 103 explanation). Each tribe's allotment is based upon the population and poverty criteria included in the set aside formula. The amount payable to tribes is deducted from the total amount available to the States under the Alcohol, Mental Health and Drug Abuse Block Grant.

TITLE IV - CONSOLIDATED FUNDING FOR INDIAN TRIBES

Section 401 This section permits tribes to consolidate their grants under the Social Services, Alcohol, Mental Health and Drug Abuse and Low-Income Home Energy Assistance Block Grants. Tribes would need to make only one grant application and be permitted to determine the allocation of the funds received as between the different programs. This section reflects the notion that the problems which these programs address are interrelated and that increased coordination of the programs will result in more responsive and efficient programs.

TITLE V - COLLECTIVE OPERATION OF PROGRAMS AND GRANT PROTECTION FOR INDIAN TRIBES

Section 501 This section allows tribes to enter into cooperative services arrangements with each other. Tribes so agreeing would be permitted to submit a single funding application and would be entitled to an amount equal to the amount to which the tribes would have been entitled had they applied individually. This section also permits tribes to contract with outside providers for the delivery of services.

Section 502 This section provides that no existing funds or programs provided to Indian tribes, their service population or off-reservation Indian people may be reduced or eliminated by reason of the passage of this legislation, except in the case where tribes are already receiving direct grants through the programs covered by this Act and continuation of these preexisting grants would be duplicative. This section ensures that this Act does not have the unintended result of a decrease in services to Indian people. Unfortunately, some states have been far too eager to reduce budgets by denying Indian people services without regard to the availability of tribal or Federal services. Given the modest sums of money provided by this Act, tribes will certainly not be able to supply the entire panoply of services -- States must continue to supply their fair share (indeed, Indian people are entitled to the services available to all citizens of the State.)

TITLE VI - CENSUS BUREAU STATISTICS

Section 601 This section directs the Census Bureau to update on an annual basis nationwide statistics on the Indian poverty level. It also requires the Census Bureau to prepare a national estimate of the yearly population growth rate to be expected on reservations (to be used to update decennial census data). This data is necessary to ensure the accuracy of the data used in the formulas. This data is routinely prepared for non-Indian populations and it should not be difficult for the Census Bureau to comply with this section.

TITLE VII - DEFINITIONS, EFFECTIVE DATE, AND AUTHORIZATION OF APPROPRIATIONS

Section 701 This is the definitional section, including definitions of "Indian", "Indian tribe" (the same definition as in section 108), "Poverty level", "Population", "Per Capita Income", "Near reservation" (communities, areas and counties adjacent or contiguous to reservations, with certain exceptions), "Reservation" (which includes Alaska Native villages and traditional Indian areas of Oklahoma) and "Secretary".

Section 702 This section provides that this legislation shall be effective beginning in fiscal year 1988.

Section 703 This section authorizes the appropriation of such funds as may be necessary to carry out the provisions of this Act.

APPENDIX B

ASSOCIATION OF AMERICAN INDIAN AFFAIRS

Indian Social Services Assistance Act of 1981

The following amounts are rough estimates based on the proposed funding formula (actual dollars except where noted)

Native American population on reservation	331,640
Native American population near reservation	313,700
Total Native American pop living on or near res.	645,300
Total United States population	228,545,885
Percent of all res. Nat. Amer. living below poverty	40.50
Percent of all US races living below poverty	11.70
Poverty factor	3.46

	Title XX Social Services	Title IVB Child-Mat- Fost. Care	Title 18 Alcohol Hemt. With	Total
Total appropriation (in millions of dollars)	\$ 2,700	\$ 200	\$ 495	\$ 3,395
Total tribal appropriation (in millions of dollars)	26.6	2.0	4.9	33.5

(1) TRIBE NAME	(2) RESERVATION NAME	(3) STATE	(4) Block Grant with res. pop. only	(5) Block Grant for off res. pop.	(6) Total	(7) % of Title IVC Prog costs funded by Fed Govt	(8) Reservation Data		
							(9) Native American Population	(10) % Native Americans Below Poverty	(11) Reser- vation Native American Population
Tribes with determined off-reservation populations:									
Three Affiliated Tribes									
Fort Berthold	ND		\$ 121,332	\$ 45,150	\$ 172,482	84	2,851	37.5	810
Confederated Tribes - Mustille	OR		49,873	41,344	90,417	92	846	40.5	787
Sac & Fox of Mass in IA	IA		21,225	13,137	34,362	82	454	36.5	781
Josche/Mescalero	NM		68,689	31,879	100,562	93	1,945	25.8	659
Sisseton-Walshon Sioux	SD/NB		191,418	25,722	221,181	86	2,323	54.8	568
Chippewa, Saganaw	MI		15,830	16,817	34,548	96	447	27.3	541
Tribes with undetermined off-reservation populations:									
Navajo									
Navajo	AZ/NM/UT		5,789,657	"	"	95	105,122	50.5	"
Opala Sioux	SD		747,833	"	"	96	11,888	48.1	"
Pueblo of Santo Domingo	NM		156,786	"	"	99	2,140	57.2	"
Ojibwa	MI		4,452	"	"	95	215	25.7	"
Ute Mountain	UT		82,138	"	"	95	897	48.7	"

Notes:

A. * indicates to be determined
B. All figures based on 1980 Census data.

TESTIMONY OF MYRA M. MUNSON
BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS
November 10, 1987

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to speak before this committee today. I am currently the Commissioner of the Alaska Department of Health and Social Services. This is a multi-service agency with a broad array of responsibility for human service needs; including responsibility for the state's implementation of the Indian Child Welfare Act in Alaska.

Since 1979, I have had extensive familiarity with the Act. From 1980 through 1983 I worked for the Division of Family and Youth Services in Alaska, providing Indian Child Welfare Act training and policy analysis on a statewide basis. In this role, my responsibilities included implementing the Indian Child Welfare Act. In addition, as part of the Division's commitment to implementing the Act, I provided training for all new Family and Youth Services social workers and probation officers, as well as child welfare staff of most of the regional non-profit Native associations and village council members. The training focused on all aspects of the Act, including the state's responsibilities, the authority and powers enjoyed by Alaska Native villages, and the improvement of child welfare services to Alaska Native children.

For the next three years, I worked for the State Attorney General's Office and represented the Department of Health and Social Services in many child welfare cases. I continued to occasionally provide training for tribal council members and staff of associations, as well as staff in the Department of Health and Social Services.

It was during this time that the state of Alaska, at the impetus of former Governor Sheffield, began negotiations with representatives of Alaska Native villages and non-profit associations to develop a model Indian Child Welfare State-Tribal Agreement to offer to the villages in Alaska. That effort, in which I took part, has continued under the direction of Governor Cowper and with my full support. Continuing this process is a very high priority of this administration. I certainly hope before I leave this office, Alaska will be a signator with many Alaska Native villages to state-tribal agreements under the Indian Child Welfare Act.

From all of this experience, I have drawn some conclusions which I think merit consideration as you reexamine the

Indian Child Welfare Act. Perhaps the most significant conclusion is that the Indian Child Welfare Act was needed and has helped. Clearly, in our state and around the country the Act has had the effect of improving the quality of lives of Indian children, reducing the frequency of placements of Indian children in non-Indian homes, and improving the awareness of state administrators, judges, and social workers to the culture and governmental relationship of the tribe and the child and the child's family. Although there is a lot of work yet to be done, no Indian child's case is considered in my state without discussion of the requirements and policies of the Act.

More importantly, however, is that the Act has had the effect of empowering Alaska Native villages. By explicitly recognizing the interest and power tribes have concerning their children, the Act has triggered interest among tribal leaders and Indian and Alaska Native social service organizations. The passage of the Indian Child Welfare Act has significantly reduced the sense of powerlessness that Alaska Natives felt regarding their children. As a result of the Act's passage, issues regarding children and family problems are discussed in village councils, and villages are making significant decisions about the well-being of individual children and children as a group. This has caused village councils to focus their non-profit associations to direct resources on advocacy, training, and child welfare services. It has forced state officials and social workers in closer and more meaningful relationships with members of Alaska Native villages. All of this has had an empowering effect which has improved the situation of Alaska Native children.

The Indian Child Welfare Act of 1978 was enacted to protect the best interests of Indian children and preserve tribal integrity by reducing the numbers of Indian children removed from Indian homes and environments. Since the passage of the Act, the Alaska Department of Health and Social Services has moved to assure full implementation of the Act, thereby providing better casework services to Alaska Native children and their families.

Although the state's data systems are wholly inadequate for even the most fundamental management needs, we can, from the information which can be gleaned from this system, demonstrate clearly that there have been improvements. Alaska Native children are placed in Native homes far more often than in the past. We are still a long way from having accomplished this as thoroughly as we would like, but there has been improvement.

At the end of Fiscal Year 1986, 34 percent of Alaska children receiving protective services were Alaskan Native. Two-thirds of the Native children receiving services were in

their own homes, while most of those in out of home placements (68 percent) were in the home of a relative or in a foster home.

The Division of Family and Youth Services is required by Titles IV-E and IV-B to periodically review the status of all children in custody. Three of the five regions in the State conduct all reviews of Native children with the participation of Native Elders. The remaining two regions follow that process on some, but not all, Native children, and will be formalizing the same procedure by the end of the fiscal year.

It is important to note that these changes have not resulted only from the Indian Child Welfare Act. They also result from a changing professional understanding of the needs of children in relationship to their family and extended family. In 1972, it was the commonly accepted practice that when a child was placed in care, there should be a period of time during which the child did not see the parent in order that the child could adjust to a new setting. We understand now that regular, frequent contact between parent and child is essential to reuniting the family and that the disruption in contact between the parent and child is damaging to the child as well as hurtful to the parent. This is a change in understanding that came about not only from the Indian Child Welfare Act, but from our continual efforts in the practice of child welfare to look at the needs of children.

The same kind of development has occurred in our understanding of the role of extended family and of families of the same race or culture. When I began practicing, culture or race was simply one more factor to be considered, not much more important than the religion of the parent, in deciding on the placement of the child. We have come to understand that the role of culture and race in a child's life is very complex and meaningful and cannot be ignored in placement decisions without causing great damage to the child and great loss to our communities. The Indian Child Welfare Act has furthered this understanding and has certainly imposed it where necessary. These changes have not come about solely because of the Indian Child Welfare Act.

In assessing the impact of the Act, it is also important that we look at factors which have mitigated its effectiveness. Not all of these factors require statutory change. Perhaps most importantly, the Act was significantly underfunded. The funding policies of the Bureau of Indian Affairs, particularly those related to distributing funds, added even more to the potential limitations. It is my personal conviction that the Act might never have been necessary had every Indian parent had easy access to competent legal representation whenever they came in contact

with a state court. Similarly, if every tribe had had access to competent, well-prepared legal advisors there would have been far more rapid implementation of the Act and quite honestly, in my opinion, there would have been less litigation as issues would have been negotiated and discussed early on by people on equal footing.

Villages in this state were hindered by the fact that the Bureau of Indian Affairs limited the use of the Indian Child Welfare grants. They would not allow them to be used explicitly for either purchasing legal representation or for training. It is meaningless to tell a small community to "use the money to develop a child welfare program" without providing training for governmental leaders and members of the village regarding what a child welfare system is and does, the rights a village has in these proceedings, and what authority it has. Taking such a course dooms the Act to be less effective than it could be. I understand those policies have changed over time, but not sufficiently. There is still inadequate funding for tribes to acquire the representation and training that they need to fully accomplish the purposes of the Act.

In addition to an overall lack of adequate funding, the extremely competitive grant process administered by the Bureau of Indian Affairs had negative effects. This process did great disservice to tribes and Indian organizations. In 1980 an informal working group of non-profit associations concerned about Indian child welfare was meeting regularly. That group called itself the Alaska Native Child Welfare Task Force. State representatives took part as ex-officio members and participated in the subsequent formation of the Alaska Native Child Advocacy Board (ANCAB). ANCAB disintegrated and discontinued meetings in 1983. The single most important cause of its disintegration was the competitiveness of Indian Child Welfare Act grants. Over time, meetings were dominated more and more by discussions related to securing and writing grants, and exchanging information regarding Bureau of Indian Affairs grant expectations. It was impossible to sustain discussion about child welfare policy when there were constant questions concerning meetings and what technical assistance was and was not available. As the associations began to disagree significantly over whose proposal and how many proposals should be funded, it simply became intolerable to continue to meet, and, quite honestly, was not a responsible use of limited travel funds. Only recently has a new group formed to focus again on Alaska Native child welfare issues. This group is forming for many reasons, but dominant among them is the impetus provided by the state in the state-tribal negotiations. History has shown us that the Act will never be as successful as Congress wants it to be if tribes are not funded to carry out the Act's purposes.

In a related area, it is essential that states and tribes be independent of each other in meeting obligations to the federal government. It is neither fair, nor does it achieve good social policy, for the federal government to require either a state or tribe to impose on the other the requirements of the federal government in order for either to achieve funding. Current requirements often contribute unnecessarily to divisiveness between states and tribes, add to the level of distrust, and do not achieve the purposes of the Act.

With regard to the details of the Act itself, I am aware that proposed amendments are coming to this committee. As one who has offered continuing legal education courses to Alaskans lawyers and taken part in training on a national level for legal services attorneys representing tribes, I urge you to be cautious in amending the Act. I think it is important that you focus on those issues of greatest national significance and not try to fix every bad case or every questionable outcome through amendments. To do so will simply lead to another round of litigation. A state court which chooses to ignore the plain language of the law will not be deterred by changes in the law. However, for the majority of states which have made a serious effort to honestly interpret and implement the law, every change will spur a whole new round of questions about "What does this mean?" A law in effect only eight years is a very new law and we should be very cautious of a "kitchen sink" approach to change.

In addition, as you look at proposed amendments, I think you should be very cautious about imposing obligations on tribes that they may not be prepared to meet. In providing training for attorneys representing non-Alaskan tribes, I was impressed by the number of those attorneys who indicated that they worked for tribes that have made a conscious decision that it is in the tribes' interests to rely on the state court to handle involuntary child custody proceedings. Those tribes decided that child welfare cases are divisive and too expensive' requiring a full infrastructure that the tribe feels it cannot afford. Instead, they made the decision that it is a better use of limited resources to use their funds to work with state officials, to intervene when necessary to cause state officials to make better decisions than might otherwise be made, and to develop services within their own tribes in order that the need for involuntary intervention in a family will be reduced. To impose exclusive jurisdiction on a tribe which currently has concurrent jurisdiction limits their options and should be avoided.

Finally, in cautioning you against making many changes in the law, I think it is important to consider that merely changing laws or strengthening laws will never fully achieve

the purposes of the Indian Child Welfare Act. We can tinker with and add to this law year after year, and the plight of Indian children and Indian families and Indian tribes will not be improved until the socio-economic condition of the people in those tribes is improved, until their status within our country is improved. Poverty, unemployment, alcoholism, suicide, and a plethora of other human problems that affect Indian children and families disproportionately must be reduced if the goals of the Act are to be achieved. In my opinion, you should look at the other ways in which Congress addresses its trust obligation to Indian people throughout this country, including Alaska.

Preventing unwarranted or improper intervention in Indian families is an important part of achieving more stable and valued tribes and Indian families, but the Act cannot accomplish the job alone. I urge you to look to the policies that support all the children in this country, particularly Indian children and families and Indian tribes, to achieve that full purpose. We must examine all of the ways in which support for Indian tribes and Indian people have been reduced, and reconsider those policies as well as those embodied in the Indian Child Welfare Act if we are going to achieve the purposes of the Act.

Attached for your information is an addendum to the testimony of Myra M. Munson who testified before the Senate Select Committee on Indian Affairs on November 10, 1987.

The addendum provides updated statistics for Native and non-Native CPS cases and comment on other statistics presented to the committee at the hearings.

State of Alaska

FY 87 Statistics/Native and Non-Native CPS Cases

- ° 10,105 children received Child Protective Services in FY87.
- ° 2,983 or 29.5% of children receiving protective services were Native children. This figure does not include the number of unknown who may be Native. If it is assumed that about 30% of the CPS cases with unknown race are Native, then the number of Native Children is probably 3,049 or 30% of the total figure.
- ° 2,019 or 67.7% of Native children served were in their own homes.
- ° 964 or 32.3% of total Native children served were in out-of-home placements, including placements in the homes of relatives.

- ° 322 or 33% of Native children served outside their homes were served in the homes of relatives (excluding relatives who were licensed foster parents.)
- ° 387 or 40% of Native children placed outside their homes were served in foster care, including relatives who were licensed foster parents.
- ° 795 children (both Native and non-Native) served in FY87 were in foster care. 387 or 48.7% of this total were Native children.
- ° Native children comprised 43% of children placed in out-of-home care in FY87.

5/RW/testimony2/

The article by Mike Walleri in the October, 1987 AFN Newsletter and the November 10, 1987 testimony of Alfred Ketzler before the Senate Select Committee on Indian Affairs present inaccurate information concerning the placement of Alaska Native children served by the State's child protection system. The inaccuracies appear to result from a misinterpretation of data from two sources and inaccuracies in the presentation of data by Alaska's Division of Family and Youth Services in one of the source documents.

The primary source for data presented in the article seems to be a Division of Family and Youth Services memorandum on Native children in foster care. The source for the data presented in Mr. Ketzler's testimony on the number of Alaska Native children in out of home care appears to be the DFYS FY86 Annual Report. Mr. Ketzler also apparently relied on the data from the DFYS memorandum concerning racial composition of foster homes in which Native children were placed by the state.

Both Mr. Walleri and Mr. Ketzler compare DFYS data with data from a 1976 survey by the Association on American Indian Affairs relating to placement of Alaska Native children. Each draws conclusions based on these comparisons. However, though both gentlemen utilized the same number (393 children) from the survey, the number is indicated as representing different groups of children. In Mr. Walleri's article the number is said to represent the number of Alaska Native children in foster care in 1976. In Mr. Ketzler's testimony the number is said to represent the total number of Alaska Native children

in any type of out of home placement during 1976. Without access to the survey, it is not possible to say with certainty what the number actually represents. However, based on a comparison with State figures on the number of Alaska native children in foster care and out of home care it appears more likely to represent the group of children placed in foster care during 1976.

The DFYS memorandum concerning racial characteristics of children in foster care and foster parents was prepared on December 5, 1986. The memo attempted to respond to questions raised in meetings with tribal organizations concerning racial characteristics of foster parents with whom Native children were placed. The memo is flawed in its failure to accurately explain the data presented and its limitations. The data presented in the memorandum represents a crosstabulation of the racial characteristics of foster children and foster parents for those foster care placements for which payments were authorized during the period. It does not represent individual children placed during that time. This gives a multiple count of individual children based on the frequency of payment authorizations (payments are normally authorized monthly but authorizations for a single child may occur more frequently e.g. if a child changes placements during a month). Thus a child in foster care placement for one year would be represented a minimum of twelve times in the data. This gives an imprecise approximation of the racial composition of both children in placement and foster parents because of the multiple counting. However, it is the closest approximation

of the desired comparison possible because of the inherent limitations of the Division of Family and Youth Services' information system. Unfortunately, these limitations were not explained in the memorandum and the data was misinterpreted by Mr. Walleri. In addition, the data presented represented a nineteen and one-half month period rather than a calendar year as Mr. Walleri's article indicated.

An accurate comparison of the type attempted by Mr. Walleri would have been between the number of Alaska Native children placed in foster care during 1976 and the number placed in foster care during a more recent one year period. Such a comparison would show the number during recent years to be slightly below the number of children in placement at the time of the survey (393 in 1976 according to the survey and 355, 309, 348, and 387, in FY84, FY85, FY86, and FY87 respectively according to DFYS' annual reports). This shows a decrease in placements despite the 28% increase in the population of Alaska Native children rather than an increase of 218% as calculated by Mr. Walleri. It also leads to a different representation of the State's effort to achieve the goals of the ICWA than was presented by Mr. Walleri based on his incomplete understanding of the data.

Mr. Ketzler's testimony that the number of Alaska Native children placed outside their homes had increased by 256% in the ten years from 1976 to 1986 also seems based on a misinterpretation of available data. Mr. Ketzler is correct in representing the number of Alaska Native children placed outside their own home in 1986 as 1,010. However, he compares

this number with what apparently is only a portion of the total number of such children in 1976 -- apparently those placed in foster care. State data on the total number of Native children placed outside their homes is not available for 1976. However, data for 1978, the earliest year for which data is available indicates, that 934 Native children were placed outside their own homes. It is likely that the number of Native children in out of home placements in 1976 is nearer the 1978 level than the 393 indicated in Mr. Ketzler's testimony. It seems probable that the number of Native children placed outside their homes has increased approximately 10% (at a slower rate than increases in the population on Native children) rather than 256% as Mr. Ketzler concluded.

Both Mr. Ketzler and Mr. Walleri misinterpreted data presented in the December 5, 1986 DFYS memorandum in drawing conclusions concerning likelihood of a Native child being placed in a Native foster home. Each interpreted data on placements as representing data on individual children and did not include data on those placements for which the foster parent race was unknown. In the Bethel area, for instance, the race of children in 98% of foster home placements was Native. The race of foster parents in 59% of the placements for these children was also Native. The race of foster parents in 7% of placements for these children was Caucasian and the foster parent race was unknown in 32% of these placements. However, most of the licensed foster parents in the area are Native. It is likely then that a substantial

portion of those placements in which the foster parent race is unknown are actually placements with Native families. This means that the likelihood of placement of a Native child in a Native foster home is greater than presented in the testimony of Mr. Ketzler and the article by Mr. Walleri and greater than indicated in the source from which their information was taken.

Though not noted by either Mr. Walleri or Mr. Ketzler, it is important to be aware that a significant increase has been made in the number of Native children who remain in their own homes while receiving protective services. In FY78 only 56% of Native children were served in their own homes, but by FY 86, 67% remained in their homes while receiving protective services.

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OCT 31 1987

STEVE COWPER, GOVERNOR

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

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Document No. 87-114

October 20, 1987

The Honorable F. Kay Wallis
Alaska State House
P.O. Box V
Juneau, AK 99811

Dear Representative Wallis:

Thank you for your recent inquiry and interest concerning placements of children in State custody. There are inherent deficiencies in the information system of the Division of Family and Youth Services which limit our ability to fully respond to your inquiry or to provide historical information on children in placement. Despite these limitations, I believe the following information provides a useful profile which addresses the thrust of your inquiry.

According to the most recent population estimates available (Alaska Population Overview, Alaska Department of Labor, September 1985), ~~the State's population (25,000 of 523,000) were identified as American Indian, Eskimo, or Aleut.~~ Although total population figures have been updated, no additional information concerning racial or ethnic composition of the total has been provided. Presumably the 1984 estimate is still representative of the racial makeup of Alaska's population.

Unduplicated counts of children taken into State custody and placements of children are readily retrievable ~~on a point-in-time basis~~. Although these point in time counts are limited in a number of ways, they provide a profile of client characteristics which is adequately representative for most purposes. *wrong! look at old file*

Enclosed is a table from the most recent Annual Report of the Division of Family and Youth Services displaying the ~~percentage composition of children receiving child protective services, as well as necessarily in custody, at the end of Fiscal Year 80.~~ As the table shows, ~~all of these children~~ ~~living in their own homes~~ ~~and~~ ~~the~~ ~~percentage~~ ~~of~~ ~~children~~ ~~in~~ ~~the~~ ~~State~~ ~~of~~ ~~Alaska~~ ~~in~~ ~~the~~ ~~year~~ ~~1980~~ ~~was~~ ~~100~~ ~~percent~~ ~~and~~ ~~the~~ ~~percentage~~ ~~of~~ ~~children~~ ~~in~~ ~~the~~ ~~State~~ ~~of~~ ~~Alaska~~ ~~in~~ ~~the~~ ~~year~~ ~~1980~~ ~~was~~ ~~100~~ ~~percent~~ ~~and~~ ~~the~~ ~~percentage~~ ~~of~~ ~~children~~ ~~in~~ ~~the~~ ~~State~~ ~~of~~ ~~Alaska~~ ~~in~~ ~~the~~ ~~year~~ ~~1980~~ ~~was~~ ~~100~~ ~~percent~~ ~~and~~ ~~the~~ ~~percentage~~ ~~of~~ ~~children~~ ~~in~~ ~~the~~ ~~State~~ ~~of~~ ~~Alaska~~ ~~in~~ ~~the~~ ~~year~~ ~~1980~~ ~~was~~ ~~100~~ ~~percent~~ ~~and~~ ~~the~~ ~~percentage~~ ~~of~~ 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Representative Wallis

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

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

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

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

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

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

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

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

Race of Children in Foster Homes

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

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

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

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

Sincerely,

Myra M. Munson

Myra M. Munson
Commissioner

Enclosure