

INDIAN CHILD WELFARE ACT

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

OVERSIGHT HEARINGS ON THE INDIAN CHILD WELFARE ACT

NOVEMBER 10, 1987
WASHINGTON, DC



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AGGC c. 1 nf NILL files

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INDIAN CHILD WELFARE ACT

TUESDAY, NOVEMBER 10, 1987

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:14 a.m., in room 485, Rayburn House Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, Murkowski, McCain, and DeConcini.

STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning. Our hearing this morning is on the implementation of the Indian Child Welfare Act of 1978. It has been nearly 10 years since this act was enacted. An ample period of time has now passed to determine whether this act and the courts and agencies which administer it are meeting the expectations of the Congress when the act was enacted.

This act is premised on the concept that the primary authority in matters involving the relationship of an Indian child to his parents or extended family should be the tribe, not the State or the Federal Government. This is particularly true in cases where the child resides or is domiciled within the reservation or jurisdiction of the tribe. The act is not limited to reservation-based tribes. It extends to tribes in Oklahoma occupying lands within former reservation areas, and it extends to tribes in native villages in Alaska whose lands are not held in trust and are not within the former reservation areas.

While the act recognizes the importance of the tribe and its primary authority in matters affecting the welfare of Indian children and their families residing or domiciled on their reservations, the act does not operate to oust the States of jurisdiction in appropriate cases. The act recognizes the traditional role played by State agencies and courts where an Indian child or his family does not reside or is not domiciled on the reservation. Thus, the act makes specific provisions for transfers of cases from State to tribal courts and it requires that States give full faith and credit to the public acts of an Indian tribe.

With respect to cases over which the State retains jurisdiction, it authorizes tribes to intervene in the proceedings and participate in the litigation. It imposes certain evidentiary burdens in State court proceedings, and it establishes placement preferences to guide State placements.