IN THE SENATE OF THE UNITED STATES

APRIL 1 (legislative day, February 21), 1977

Mr. ABOUREZK (for himself, Mr. HUMPHREY, and Mr. MCGOVERN) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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.

1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2. That this Act may be cited as the “Indian Child Welfare Act of 1977”.

3. FINDINGS

4. 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:

II
(a) An alarmingly 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 biological 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 Government 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, including especially their placement in institutions or homes which do not meet their special needs, is socially and culturally undesirable. 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 government 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, to discourage unnecessary placement of Indian children in boarding schools for social rather than educational reasons, to assist Indian tribes in the operation of tribal family development programs, and generally to promote the stability and security of Indian family life.

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, as defined in subsection (c) hereof.

(c) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native region, village, or group as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

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

(e) "Tribal court" means the Court of Indian Offenses, any court operated and maintained by an Indian tribe, and any other tribunal which performs judicial functions in the name of an Indian tribe within an Indian reservation.

(f) "Nontribal government agency" means any Federal, State or local government department, bureau, agency, or other office, including any 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) "Child placement" means any proceedings, judicial, quasi-judicial, or administrative, voluntary or involuntary, and public or private, under which an Indian child is removed from the custody of his natural parent or parents, his Indian adoptive parent or parents, or the custody of any blood relative in whose care he has been left by his natural parent or parents, or his Indian adoptive parent or parents, and is either offered for adoption or is placed in a foster home or other institution.

(h) "Natural parent" means the biological parent of a child and also any Indian who has adopted a child.

(i) "Blood relative" means any grandparent, aunt or uncle (whether by blood or marriage), brother or sister, brother- or sister-in-law, niece or nephew, or stepparent, whether by blood, marriage, or adoption, over the age of eighteen or otherwise emancipated, or as defined by tribal law or custom.

TITLE I—CHILD PLACEMENT STANDARDS

Sec. 101. (a) In the case of any Indian child who resides within an Indian reservation, no child placement shall be valid or given any legal force and effect, except temporary placements after emergency removal under circumstances where the physical or emotional well-being of the child is immediately threatened, unless made pursuant to an order of the tribal court, where a tribal court exists.
(b) In the case of any Indian child who is domiciled within an Indian reservation, or who resides within an Indian reservation which does not have a tribal court, 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 threatened, unless the Indian tribe occupying such reservation has been accorded thirty days' written notice of, and a right to intervene as an interested party in, the child placement proceedings. For the purposes of this Act, an Indian child shall be deemed to be domiciled where his natural parent or parents, or the blood relative in whose care he may have been left by his natural parent or parents, is domiciled:

(c) In the case of any Indian child who is not a resident or domiciliary of an Indian reservation, 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 threatened, unless the Indian tribe of which the child is a member, or is eligible for membership, has been accorded thirty days' written notice of, and a right to intervene as an interested party in, the child placement proceedings.
(d) No Indian child shall be removed from the custody of his natural parent or parents, Indian adoptive parent or parents, or blood relative in whose custody the child has been placed by the private actions of any private individual, corporation, group, or institution for a period of more than thirty days without written notice served upon the tribe of which the child is a member or is eligible for membership in or upon whose reservation the child resides or is domiciled. The notice shall be in writing signed or acknowledged by the child's natural parent or parents, Indian adoptive parent or parents, or blood relative, and the child's temporary guardian, notarized or signed by two witnesses, stating the names of all the parties, their addresses, the expected length of removal, the purpose of removal, and the extent to which custody over the child is transferred to the temporary guardian. This section shall not apply if the tribe has enacted or enacts its own law governing private placements. No placement shall be valid or given any legal force and effect if made in violation of this section.

(e) It shall be the duty of the party seeking a change of the custody of an Indian child to notify the relevant tribal governing body by mailing written notice to the chief executive officer or such other person as the tribe may designate: Provided further, That the judge or hearing officer at any child placement proceeding shall make a good faith deter-
mination of whether the child involved is Indian and, if so, which tribe must be notified.

Sec. 102. (a) No placement of an Indian child, except as provided in section 101 (d) of 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 (1) his natural parent or parents, or the blood relative in whose care the child may have been left by his natural parent or parents, has been accorded thirty days' written notice of the child placement proceedings and a right (A) to intervene in the proceedings as an interested party through counsel or, alternatively, in a tribal court, through a lay advocate, (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 nontribal government agency seeking to effect the child placement affirmatively shows that alternative remedial services and rehabilitative programs designed to prevent the break-up 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 any of three classes mentioned in section 101 of this Act, or the blood relative in whose care the child may have been left by his natural parent or parents,
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 an overwhelming weight of the evidence, including testimony by qualified professional witnesses, that the continued custody of the child by his natural parent or parents, or the blood relative in whose care the child has been left, will result in serious emotional damage, or in the absence of a determination, supported by clear and convincing evidence, including testimony by a qualified physician, that the continued custody of the child by his natural parent or parents, or the blood relative in whose care the child has been left, will result in serious physical damage.

In making such determinations, poverty, including inadequate or crowded housing, misconduct, and alcohol abuse on the part of either natural parent, or the blood relative, shall not be deemed prima facie evidence that serious physical or emotional damage to the child has occurred or will occur. The standard to be applied in any proceeding covered by this Act shall be the standards of the Indian community in which the natural parent or parents, Indian adoptive parent or parents, or blood relatives reside.

(c) In the event that the natural parent or parents or Indian adoptive parent or parents of an Indian child consent to the loss of custody, whether temporary or permanent, no child placement shall be valid or given any legal force and effect.
effect, unless such consent is voluntary, in writing, executed
before a judge of a court having jurisdiction over child place-
ments, and accompanied by the witnessing judge's certificate
that the consent was explained in detail, was translated into
the natural parent's native language, and was fully under-
stood by him or her. If the consent is to a nonadoptive
child placement, the natural parent or parents or Indian
adoptive parent or parents may withdraw the consent at
any time for any reason, and the consent shall be deemed
for all purposes, except temporary custody, as having never
been given. If the consent is to an adoptive child placement,
and the child is over the age of two, the natural parent or
parents or Indian adoptive parent or parents may withdraw
the consent for any reason at any time before the final decree
of adoption: Provided further, That no final decree of
adoption may be entered within ninety days after the natural
parent or parents, Indian adoptive parent or parents, or
blood relative has given consent to the adoption. A final
decree of adoption may be set aside only 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. Consent by the natural parent or parents
of an Indian child given within ninety days of the birth of
the child shall be presumed to be involuntary.
(d) No placement of an Indian child, except as provided by section 101(d) of 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 the child has been represented in the placement proceedings by counsel or, alternatively, in a tribal court, by a lay advocate, and unless his natural parent or parents, Indian adoptive parent or parents, or the blood relative in whose care the child may have been left by his natural parent or parents, or Indian adoptive parent or parents, has been represented by separate counsel or lay advocate.

Sec. 103. (a) In offering for adoption an Indian child, every nontribal government agency shall grant a preference to members of the child’s extended Indian family, which shall be defined by tribal law or custom.

(b) In otherwise placing an Indian child, every nontribal government agency, in the absence of good cause shown to the contrary, shall grant preferences in the following order: (1) to the child’s extended Indian 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 domiciliary; (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 recom-
mended by the Indian tribe of which the child is a member
or is eligible for membership; (5) to any foster home run by
an Indian family; and (6) to a custodial institution for chil-
dren operated by an Indian tribe, a tribal organization or
nonprofit Indian organization: Provided, however, That each
Indian tribe may modify or amend the foregoing order of
preferences, and may add or delete preference categories,
by resolution of its government body. Every nontribal gov-
ernment agency shall maintain a record evidencing its efforts
to comply with the order of preferences provided under this
subsection in each case of an Indian child placement.

(c) Where an Indian child is placed in a foster or adop-
tive home, or in an institution, outside the reservation of
which the child is a resident, pursuant to an order of a tribal
court, the tribal court shall retain continuing jurisdiction over
such child placement until the child attains the age of
eighteen.

Sec. 104. After an Indian adoptive child attains the age
of eighteen, upon his or her application to the court which
entered the final adoption decree, and in the absence of good
cause shown to the contrary, the child shall have a right to
learn the names and last known address of his natural parent
or parents and siblings who also have attained the age of
eighteen, their tribal affiliation and the grounds for the sever-
ance of their family relations.

SEC. 105. In any proceeding within the jurisdiction of
this Act the United States, any Indian Reservation, State,
Commonwealth, territory, or possession thereof shall give full
faith and credit to the laws of any Indian tribe involved in a
proceeding under the Act and any Tribal Court orders
issued in such proceeding.

TITLE II—INDIAN FAMILY DEVELOPMENT

SEC. 201. (a) The Secretary is hereby authorized, un-
der such rules and regulations as he may prescribe, to make
grants to, or enter into contracts with, Indian tribes for the
purpose of assisting such tribes in the establishment and
operation of Indian family development programs, as de-
scribed in section 202, and in the preparation and imple-
mentation of child welfare codes.

(b) The Secretary is further authorized, under such
rules and regulations as he may prescribe, to carry out,
or to make grants to or contracts with Indian tribes to carry
out, a special home improvement program to upgrade: (1)
the housing conditions of Indian foster and adoptive parents,
if such housing conditions are substandard; (2) the housing:
conditions of Indians who seek Indian foster or adoptive
children, where improved housing would enable such In-
1 dians to qualify as foster or adoptive parents under tribal
2 law or regulations; and (3) the housing conditions of In-
3 dian families facing disintegration, where improved housing
4 would contribute significantly to family stability.
5 (c) The Secretary is also authorized, under such rules
6 and regulations as he may prescribe to carry out, or to
7 make grants to or contracts with Indian organizations to
8 carry out, off-reservation Indian family development pro-
9 grams, as described in section 203. In the establishment,
10 operation, and funding of off-reservation Indian family de-
11 velopment programs, the Secretary may enter into agree-
12 ments or other cooperative arrangements with the Secre-
13 tary of Health, Education, and Welfare, and the latter Secre-
14 tary is hereby authorized for such purposes to use funds
15 appropriated for similar programs of the Department of
16 Health, Education, and Welfare.
17 (d) There are authorized to be appropriated $21,-
18 792,000 during fiscal year 1978, $23,700,000 during fiscal
19 year 1979, $25,120,000 during fiscal year 1980, and such
20 sums as may be necessary during each subsequent fiscal year:
21 in order to carry out the purposes of this section.
22 Sec. 202. (a) Every Indian tribe is hereby authorized:
23 to establish and operate an Indian family development pro-
24 gram, which program may include some or all of the fol-
25 lowing 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 (c) (2) 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 Indian families and Indian children;

(5) a special home improvement program, as defined in section 201 (b);

(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, and the granting of scholarships for such education and training; and

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

(b) Where an Indian tribe has implemented a licensing or other regulatory system pursuant to subsection 202 (a) (1), any Indian foster or adoptive home so
1 licensed or designated (1) may accept Indian child place-
2 ments by a nontribal government agency and State funds
3 in support of Indian children, (2) shall have a first pref-
4 erence in the placement of an Indian child who is a
5 resident or domiciliary of such tribe's reservation in accord-
6 ance with subsection 103 (b) (1) of this Act, and (3) shall
7 have a second preference in the placement of an Indian child
8 who is a member of, or eligible for membership in, such
9 tribe in accordance with subsection 103 (b) (2) of this Act.
10 (c) (1) The objective of every Indian family develop-
11 ment program shall be to prevent the breakup of Indian
12 families and, in particular, to insure that the permanent re-
13 moval of an Indian child from the custody of his natural par-
14 ent or parents, or the custody of any blood relative in whose
15 care he has been left by his natural parent or parents, by
16 a tribal court or nontribal government agency shall be ef-
17 fected only as a last resort.
18 (2) In furtherance of this objective, every Indian tribe
19 is authorized to construct, operate, and maintain a family
20 development center which may contain, among other
21 features:
22 (A) facilities for counseling Indian families which
23 face disintegration and, where appropriate, for the
24 treatment of individual family members;
25 (B) facilities for the temporary custody of Indian
children whose natural parent or parents are temporarily
unable or unwilling to care for them or who otherwise
are left temporarily without adequate adult supervision
by a blood relative; and

(C) facilities for the temporary custody of Indian
parents, where so ordered by a tribal court, in lieu of
incarceration for public intoxication or the commission
of any other minor offense.

Sec. 203. Off-reservation Indian family development
programs, operated either directly by the Secretary or
through grants and contracts with local Indian organiza-
tions, may include, but shall not be limited to, the follow-
ing features:

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

(b) the construction, operation, and maintenance
of family development centers providing the facilities
and services set forth in paragraphs (2) (A) and (B)
of section 202 (c) of this Act;

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

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

(e) an Indian child defense program, as defined in section 204(b), and other representation of Indian children before the courts; and

(f) furnishing guidance, representation, and advice to Indian families involved in child placement proceedings before nontribal government agencies.

Sec. 204. (a) The Secretary is hereby authorized and directed, under such rules and regulations as he may prescribe, to undertake a study of the circumstances surrounding all child placements which have occurred during the sixteen years preceding the effective date of this Act, where the Indian child so placed still is under the age of eighteen on such date. If the Secretary has good cause to believe, on the basis of this study, that a child placement was or may be invalid or otherwise legally defective, and if either natural parent, Indian adoptive parent or the blood relative previously having custody of the Indian child so requests, the Secretary is authorized, in his discretion, to institute a habeas corpus action or other appropriate legal proceeding in the name of the United States on behalf of such parent, Indian adoptive parent or blood relative in the United States district court for the district in which the child resides for the purpose of challenging the child placement, and, if it is found
invalid or legally defective, of restoring custody of the Indian
child to its natural parent or parents, Indian adoptive parent
or parents, or to the blood relative in whose care the child
had been left.

(b) The Secretary is further authorized and directed, under such rules and regulations as he may prescribe, to
operate, or to make grants or contracts with Indian tribes
or Indian organizations to operate, an Indian family defense
program which shall provide representation by an attorney
or, alternatively, in a tribal court, by a lay advocate for any
Indian child who is the subject of a child placement proceed-
ing, or, if appropriate, for his natural parent or parents, or
the blood relative in whose care the child may have been
left by his natural parent or parents.

(c) The Secretary also 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 either are effected after
the date of this Act or are the subject of the study required
under subsection (a) hereof, 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 blood relative, if any, in whose care he may have
been left by a natural parent, the names and addresses of
his siblings, and the names and locations of any tribal court
or nontribal government agency which possesses 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: (1) to an Indian adoptive child over the age of eighteen for the purpose of identifying the court which entered his final adoption decree and furnishing such court with the information specified in section 104; (2) to the adoptive parent of an Indian child or to an Indian tribe for the purpose of assisting in the enrollment of an Indian adoptive child in the tribe of which he is eligible for membership; and (3) to the adoptive parent of an Indian child for the purpose of establishing or continuing his tribal affiliation or a relationship with his siblings. 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 this Act.

(d) There are authorized to be appropriated $18,000,000 during fiscal year 1979, $20,000,000 during fiscal year 1980, $22,000,000 during fiscal year 1981, and such sums as may be necessary during each subsequent fiscal year in order to carry out the purposes of this section, including the payment of attorney fees:

Sec. 205. (a) The Secretary is authorized to perform
any and all acts and to make such rules and regulations as
may be necessary and proper for the purposes of carrying out
the provisions of this Act.

(b) (1) Within six months from the date of enactment
of this Act, the Secretary shall consult with Indian tribes,
Indian organizations and Indian-interest agencies in the
consideration and formulation 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 Repre-
sentatives, respectively.

(3) Within eight months from the date of enactment of
this Act, the Secretary shall publish proposed rules and reg-
ulations 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 regula-
tions to implement the provisions of this Act.

c) The Secretary is authorized to revise and amend
any rules or regulations promulgated pursuant to this sec-
tion: 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, organiza-
tions, 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.
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.

By Mr. Abourezk, Mr. Humphrey, and Mr. McGovern

APRIL 1 (legislative day, FEBRUARY 21), 1977
Read twice and referred to the Select Committee on Indian Affairs