

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

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

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

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

11 DECLARATION OF POLICY

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

22 DEFINITIONS

23 SEC. 4. For purposes of this Act:

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

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

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

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

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

19 (f) "Nontribal government agency" means any Federal,
20 State or local government department, bureau, agency, or
21 other office, including any court, and any private agency
22 licensed by a State or local government, which has jurisdic-
23 tion or which performs functions and exercises responsibili-
24 ties in the fields of social services, welfare, and domestic
25 relations, including child placement.

1 (g) "Child placement" means any proceedings, judicial,
2 quasi-judicial, or administrative, voluntary or involuntary,
3 and public or private, under which an Indian child is removed
4 from the custody of his natural parent or parents, his Indian
5 adoptive parent or parents, or the custody of any blood
6 relative in whose care he has been left by his natural parent
7 or parents, or his Indian adoptive parent or parents, and is
8 either offered for adoption or is placed in a foster home or
9 other institution.

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

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

18 TITLE I—CHILD PLACEMENT STANDARDS

19 SEC. 101. (a) In the case of any Indian child who
20 resides within an Indian reservation, no child placement
21 shall be valid or given any legal force and effect, except
22 temporary placements after emergency removal under cir-
23 cumstances where the physical or emotional well-being of
24 the child is immediately threatened, unless made pursuant
25 to an order of the tribal court, where a tribal court exists

1 within such reservation which exercises jurisdiction over
2 child welfare matters and domestic relations.

3 (b) In the case of any Indian child who is domiciled
4 within an Indian reservation, or who resides within an
5 Indian reservation which does not have a tribal court, no
6 child placement shall be valid or given any legal force and
7 effect, except temporary placements under circumstances
8 where the physical or emotional well-being of the child is
9 immediately threatened, unless the Indian tribe occupying
10 such reservation has been accorded thirty days' written
11 notice of, and a right to intervene as an interested party in,
12 the child placement proceedings. For the purposes of this
13 Act, an Indian child shall be deemed to be domiciled where
14 his natural parent or parents, or the blood relative in whose
15 care he may have been left by his natural parent or parents,
16 is domiciled:

17 (c) In the case of any Indian child who is not a resident
18 or domiciliary of an Indian reservation, no child placement
19 shall be valid or given any legal force and effect, except tem-
20 porary placements under circumstances where the physical
21 or emotional well-being of the child is immediately threat-
22 ened, unless the Indian tribe of which the child is a member,
23 or is eligible for membership, has been accorded thirty days'
24 written notice of, and a right to intervene as an interested
25 party in, the child placement proceedings.

1 (d) No Indian child shall be removed from the custody
2 of his natural parent or parents, Indian adoptive parent or
3 parents, or blood relative in whose custody the child has been
4 placed by the private actions of any private individual, cor-
5 poration, group, or institution for a period of more than thirty
6 days without written notice served upon the tribe of which
7 the child is a member or is eligible for membership in or upon
8 whose reservation the child resides or is domiciled. The notice
9 shall be in writing signed or acknowledged by the child's
10 natural parent or parents, Indian adoptive parent or parents,
11 or blood relative, and the child's temporary guardian,
12 notarized or signed by two witnesses, stating the names of
13 all the parties, their addresses, the expected length of re-
14 moval, the purpose of removal, and the extent to which
15 custody over the child is transferred to the temporary
16 guardian. This section shall not apply if the tribe has enacted
17 or enacts its own law governing private placements. No
18 placement shall be valid or given any legal force and effect
19 if made in violation of this section.

20 (e) It shall be the duty of the party seeking a change
21 of the custody of an Indian child to notify the relevant tribal
22 governing body by mailing written notice to the chief execu-
23 tive officer or such other person as the tribe may designate:
24 *Provided further*, That the judge or hearing officer at any
25 child placement proceeding shall make a good faith deter-

1 mination of whether the child involved is Indian and, if so,
2 which tribe must be notified.

3 SEC. 102. (a) No placement of an Indian child, except
4 as provided in section 101 (d) of this Act, shall be valid or
5 given any legal force and effect, except temporary place-
6 ments under circumstances where the physical or emotional
7 well-being of the child is immediately threatened, unless (1)
8 his natural parent or parents, or the blood relative in whose
9 care the child may have been left by his natural parent or
10 parents, has been accorded thirty days' written notice of the
11 child placement proceedings and a right (A) to intervene in
12 the proceedings as an interested party through counsel or,
13 alternatively, in a tribal court, through a lay advocate, (B) to
14 submit evidence and present witnesses on his or her own be-
15 half, and (C) to examine all reports or other documents and
16 files upon which any decision with respect to child place-
17 ment may be based; and (2) the nontribal government
18 agency seeking to effect the child placement affirmatively
19 shows that alternative remedial services and rehabilitative
20 programs designed to prevent the break-up of the Indian
21 family have been made available and proved unsuccessful.

22 (b) Where the natural parent or parents of an Indian
23 child, who falls within any of three classes mentioned in sec-
24 tion 101 of this Act, or the blood relative in whose care the
25 child may have been left by his natural parent or parents,

1 opposes the loss of custody, no child placement shall be valid
2 or given any legal force and effect in the absence of a deter-
3 mination, supported by an overwhelming weight of the evi-
4 dence, including testimony by qualified professional wit-
5 nesses, that the continued custody of the child by his natural
6 parent or parents, or the blood relative in whose care the
7 child has been left, will result in serious emotional damage,
8 or in the absence of a determination, supported by clear and
9 convincing evidence, including testimony by a qualified phy-
10 sician, that the continued custody of the child by his natural
11 parent or parents, or the blood relative in whose care the
12 child has been left, will result in serious physical damage.
13 In making such determinations, poverty, including inade-
14 quate or crowded housing, misconduct, and alcohol abuse on
15 the part of either natural parent, or the blood relative, shall
16 not be deemed prima facie evidence that serious physical or
17 emotional damage to the child has occurred or will occur. The
18 standard to be applied in any proceeding covered by this Act
19 shall be the standards of the Indian community in which the
20 natural parent or parents, Indian adoptive parent or parents,
21 or blood relatives reside.

22 (c) In the event that the natural parent or parents or
23 Indian adoptive parent or parents of an Indian child consent
24 to the loss of custody, whether temporary or permanent, no
25 child placement shall be valid or given any legal force and

1 effect, unless such consent is voluntary, in writing, executed
2 before a judge of a court having jurisdiction over child place-
3 ments, and accompanied by the witnessing judge's certificate
4 that the consent was explained in detail, was translated into
5 the natural parent's native language, and was fully under-
6 stood by him or her. If the consent is to a nonadoptive
7 child placement, the natural parent or parents or Indian
8 adoptive parent or parents may withdraw the consent at
9 any time for any reason, and the consent shall be deemed
10 for all purposes, except temporary custody, as having never
11 been given. If the consent is to an adoptive child placement,
12 and the child is over the age of two, the natural parent or
13 parents or Indian adoptive parent or parents may withdraw
14 the consent for any reason at any time before the final decree
15 of adoption: *Provided further*, That no final decree of
16 adoption may be entered within ninety days after the natural
17 parent or parents, Indian adoptive parent or parents, or
18 blood relative has given consent to the adoption. A final
19 decree of adoption may be set aside only upon a showing
20 that the child is again being placed for adoption, that the
21 adoption did not comply with the requirements of this Act
22 or was otherwise unlawful, or that the consent to the adoption
23 was not voluntary. Consent by the natural parent or parents
24 of an Indian child given within ninety days of the birth of
25 the child shall be presumed to be involuntary.

1 (d) No placement of an Indian child, except as pro-
2 vided by section 101 (d) of this Act, shall be valid or given
3 any legal force and effect, except temporary placements
4 under circumstances where the physical or emotional well-
5 being of the child is immediately threatened, unless the child
6 has been represented in the placement proceedings by coun-
7 sel or, alternatively, in a tribal court, by a lay advocate, and
8 unless his natural parent or parents, Indian adoptive parent
9 or parents, or the blood relative in whose care the child
10 may have been left by his natural parent or parents, or
11 Indian adoptive parent or parents, has been represented by
12 separate counsel or lay advocate.

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

17 (b) In otherwise placing an Indian child, every non-
18 tribal government agency, in the absence of good cause
19 shown to the contrary, shall grant preferences in the follow-
20 ing order: (1) to the child's extended Indian family, (2) to
21 a foster home, if any, licensed or otherwise designated by
22 the Indian tribe occupying the reservation of which the
23 child is a resident or domiciliary; (3) to a foster home, if
24 any, licensed by the Indian tribe of which the child is a
25 member or is eligible for membership; (4) to any other

1 foster home within an Indian reservation which is recom-
2 mended by the Indian tribe of which the child is a member
3 or is eligible for membership; (5) to any foster home run by
4 an Indian family; and (6) to a custodial institution for chil-
5 dren operated by an Indian tribe, a tribal organization or
6 nonprofit Indian organization: *Provided, however,* That each
7 Indian tribe may modify or amend the foregoing order of
8 preferences, and may add or delete preference categories,
9 by resolution of its government body. Every nontribal gov-
10 ernment agency shall maintain a record evidencing its efforts
11 to comply with the order of preferences provided under this
12 subsection in each case of an Indian child placement.

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

19 SEC. 104. After an Indian adoptive child attains the age
20 of eighteen, upon his or her application to the court which
21 entered the final adoption decree, and in the absence of good
22 cause shown to the contrary, the child shall have a right to
23 learn the names and last known address of his natural parent
24 or parents and siblings who also have attained the age of

1 eighteen, their tribal affiliation and the grounds for the sever-
2 ance of their family relations.

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

9 **TITLE II—INDIAN FAMILY DEVELOPMENT**

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

17 (b) The Secretary is further authorized, under such
18 rules and regulations as he may prescribe, to carry out,
19 or to make grants to or contracts with Indian tribes to carry
20 out, a special home improvement program to upgrade: (1)
21 the housing conditions of Indian foster and adoptive parents,
22 if such housing conditions are substandard; (2) the housing
23 conditions of Indians who seek Indian foster or adoptive
24 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 (1) a system for licensing or otherwise regulating
2 Indian foster and adoptive homes;

3 (2) the construction, operation, and maintenance
4 of family development centers, as defined in subsection
5 (c) (2) hereof;

6 (3) family assistance, including homemakers and
7 home counselors, day care, after-school care and employ-
8 ment, recreational activities, and respite services;

9 (4) provision for counseling Indian families and
10 Indian children;

11 (5) a special home improvement program, as de-
12 fined in section 201 (b) ;

13 (6) the employment of professional and other
14 trained personnel to assist the tribal court in the disposi-
15 tion of domestic relations and child welfare matters;

16 (7) education and training of Indians, including
17 tribal court judges and staff, in skills relating to child
18 welfare and family assistance programs, and the granting
19 of scholarships for such education and training; and

20 (8) a subsidy program under which Indian adop-
21 tive children are provided the same support as Indian
22 foster children.

23 (b) Where an Indian tribe has implemented a
24 licensing or other regulatory system pursuant to subsec-
25 tion 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

1 children whose natural parent or parents are temporarily
2 unable or unwilling to care for them or who otherwise
3 are left temporarily without adequate adult supervision
4 by a blood relative; and

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

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

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

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

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

25 (d) provision for counseling and treatment both of

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

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

6 (f) furnishing guidance, representation, and advice
7 to Indian families involved in child placement proceed-
8 ings before nontribal government agencies.

9 SEC. 204. (a) The Secretary is hereby authorized and
10 directed, under such rules and regulations as he may pre-
11 scribe, to undertake a study of the circumstances surrounding
12 all child placements which have occurred during the six-
13 teen years preceding the effective date of this Act, where
14 the Indian child so placed still is under the age of eighteen
15 on such date. If the Secretary has good cause to believe, on
16 the basis of this study, that a child placement was or may
17 be invalid or otherwise legally defective, and if either natural
18 parent, Indian adoptive parent or the blood relative previous-
19 ly having custody of the Indian child so requests, the Secre-
20 tary is authorized, in his discretion, to institute a habeas
21 corpus action or other appropriate legal proceeding in the
22 name of the United States on behalf of such parent, Indian
23 adoptive parent or blood relative in the United States district
24 court for the district in which the child resides for the pur-
25 pose of challenging the child placement and, if it is found

1 invalid or legally defective, of restoring custody of the Indian
2 child to its natural parent or parents, Indian adoptive parent
3 or parents, or to the blood relative in whose care the child
4 had been left.

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

15 (c) The Secretary also is authorized and directed,
16 under such rules and regulations as he may prescribe, to
17 collect and maintain records in a single, central location of
18 all Indian child placements which either are effected after
19 the date of this Act or are the subject of the study required
20 under subsection (a) hereof, which records shall show as
21 to each such placement the name and tribal affiliation of
22 the child, the names and addresses of his natural parents
23 and the blood relative, if any, in whose care he may have
24 been left by a natural parent, the names and addresses of
25 his siblings, and the names and locations of any tribal court

1 or nontribal government agency which possesses files or
2 information concerning his placement. Such records shall not
3 be open for inspection or copying pursuant to the Freedom
4 of Information Act (80 Stat. 381), as amended, but infor-
5 mation concerning a particular child placement shall be made
6 available in whole or in part, as necessary: (1) to an
7 Indian adoptive child over the age of eighteen for the pur-
8 pose of identifying the court which entered his final adoption
9 decree and furnishing such court with the information speci-
10 fied in section 104; (2) to the adoptive parent of an Indian
11 child or to an Indian tribe for the purpose of assisting in the
12 enrollment of an Indian adoptive child in the tribe of which
13 he is eligible for membership; and (3) to the adoptive
14 parent of an Indian child for the purpose of establishing or
15 continuing his tribal affiliation or a relationship with his
16 siblings. The records collected by the Secretary pursuant to
17 this section shall be privileged and confidential and shall be
18 used only for the specific purposes set forth in this Act.

19 (d) There are authorized to be appropriated \$18,000,-
20 000 during fiscal year 1979, \$20,000,000 during fiscal year
21 1980, \$22,000,000 during fiscal year 1981, and such sums
22 as may be necessary during each subsequent fiscal year in
23 order to carry out the purposes of this section, including
24 the payment of attorney fees.

25 SEC. 205. (a) The Secretary is authorized to perform

1 any and all acts and to make such rules and regulations as
2 may be necessary and proper for the purposes of carrying out
3 the provisions of this Act.

4 (b) (1) Within six months from the date of enactment
5 of this Act, the Secretary shall consult with Indian tribes,
6 Indian organizations and Indian-interest agencies in the
7 consideration and formulation of rules and regulations to
8 implement the provisions of this Act.

9 (2) Within seven months from the date of enactment
10 of this Act, the Secretary shall present the proposed rules
11 and regulations to the Select Committee on Indian Affairs
12 of the United States Senate and the Committee on Interior
13 and Insular Affairs of the United States House of Repre-
14 sentatives, respectively.

15 (3) Within eight months from the date of enactment of
16 this Act, the Secretary shall publish proposed rules and reg-
17 ulations in the Federal Register for the purpose of receiving
18 comments from interested parties.

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

22 (c) The Secretary is authorized to revise and amend
23 any rules or regulations promulgated pursuant to this sec-
24 tion: *Provided*, That prior to any revision or amendment to
25 such rules or regulations, the Secretary shall present the

1 proposed revision or amendment to the Select Committee
2 on Indian Affairs of the United States Senate and the
3 Committee on Interior and Insular Affairs of the United
4 States House of Representatives, respectively, and shall,
5 to the extent practicable, consult with the tribes, organiza-
6 tions, and agencies specified in subsection (b) (1) of this
7 section, and shall publish any proposed revisions in the
8 Federal Register not less than sixty days prior to the
9 effective date of such rules and regulations in order to
10 provide adequate notice to, and receive comments from,
11 other interested parties.

95TH CONGRESS
1st SESSION

S. 1214

A BILL

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

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