We feel that there are two aspects of the Indian Child Welfare Act that warrant the attention of this Committee: (1) the substantive and administrative provisions of the law which require clarification; and (ii) the adequacy and accessibility of federal funds to carry out the objectives of the law. With regard to the first, we note that many of the witnesses that testified at the April 25, 1984 hearing have already detailed technical amendments to more clearly delineate the scope of state and tribal authority and to clarify specific provisions of the Act. Thus, our comments will focus on the second aspect: funding.

During the years that the American Indian Nations Program of SCF has worked at the community level, it has found that the area of services demanding the largest allocation of its program budget is social welfare. (Among the areas of program activity covered by this program division are welfare, education, public works, housing, health and nutrition, and agriculture. Of the program's total budget for these activities, social welfare accounts for almost 50% of its expenditures). Funds budgeted for social welfare are allocated for both direct services and developing community-based institutions to ensure such services are available on an on-going basis.

On the basis of our experience at the community level, we feel that if the goals of the Indian Child Welfare Act are to be attained then additional funds must be made available to undertake activities that facilitate the maintenance of the family unit in addition to the crisis intervention activities currently carried out under the Act, (i.e. foster placement, adoption, and adjudication of alleged child neglect and/or abuse).

Within most Indian tribes and communities today there are numerous factors contributing to the disintegration of the family unit. At the head of the list is epidemic unemployment. Despite this, as the testimony of witnesses appearing before this Committee on April 25, 1984 confirms, the services central to reducing the likelihood that an Indian child will have to be removed
from the family unit, (i.e. supportive, preventive, and rehabilitative services), are those which ICWA programs are often least able to provide due to a lack of funding.

If one were to evaluate successful child protection/family assistance programs currently operating in mainstream that evaluation would disclose that a wide range of services must be in place if troubled families are to avoid dissolution. These services include but are not limited to.

* Access to telephone counselling services twenty-four hours a day.
* Access to family and individual counselling services on a regular basis.
* Access to professional counselling on alcohol and substance abuse.
* Shelters for abused spouses and children.
* Job and personal finances counselling.

In contrast, these services are either not available to most Indian communities or are operated on an intermittent basis at locations that are not accessible to Indian people. Moreover, in light of program budget cuts in recent years, Indians who move off the reservation and into urban areas are most likely to find that family/child welfare support services are not available when they are most needed.

If this Committee shares our belief that the interests of Indian children are best protected by a program that combines crisis intervention with aggressive efforts to eliminate those factors which give rise to families in crisis, then its oversight authority might be profitably exercised in the following areas:

1 Cf. Statement of Ethel Krepps, President of the Oklahoma Indian Child Welfare Association at p. 3, Statement of Melvin Sampson, Confederated Tribes and Bands, Yakima Nation at pp. 3-4.

* An assessment of the current level of need in Indian tribes and communities for preventive, supportive, and rehabilitative services, the level of unmet need, and the minimum per capita expenditure that would be required to adequately address identified needs and develop a service delivery infrastructure.
* An assessment of the current level of federal inter- and intraagency coordination state and tribal funding for ICWA related activities.
* An assessment of how the changes in program structure and funding levels of federal family/child welfare related programs have impacted upon implementation of the ICWA.
* An assessment of whether the rights of Indian children are inadequately protected under current administration of the Act as a consequence of their moving and living off of the reservation.
* Requirement of a program impact statement by agencies or agency divisions with primary responsibility for administration of the ICWA when reductions in fiscal year funding levels are requested for program areas that directly impact upon implementation of the ICWA.

We firmly believe that because children are so vulnerable and so powerless in our society, the goals of the Indian Child Welfare Act are best attained by a two-pronged approach. For families in crisis, the interests of Indian children must be protected in a manner that respects Indian culture and values. However, resources must also be allocated to prevent such family crises from occurring or escalating to the point that the future of the child within that family unit is in jeopardy.

The most responsive legal system and the most flawless foster or adoptive placement system are commendable goals. However, they offer no guarantees that the damage done to a child during a period of family upheaval and attendant termination of parental rights can be undone.
Perhaps the most important consideration for Urban Indian Child Welfare programs at this time is the issue of under whose rules and regulations we can best provide services. The Bureau of Indian Affairs has been a reluctant host, we have suffered illegal and insensitive handling of our funding applications. The regulations interpreting our eligibility were misinterpreted, and our clients the children were at risk of losing the Indian families licensed through our agency.

The office of Human Development Services, formerly H.E.W. was considered the most sensible viable agency for administration of P.L. 95-608 during early Indian Testimony, because of the initial hostility toward the act displayed in Bureau Testimony to Indian efforts establishing protections for our most important resource, our children.

Time has passed and we have learned that there are no Urban Indian children, these children are Tribal children who have rights and resources within their corporations, villages and reservations. The right to a positive identity and the extended family as a resource are important considerations in planning the future for a child.

Our actual tasks include; holding families together with emergency counseling and services, rescuing children already identified by Children’s Protective Services as neglected, abandoned or abused and seeking Native families to help these children the next few weeks or the rest of their childhood, if that’s necessary.

The Seattle Indian Center will always be appreciative of the opportunities provided by the Administration for Native Americans to organize, plan and assess on behalf of the thousands of Native Americans within our service area, however, the children rely on our Family Services Division for actual life saving services. We have prevented hundreds of Indian children entering the foster care system and have arranged adoptions and foster placements to serve hundreds more. We cannot survey their needs, the needs are obvious and emergent. The regulations governing A.N.A. at this time would tie our hands for delivery of services.

Despite the Bureau of Indian Affairs’ history of war, isolation, relocation and the sanctioning of child removal through tens of thousands of intertribal adoptions already ordered through state courts across the Nation......... they have regulations that permit services to be provided. We are relying on the development of computerized systems of identifying tribal affiliations. We are relying on facilities being developed on reservations to serve the disturbed victims of these multiple disruptions. We are relying on the birth of advocacy within the Bureau ranks. During the last three years the staff within the Bureau have gone through a very intensive sensitivity training and these changes may very well occur.

A meeting was held on the Yakima Reservation on March 26, 1984. The Seattle Indian Center representative along with representatives from several Washington state Tribes formulated the following recommendations.

We request that definition of Indian be expanded to include Indian children who are acknowledged by an Indian tribe or Indian community organization so that services under P.L. 95-608 may be offered particularly if that child is over 1/4 blood degree but unenrolled, and further to include Canadian Indian people, as authorized by the Jay Treaty or at least require notification to bands of court actions.

To include Indian children in juvenile justice systems and to permit tribal-state agreements to allow for Tribal Court jurisdiction and utilization of state resources for tribal children requiring services not available within the reservations, also include a process in the Act for tribes to reassert jurisdiction in juvenile justice issues (particularly in 280 states).

Establish separate funding authorization to remove the controls and limitations of the Snyder Act, and also establish an authorization level of 54 million, as recommended during the initial hearings, and establish consistency in funding from year to year on a three year cycle.

We request consideration of a minimum of 54 million per year for fiscal years 1985, 1986 and 1987, with 30 million entitlement to tribes and organizations, and 14 million merit for tribes and organizations. Consider eliminating the grant process and accept the work plans as developed by tribes and organizations consistent with P.L. 95-608. Evaluations should be based on individual program merit with guidelines established and consistent for all projects. The evaluators should be qualified, trained and representative of the service area population. These projects are reducing future social problems by stabilizing children with appropriate Indian role models. Increasing funding is an investment in a better educated more self-sufficient Native future.
THERE MUST BE NOTIFICATION OF BOTH VOLUNTARY & INVOLUNTARY PLACEMENT PROCEEDINGS

We must have federal protections for Indian children including mandates requiring proper identification of who is Indian; Indian blood quantum records on a federal computer, standardized enrollment procedures, controls for compliance on private agencies, notification state-to-tribe and tribe-to-tribe, dollars for and requirements for B.I.A. monitoring in this area with notice to local Indian child welfare programs, and prior to going into court, at the time of intake mandate that both public and private agencies give notice to the Tribes and local Indian Child Welfare programs including children over 1/4 blood degree but not enrolled. Also other systems/individuals who are involved. We must continue to serve and preserve the rights of unenrollable Indians.

Upon notification of contact, the tribes shall have access to the following information: the child's birth name and any AKA's, birthdate, tribal affiliation, birth parents, the social history and the case plan currently under consideration. The Tribes to abide by the ethical and professional standards of confidentiality.

In Title II, Section 201(a)(3), include cultural and family-enriching activities.

Inheritance Issues - We are concerned about all aspects of, including; terminations, enrollment, trust accounts, tribal constitutions, and land holdings. Appendix A (iv) pg. 2 should be revised to read:

... parents unless such placement terminates a child’s rights of inheritance, enrollment, or cultural reinforcements and add definition of qualified expert witness to read:

An individual with experience in Indian child development, psychology, child rearing, with the additional qualifications of knowing Indian customs, traditions and laws, and appointed by the child's tribe, Indian Child Welfare program, or other Indian organization (i.e., LICMAC).

In the transfer of jurisdiction from state of tribal court we are concerned with the misuse of definition of good cause to the contrary. The burden of proof in racist court proceedings should rest with the parent(s) in objections to the transfer, to show good cause. Notices should include off-reservation programs, when notice goes out to the child's tribe(s) the tribes can connect with local resources immediately to reduce trauma for the child and family.

P.L. 95-272 or any other federal or state law governing child placement must never be used contrary to the best interest of the Indian child as defined by P.L. 95-608.

The Act should mandate B.I.A. in conjunction with tribal and Indian organizations to establish a state-by-state monitoring committee to ensure compliance of provisions of Act. Public agencies, private agencies and state courts are not complying with the Act and the ICW's are not privy to the information gathered by the Bureau. The Act could be revised to establishment of tribal and off-reservation committees to oversee the monitoring procedures of the Bureau and assist with the operation monitoring plan. Individual state regulations should be reviewed annually. State court/agency reporting system should be reviewed annually.

When guardians ad litem are appointed for Indian children, they shall meet the criteria described for expert witnesses (see number 11). We strongly recommend the following; adoption/penalties (new section to be added to "Definitions.")

A. Failed Adoptions

1. Any out of home placement of an Indian child who has been adopted including consent to place, a criminal incarceration, a relinquishment, termination deprivation, any court ordered (tribal or state) out of home placement requires:

A. Notice to biological parents
B. Notice to Tribes of origin
C. Notice to the B.I.A.
D. Notice to local Indian Child Welfare Adoptive Services

B. Upon relinquishment or termination of Indian child as defined by P.L. 95-608 the supervision/custody must be transferred to a local Indian Child Welfare agency managed by a tribe or an Indian organization.

C. Establish penalties and compliance regulations

All these issues are causing problems for the Indian Child Welfare agencies and the children and families we wish to serve.

We appreciate your attention and look forward to these much needed improvements in this life saving law.
April 12, 1984

RECEIVED APR 17 1984

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
SH-301 Hart Senate Office Bldg.,
Washington, D.C. 20510

Dear Senator Andrews:

As a result of Public Law 95-650, the Indian Child Welfare Act, the Sitka Community Association, a Federally Recognized Tribe, wishes to apprise the Committee of the following:

1) This Tribe has been funded by the Bureau of Indian Affairs for Indian Child Welfare Programming for three years at a level of $50,000 per year.

2) Funding is to cover the salary of one Child Welfare worker plus a minimal direct services budget for legal assistance to children and families coming within the act, and for adoptive subsidies to Indian and non-Indian families. The tribe has applied for and obtained a grant from the Department of health and human services to further supplement the available funding.

3) In our efforts to provide services to such children and families, we have approached the State of Alaska to act for that Court. This was accomplished with a resulting agreement to provide services and supervision to children coming before the courts is too difficult, and to provide intervention before the need for court action exists. We are making measurable progress in that direction.

4) The Tribe has applied for and obtained Community Services Block Grant Funds from the Department of Health and Human Services to further supplement the available funding.

5) As a result of enhanced service, the Tribe is able to provide services and supervision to children and families for the third year of the contract.

6) The intent of the Act is to prevent the breakup of Indian families and to provide intervention before the need for court action exists. We are making measurable progress in that direction.

7) The present competitive grant process for Indian Child Welfare monies used by the Bureau of Indian Affairs tends to reward those Tribes which can afford to contract out their service and deprive those tribes most in need of Indian Child Welfare programming.

8) The State of Alaska has not recognized our Tribe or its jurisdiction within the Act. At a local level, however, the State Department of Family and Youth Services has been most cooperative in notifying the Tribe of children and families coming before the State Superior Court and in mutual case planning to provide services to such children and families within the intent and meaning of the Act. There have been over 100 such notifications and mutual planning efforts over the three year funding period.

9) There are approximately six hundred members of the Sitka Tribe in absence status in other States than Alaska. We have handled court cases in Washington, Oregon, Idaho, and New Mexico on behalf of children of the Tribe before those courts. Full faith and recognition has been extended, mutually, in all cases outside Alaska; a total of 46 cases at this writing. We have been successful in all cases outside Alaska, one of which required appellate action to the Supreme Court of the United States.

10) In two of the cases in the 'south 48' it was necessary to hold Tribal Court hearings in those states. In one, a judge pro tem, was appointed to hear the case for the Tribe, and in the second, the Court was extended jurisdiction in the same manner. Both actions were successful in restoring children to Indian families. Our Tribe engages the services of competent Indian practitioners to provide services and supervision to children in those states where return of families and/or children to Alaska would place a burden on the Indian families.

11) In three instances children have been returned to the Tribe as a result of actions by other State Courts, but not as transfers of jurisdiction. In each instance the Tribe was asked to monitor the case for the reciprocating State Court and to act for that Court. This was accomplished with a resulting re-establishment of intact Indian families in each case.

12) Despite the non-recognition of the Tribal Court program by the State of Alaska, the Sitka Superior Court and the Sitka Bar require notification to the Tribe and a written report to the Supreme Court from the Tribe in all Native adoptions coming before the Superior Court. A full adoption review is provided by the Tribal Indians Child Welfare Agency as an arm of the Tribal Court in all such cases. These have totalled 43 over the three year period.

13) The Tribe has approached the State of Alaska to attempt to reach an administrative agreement on children's matters through the Governor. The concept paper sent by the Tribe is attached. No action has been taken by the State at this writing, although we are assured the matter is under study.

14) In summary, the Indian Child Welfare Act is working. Even with inadequate funding, we have been able, to completely address the intent of the Act this Tribe has been funded by the Bureau of Indian Affairs for three years at a level of $50,000 per year.

15) The intent of the Act is to prevent the breakup of Indian families and to provide intervention before the need for court action exists. We are making measurable progress in that direction.

16) The present competitive grant process for Indian Child Welfare monies used by the Bureau of Indian Affairs tends to reward those Tribes which can afford to contract out their service and deprive those tribes most in need of Indian Child Welfare programming.

17) The method for securing BIA legal help to Indian families and children before the courts is too cumbersome and too slow to provide such help within the normal notice period for process used by the majority of courts.

18) We, the tribes of Alaska, need help desperately in securing recognition of tribal jurisdiction in family and children's matters by the State of Alaska. The full intent of the Act will never be achieved without such recognition.

19) Those funds presently used for care of Indian Children and services to Indian families by the State of Alaska from federal sources should be made available to the Tribes for provision of those services in a culturally relevant context under tribal programming.

Very truly yours,

Andrew Hope III
Executive Director

Sitka Community Association
A FEDERAL INDIAN TRIBE
Box 4389
Mt. Edgecumbe, Alaska
99965
Tel: 907-747-2527
Mr. Bill Brady  
President  
Sitka Community Association  
Box 4360  
Mt. Edgecumbe, AK 99835  

Dear Mr. Brady:

Governor Sheffield has received your correspondence regarding the relations between Sitka Tribe and the State of Alaska for service to children and asked me to reply. He has asked that the issue be reviewed, and a response will be sent to you shortly.

Sincerely,

Marsha A. Hubbard  
Special Staff  
Assistant to the Governor
May 23, 1984

WRITTEN TESTIMONY

COMMENTS AND RECOMMENDATIONS

Submitted By

THE URBAN INDIAN COUNCIL

TO

THE CONGRESSIONAL OVERSIGHT COMMITTEE


Respectfully Yours,

for further insight of the tragedy the Indian provided many participated procedures and limited developed INC.

Mark caseworkers to be in contract ty, and counseling pro-

ill services to the tra-county area. Major accomplisbments are the

TESTIMONY welfare of Indian Children. Copies of support programs that both public

the, INDIAN set forth by the law. serve

lmplanent

Amencans identified times misinterpreted.

by programs in providing servi.ces on the Act

by. other evidenced funded
cnild abuse infonnation classes

This document is in support

URBAN INDIAN COUlCIL of increased funding and in consideration of the following proposals.

We concur with the Native American Rehabilitation Association, Portland, Oregon, that the Act, without allocating adequate funding to Indian organizations and tribes, that complications will continue to result in inadequate social service delivery and inappropriate judicial decisions.

During FY 83, our ICW Program has developed and provided both treatment and preventative services to the tri-county area. Major accomplishments are the development of increased awareness of the Act by the community, and counseling provided to 60 families experiencing potential disruption and/or are in the process of regaining their family. We provided advocacy to juvenile and tribal court systems. Ten child abuse cases were investigated and documented and identified as high priority. Within the Preventative Education, 35 clients participated in women’s crisis education, 20 participated in child abuse information classes, 15 adolescents participated in skills for emergency situations and 5 participated in teen parenting support groups. In addition, our Youth component offered alternatives and information to 500 youth and their families through cultural and recreational activities (i.e. basketball, softball) and the opportunity to participate actively in perspectives of Native American philosophy and spirituality, such as, drumming and dancing from Indian Elders and Teachers from the Indian Community.

OTHER CONCERNS

It is relevant to suggest that because more than half of all Indians do live in urban areas, that cities be given the opportunity to serve Indian Children and their families—not just those on or near the reservation.

We share concerns faced by other ICW programs that both public and private agencies are unaware of the intent of the law and most caseworkers (and their supervisors) are unfamiliar with procedures set forth by the law. Information and training must be provided on the Act in order to be in contract compliance—including enforcement by penalty for non-compliance.

SUMMARY

Again, inadequate funding, limited yearly cycle, and competitive status restrict implementation by programs in providing services (in support of the Act.)

I respectfully submit this testimony in behalf of the Urban Indian Council Indian Child Welfare Program which has been terminated because of lack of funding; and in response to the Portland community—both Indian and non-Indian who are concerned for the welfare of Indian Children. Copies of support letters are attached and highlighted for further insight of the tragedy the Indian families may experience because of present funding restrictions.

Very Respectfully Yours,

URBAN INDIAN COUNCIL, INC.

Claudia R. Long, M.S.W.
Indian Child Welfare Program Coordinator
1200 S.E. Morrison
Portland, Oregon 97214
(503) 230-0681
TO WHOM IT MAY CONCERN:

I am writing this letter in support of the Urban Indian Council Indian Child Welfare Act Projects' application for funding from the Bureau of Indian Affairs.

We strongly support their prevention and treatment activities and view them as an integral part of the social service network that serves Portland's Indian Community. We have been working closely with ICW staff to develop a cooperative package of social services and activities.

The school dropout rate among American Indian Students in our district is nearly fifty percent. We know that social factors such as broken families and cultural breakdown have a significant and detrimental effect on the progress of many Indian students in school.

Again, I would like to urge your serious consideration in funding this important program. Thank you for your time and consideration.

Yours sincerely,

Gary Forrest
Project Coordinator

January 11, 1984
January 12, 1984

Bureau of Indian Affairs
Social Services
Urban Indian Health Clinic
1200 S.E. Morrison
Portland, OR 97214

Subject: Letter of Support

To whom it may concern:

The Foster Parents Association serves approximately 1400 foster families in the metropolitan Portland area, those families providing care for about 1500 children each day. As an agency with a strong focus on the areas of training, peer support activities, and advocacy for children in foster care, we work with numerous agencies, both private and public, to assure appropriate service delivery to children needing substitute care.

Indian Child Welfare programs that include both prevention and treatment aspects have been instituted locally and now seem to have a broad base upon which to build within the Indian community in the area of developing foster homes specifically trained and especially able to care for Native American children. Cooperating with the Oregon Children's Services Division and the Indian Child Welfare Program, the Foster Parents Association encourages efforts aimed at recruiting and training such foster families as well as of support groups that evolve out of common needs and experiences in providing care to foster children.

Additional program proposed by the Indian Child Welfare Program that should have long-term beneficial results in helping youngsters includes the Big Brother/Big Sister program.

Sincerely,

Jenny White
Training/Volunteer Coordinator
January 10, 1984

Dear Sir:

This is a letter of support on behalf of the Indian Child Welfare Program. They have been supportive in helping us with a Warm Springs Indian child in long-term residential treatment, by providing consultation, play therapy and Big Brother resources. We have found their expertise essential in our understanding of cultural and ethical concerns affecting treatment directions in our interactions with the Warm Springs Reservation Tribal Court.

Their services of prevention, treatment and referral are greatly needed in this community. Their highly professional staff of therapists, psychologists, psychiatrists and youth workers will require your continued support and endorsement if they are to carry on this good work.

Most cordially yours,

Donald R. Ebert
Family Therapist, B.S., M.Ed.

January 12, 1984

The Urban Indian Council fills a very important need in our community. They help raise the consciousness of Indian people living in a non-Indian environment by making them aware that there is a tradition and a culture that each "Urban Indian" is a part of. They are extremely important, for people who have been displaced from their homeland for whatever reason. The Council also puts Indian people in contact with each other through special programs and activities.

We, as a licensed foster family, have worked with the Urban Indian Council as a support group for our Indian foster children. They work very hard to uphold the best interests of the child with Indian foster families. They also understand the needs and the situation of the child and the family. We appreciate their work in these areas. The Council is in the process of recruiting more Indian foster families by hosting monthly workshops. We need more Indian foster homes to help the children of families in trouble.

The Urban Indian Council helps foster public
Mr. Pete Taylor  
Senate Select Committee on Indian Affairs  
United States Senate  
Hart Senate Office Building  
Washington, D.C. 20510  

Dear Pete:  

Please find attached a complete packet of testimony materials reflecting preparation and discussions involving tribal governments, Indian organizations, and the Washington State Department of Social and Health Services in December 1983 to April 1984. 

I believe the attached material contains significant details from both the Indian and state agency perspectives in Washington and should be made part of the record. It is my understanding that the complete packet may have been already submitted during the hearings. However, I am also sending the material directly to the Committee just in case.  

Please feel free to contact me at (206) 754-1698 if I can be of further assistance.  

Sincerely,  
Don Milligan, MSW  
DSHS Indian Affairs Section  
8B 74  
Olympia, WA 98504  

Attachment
 highlighted text.
NOTIFICATION/BOTH VOLUNTARY & INVOLUNTARY PLACEMENT PROCEEDINGS

1. IDENTIFYING WHO'S INDIAN
2. ENROLLMENT PROCEDURES
3. CONTROLS FOR COMPLIANCE ON PRIVATE AGENCIES
4. NOTIFICATION STATE-TO-TRIBE, TRIBE-TO-TRIBE
5. TIGHTEN UP ON BIA MONITORING IN THIS AREA
6. PRIOR TO GOING INTO COURT/AT THE TIME OF INTAKE
   MANDATE THAT BOTH PUBLIC & PRIVATE AGENCIES GIVE NOTICE AT THE
   POINT OF INTAKE:
   ALSO OTHER SYSTEMS/INDIVIDUALS WHO ARE INVOLVED

A. Upon notification of contact, the tribes shall have access to the following
   information:
   1. Child's birth name and any AKA's, birthdate, tribal affiliation(s)
      Birth parents.
   2. Social history
   3. case plan

B. The tribe will abide by the ethical and professional standards of confidentiality

$5.

In title II, Sec. 201 (a) (3), include cultural and family-enriching
activities

A. Continue to serve and preserve the rights of unenrollable Indians

$6.

Inheritance issues - all aspects,

A. terminations
B. enrollment
C. Trust accounts
D. tribal constitutions
E. land holdings

$7. Appendix A (iv) pg. 2 (to read)

... parents unless such placement terminates a child's rights of inheritance

$8. Add definition of qualified expert witness

A. An individual with experience in Indian Child development,
   psychology, child rearing, with the additional qualifications
   of knowing Indian customs, traditions and laws, and appointed
   by the child's tribe, Indian child welfare program, or other
   Indian organization (i.e. LICWAC)

$9

Transfer of jurisdiction

1. State to tribal court
   A. Problems with the definition of good cause to the contrary
   B. The burden of proof shall rest with the parent(s) objecting to the
   transfer to show good cause

2. Secondary back up by off-reservation programs when jurisdiction is denied by
   a Tribe, when notice goes out to the child's tribe(s) names and location of
   Indian child welfare services and tribes will be included.

$10

FL 96272 or any other federal or state laws governing child placement must never be
used contrary to the best interest of the Indian Child as defined by 95-608

$11

Act mandate B.I.A. in conjunction with tribal and Indian organization establish a
State-by-State monitoring committee to ensure compliance of provision of Act
A. Public agencies
B. Private agencies
C. State courts
D. Establishment of Tribal and Off-Reservation committee's to oversee the
   monitoring procedures of the Bureau and assist with the operational monitoring
   plan

1. Individual state regulations reviewed (annually)
2. State court/Agency reporting system (annually)

$12

When guardians ad litem are appointed for Indian Children, they shall meet the
criteria described for expert witnesses (see number1)

$13

Adoptions/Penalties (new section to be added to "Definitions"

A. Failed Adoptions
   1. Any out of home placement of an Indian child who has been adopted
      including consent to place, a criminal incarceration, a relinquishment,
      termination deprivation, any court ordered (Tribal or State) out of
      home placement requires:
      A. notice to biological parents
      B. notice to tribes of origin.
      C. notice to the B.I.A.
      D. notice to local Indian child welfare adoptive services.

   B. Upon relinquishment or termination of an Indian Child as defined by FL 95-608
      the supervision/Custody must be transferred to a Local Indian Child Welfare
      agency managed by a Tribe or an Indian organization.

   C. Establish Penalties and compliance regulations.
to include those other children and that it will cost a lot to improve tribal juvenile justice systems to accommodate exclusive jurisdiction over such cases. Some tribes do not have juvenile detention facilities; nor do they have shelter care facilities; therefore, such an addition may not be feasible for some tribes without additional time to plan and additional money to develop resources. The types of cases would probably be necessarily limited to misdemeanors, as the U.S. Attorney's offices would frown on exclusive jurisdiction over a case involving a major crime because they would have to prosecute the cases in federal court. In spite of the potential arguments against reassertion of exclusive jurisdiction over juvenile offenders, it would be left up to the individual tribe to determine whether they have the resources to accommodate such cases.

The other issue under juvenile justice suggests that tribes be allowed to enter into tribal-state agreements on juvenile offenders and that they be allowed to access state resources. The ICWA authorized agreements regarding issues of jurisdiction primarily because the Indian Civil Rights Act's amendment to P.L. 83-280 prohibits the giving up of tribal jurisdiction without certain conditions being met. The ICWA, in effect, supercedes those conditions or prohibitions in child custody matters only. Tribal-state agreements were not invented under ICWA, they have been entered into for many years and on many subjects; therefore, tribes can negotiate agreements on juvenile offenders provided that they do not violate the Indian Civil Rights Act's amendment to P.L. 83-280.

Funding - One primary criticism that I have had of ICWA since its enactment has been the statutory funding authorization under the Snyder Act. The BIA has continually robbed Peter to pay Paul under ICWA Title II because ICWA's funding
authorization is the same authorization as the entire BIA. Congress should have authorized separate funding, which would have partially eliminated the problem with ICWA funding level. The recommended CBO funding level of ICWA was $125 million spread over a five-fiscal-year period, with approximately $60,000,000 for construction. Rep. Udall amended the bill, HR 12533, to eliminate the construction costs and projected expenditures of $44 million spread over five fiscal years. See Congressional Record H12854, October 14, 1978.

Congress sometimes puts the cart before the horse and in the case of ICWA, they did just that. They should have authorized and appropriated dollars for tribal program development before mandating transfers to tribal court under ICWA. The jurisdictional mandates of ICWA placed the tribes in a precarious situation of deciding whether they should accept or request transfer from state court. Also, this decision should be based upon an assessment of available resources, e.g., availability of foster homes, money for foster care payments, willingness of extended family members, etc. A higher funding level, consistency of funding and a three-year funding cycle would greatly assist tribes in making the decision of accepting or requesting transfer.

The tribes’ requested funding appropriation level of $54 million per year would be nice but is unrealistic, especially since the recommended funding request was $15 million from the western tribes. A funding level of $54 million would cost approximately $38.00 per Indian person who was counted under the 1980 census. But what percentage of those persons counted or uncounted in the 1980 census would be served under ICWA by tribal or Indian organizations? There should be a clear justification for requesting $54 million, e.g., according to AIAA’s 1978 statistics Indian children have 200-1 odds of being placed out of home as compared to other children; therefore, because of this risk, a higher level of dollar funding is necessary to prevent the removal of children from the family and tribe.

Need for permanency planning by the family prior to the filing of a petition, it would be in the best interest of the child. Congress has identified the need for permanency planning by its enactment of P.L. 96-272, Adoption Assistance and Child Welfare Act of 1980, its requirements suggests that prevention and reunification activities are priorities. ICWA should provide for notice to tribes upon first contact with an Indian family, as waiting until the petition is filed creates problems for the child, family and tribe.
Whether or not notice is properly and timely provided to tribes should be monitored by the BIA or another identified agency or group. If notice is not properly provided, the case could later be invalidated in an appellate court.

5. **Title II Activities** - Including cultural and family-enriching activities in Title II grant programs is appropriate but it is doubtful that Congress would authorize expenditures on non-federally recognized families.

6. **Inheritance Issues** - Inheritance issues are of utmost importance in ICWA adoption cases. Without proper notice to tribes and BIA, a child could lose money and their rights to property. This is very critical if a tribe requires membership verification and the tribe did not receive the required membership information on an adopted child.

7. **Adoption Placement** - I'm not sure that adding "parents unless such placement terminates a child's rights of inheritance, enrollment or cultural reinforcement" to Sec. 4(1) will accomplish its apparent intent. The proposed language needs to be reworded and its intent clarified by example.

8. **Qualified Expert Witness** - Adding a definition of "qualified expert witness" would assist state courts. But I think it's unlikely that Congress would tell state courts who an expert witness must be in an ICWA case.

9. **Transfer of Jurisdiction** - The legislative history on "good cause" for denying transfer to tribal courts indicates that state courts are to use a modified doctrine of forum non conveniens. The state court guidelines, F.R. November 26, 1979, set forth good examples for the state courts to use when finding good cause, but many state courts are not following those "guidelines." It would be nice if there were some way to force all state courts to use the same standard for finding good cause.

The issue of requiring a parent show good cause when they object to transfer to tribal court is not open to much debate. It is highly unlikely that Congress would require that a parent show good cause; their objection to such transfer would be enough to prevent the transfer. Even though ICWA recognizes the importance of tribes having a say in the future of their children, Congress also recognized the rights of parents.

I'm not sure of the purpose of notifying an off-reservation Indian program if a tribe refuses to accept transfer of an ICWA case. This issue should be more clearly stated.

10. **Federal and State Child Placement Statutes** - The issue of federal or state laws that are or appear to be contrary to ICWA may not be a valid concern. ICWA would clearly oust any contrary state law under the Supremacy Clause of the U.S. Constitution. Federal statutes that expressly contradict ICWA is a harder issue to resolve. Although P.L. 96-272 appears to contradict ICWA, I would argue that it enhances ICWA because of the focus on prevention and reunification. The one major issue under P.L. 96-262 is its affect on TPR petitions after the child has been in placement 18 months. Even though a TPR petition is filed, the standard of proof under ICWA of "proof beyond a reasonable doubt" will still be the required proof.

11. **Monitoring Committee** - As stated under Number 4 of these comments, there needs to be some sort of monitoring system. Establishing such a system outside of the government, e.g., BIA or IHS would be unwieldy and costly. It might be difficult to persuade Congress to set up such a system.

12. **Guardian ad Litem** - It would be extremely difficult to convince Congress that a non-legal trained person should always serve as a guardian ad litem in ICWA cases.

13. **Adoption/Penalties** - There needs to be a method of prohibiting doctor and lawyer adoption placements. In particular, these placements should not be made without home studies or following ICWA. Establishing civil or criminal sanctions might prevent such placements but how will the sanctions be enforced, if the lawyer intentionally fails to advise the state court that the child is an Indian child? A great deal of thought needs to be given to enforcement of sanctions.

cc: Elizabeth RedBear
TO:    Indian Child Welfare Programs
FROM:    Don Milligan
SUBJECT: PREPARATION FOR SENATE HEARINGS ON AMENDMENT OF THE INDIAN CHILD WELFARE ACT

As most of you know, we have been told that the Senate will be holding hearings regarding the possible amendment of the Indian Child Welfare Act and its regulations possibly some time in late February or March, 1984. The specific focus of the hearings has not been set yet, but we should probably proceed looking at all aspects of the Act.

At the request of Roger Jim Sr., Yakima Tribal Council, I have scheduled a work session for January 19 and 20 to provide tribal and off-reservation Indian Child Welfare Program staff the opportunity to share their ideas, concerns, recommendations and strategies to prepare for the hearings. See map for location.

First, we are asking that each of you review your own experiences and concerns with the Act since 1978 in such areas as funding level, grant application process, state court issues, state and private agency issues, tribal court issues, federal agency issues, etc.

Second, we are asking that each of you obtain a tribal or board resolution containing recommendations for amending the Indian Child Welfare Act based upon your own program experiences. Please bring extra copies to the work session.

All participant recommendations will be compiled with summary commentary into one document. This document will be distributed to all Indian Child Welfare Programs with the request that you work with your tribal council or board of directors to pass a resolution in support of the combined document. In addition to each tribe/organization sending your resolution and the combined document to the Senate hearings and to your legislators, we are asking that each of you send a copy of your resolution to me. I will see to it that it is attached to a combined document with all resolutions from Washington State tribes and organizations and presented by a tribal leader during the hearings in Washington D.C. in February.

Those of you who cannot attend the work session please send a copy of your resolution and recommendations to me and it will be distributed there. You will also receive a combined document.

For your convenience, I have attached some material related to possible amendments.

Attachments
Quinault Tribe

1. Need access to DSHS files prior to tribal intervention (documentation of effort).
2. Court and DSHS notification of tribe untimely in several instances.
3. Need adequate definition of expert witness, e.g., must be Indian or designated by a tribal government.
4. Unwed parents/transfer issue.
   - Fathers (non-Indian) who have not declared paternity have frustrated transfers from state to tribal courts.
5. Divorce.
   - Non-Indian mothers obtaining custody in state courts.
6. Refusal of tribal courts to accept jurisdiction in some instances.
   - Training of tribal judges.
   - Protection of unenrollable Indian children.
   - Handling of children from other tribes.
7. Conflicts among various children's codes, e.g., Indian Child Welfare Act, WAC, PL 272, HB 2768, tribal codes, etc.
8. Lack of understanding by some tribal courts regarding higher standard of care provision, e.g., WAC.
9. Failure of some tribes to notify other tribes related to intervention.
10. "Good Cause to the Contrary" provision.
    - Objection of the non-Indian parent should not result in automatic non-transfer to tribal court.
    - Tribe must turn custody over to DSHS to receive benefits.
12. Under P.L. 272 if tribal courts do not do a timely review foster parents licensed by state-certified Indian programs do not receive state payments.
13. Clarification of roles of tribal court and social worker (program).
14. Variation of DSHS implementation of WAC from office to office.

15. Voluntary agencies:
   - Some ignoring the ICW Act.
   - Some not giving notice to tribes.

Swinomish-Nooksack-Upper Skagit Tribes

1. Conflicts develop when more than one tribe involved (need for inter-tribal agreements).
2. Unawareness of Courts and DSHS workers:
   - Need to share information prior to intervention.
   - Notification when CPS case is opened.
3. Courts not meeting standards of evidence.
4. Tribal access to court documents and DSHS.
5. Court orders should specify cooperative effort between DSHS, state court worker, tribal/off-reservation Indian programs.
6. State dumping responsibility on tribes, e.g., CPS investigation.
7. State refusal to investigate Indian cases.
8. Placement preference:
   - Inconsistency of federal AFDC regulations regarding "definition of relatives," tribal definitions, state implementation, and intent of ICW Act, i.e., no payment to relatives if they do not meet AFDC definition.
   - Clarification of extended family needed.
9. Placement preference not always being followed by DSHS, nor is consultation with tribes always obtained by DSHS.
10. Placement in tribally approved homes should be a requirement.
11. Hidden placements in AFDC.
12. Paternity problems:
   - No paternity established.
   - Removal from paternal relatives.
   - Threats of removal.
13. Recognition of tribal standards for establishing paternity - inconsistency from DSHS office to office.
Makah Tribe
1. Funding for services.
   - Relative payment and other services.
   - DSHS dictating to tribal court regarding content of order in order to get DSHS payment.
3. No provision in tribal court or code for Canadian Indian children.
4. Funding:
   - Recognition for success of funded programs.
5. Competitiveness for funding jeopardizes on-going programs.

Skokomish Tribe
1. Failure of BIA to take leadership regarding implementation of ICW Act.
2. Absence of a reporting system that accurately reflects activities of tribal programs.
3. State court failure to give notice to tribes.
4. Services to people who live off-reservation.
   - Not receiving service.
5. Expert witness credentials.
6. Voluntary placements.
   - No information being given to tribe and relatives.
   - Parents not receiving counseling regarding tribal resources.

Lummi Tribe
1. Funding.
   - Need for three year funding cycle.
2. ICW Act education needed for tribal governments.

Puyallup Tribe
1. Jurisdiction - problem with state courts regarding transfer.
2. Training of state court judges and attorneys general needed.
3. More adequate funding cycle.
4. Need for legal assistance.
5. Tribal delegation of expert witness:
   - Indian
   - Tribal specific
6. Use state Inter-Local Cooperation Act regarding transfer of protective service investigation.
7. Requirement that all tribal judges have special training on ICW Act and sexual abuse.
8. Act should include sanction of courts and agencies who do not notify tribes.
9. Need for Inter-Tribal Agreements.
10. Legal Assistance (federal, state).
**Muckleshoot Tribe**

1. Funding.
   - Restrictions on population figures used.
2. Competition causes friction between programs.
   - 3 year cycle
   - Set aside for on-going programs
3. Grant application process.
4. State Court:
   - Trouble with youth perpetrators. Forced to use state courts for resources.
5. Notice:
   - Review hearings/kids who have been in care for a long time.
6. Teeth in guidelines to get courts to comply.
7. Monitoring of private agency needed.
8. Confidentiality - what assistance given to parents to learn resources of tribes.
   - Tribe - confidentiality.
9. Need for broadening of tribal/state agreements in cases of group home services.
10. State custody of children in group care.
    - State law - no alternative to public agency (P.L. 272 undoing parts of ICW Act).
11. BIA should be monitoring public and private agencies and state courts.
12. Tribal courts - getting other tribal courts to recognize tribal membership.
13. CPS workers cannot directly file petitions in tribal courts.
14. Identify notification problem in Pierce County (tribal and state courts).
15. Notification of tribes is a problem.

**Colville Tribe**

1. $1 million should be reinstated.
2. Include "voluntary" removals.

**Yakima Tribe**

1. Training on P.L. 272 (Court-State-Tribal Program).
2. Emphasis on cultural relevance in program and courts.
3. Custody issues between relatives.
4. State forcing tribe to adhere to state standards.
   - Beyond licensing standards.
5. Clarification of tribal enrollment in adoption.

**Spokane Tribe**

1. Funding - ADC.
2. When state court places Indian child within the jurisdiction of a tribal court does the tribal court assume jurisdiction? Clarification of tribal right to assume jurisdiction needed.
3. Divorce proceedings in tribal courts - custody matters. Amend Act to address custody issues.

**United Indians of All Tribes Foundation**

1. Guardian Ad Litems: Judges place a lot of weight on the recommendations of unknowledgeable non-Indian GALs.
2. Private agencies are not in compliance with the ICW Act. Notification of tribes is a problem.
3. Training of state judges and attorneys.
4. Increase funding.
5. Monitoring of state courts and private agencies.
6. Provision for intervention by urban programs on behalf of tribes.
7. Transfer of jurisdiction to urban programs and tribal council.
8. Private agency compliance should be identified in the ICW Act.
Minimal monitoring by DSHS for compliance.

Suquamish Tribe
1. Funding.
2. Juvenile Court cases held off reservation.
   - Intervention prevented.
3. Definition of Indian should include unenrollable Indians.
4. Some tribal court orders not being accepted by state courts and agencies - tribes have to pay for some services.
5. Canadian Indian issues of transfer and services.

Lower Elwha Tribe (via Jan Goslin)
1. Funding.
2. Alternative funding sources - pay for work done by tribal program for DSHS.
3. LICWAC seen as arm of the tribe. There is a need for tribal committee to work with DSHS in instances where parents refuse staffing.
4. Notification to tribes within 72 hours of involuntary placement.
5. Lack of Indian foster homes.
6. DSHS notify by telephone and follow-up with registered letter.

Miscellaneous
1. Designation of a tribe as a public agency would provide tribe with access to confidential information.
3. Problem of late identification of some Indian children due to appearance.
4. Definition of Indian.

DSHS
See attachment of DSHS comments.
A.) REVIEW OF CURRENT FINDINGS FROM SEATTLE 19 & 20 MEETING:

1. Funding

2. Voluntary proceedings/Notice
   - A. Both Private & State Agencies
   - B. Tribal Children's Codes to specify guidelines
   - C. Custody Issues, considering the rights of both parent & child

3. Monitoring/compliance

4. Role of the Local Indian Child Welfare Advisory Committee (LICWAC), within the Act the only reference made in this area is as a Higher Standard of Protection.
   - A. There is a need for the issue of an advisory committee to be specifically addressed in the Act.
   - B. Stress the need for Indian participation on off-reservation LICWAC's

5. P.L. 96-272 contradicts the Act on maintaining jurisdiction of Indian children
   - A. State & Federal money
   - B. If Tribes had appropriate funding!

6. Enrollment Issues
   - A. Relinquishment requirements for enrollment and/or verification of Indian blood.

7. Placements/State guidelines encourage foster care placements over extended family by giving more money for that type of placement
   - A. Can be addressed in P.L. 96-272
   - B. Standards for foster care, to compare with State

8. Clarification of State Court Transfer (s) to Tribes
   - A. Expand Notice procedure (definition) to also include cases that do not get into Court

9. Domestic Relations/Divorce Proceedings
   - A. Custody to non-Indian parent

10. State-Tribal Agreements
    - Need for extended definition/clarification
    - A. Open for both concurrent & exclusive jurisdiction
    - B. Open for Urban/Rural Indian programs and organizations

11. Urban/Rural (Off-Reservation Indian Issues)
    - A. Secondary protection procedure i.e. when jurisdiction is denied by a Tribe, the Off-Reservation program can assume the jurisdiction over the Indian child as an added safeguard

B.) SUMMARY/RECOMMENDATIONS:

1. Funding
   - A. Current: competitive
     - Appropriated amount
     - 638 Social Service Funds
     - Tribal
     - Administration for Children, Youth & Families (ACYF)
     - IHS
     - ANA
     - State Grants
     - Local funds

2. Need guaranteed funding
   - Based on our proposed level
   - Entitlement monies
   - Adequate funding based on need

3. A procedure be developed for distribution of funds pursuant to needs
   - BIA/HHS coordinate funding (a mandated allocation plan)

2. Court-Related Issues
   - A. Notification/Both voluntary & involuntary proceedings
      - 1. Identifying whom Indian
2. Enrollment procedures
3. Controls for compliance on Private Agencies
5. Tighten up on BIA monitoring in this area
6. Prior to going into Court/at the time of intake
7. Mandate that both Public & Private agencies give notice at the point of intake;
   also other systems/individuals who are involved in the placement process.

B. Transfers
1. Problems with the definition of Good Cause to the Contrary
2. Expert witness definition included
3. Secondary backup by Off-Reservation programs when jurisdiction is denied by a Tribe
4. Based on Tribal Sovereignty, a child who falls within the definition of "Indian" will automatically be eligible for transfer and/or one parent is Indian, that child/case will be eligible for transfer/Notices included

C. Legal representation for/by Tribes

3. State/Tribal/Urban/Off-Reservation
   A. Establishment of (independent) LICWAC systems/consultants
      1. Uniform guidelines, Tribal first, Off-Res. second
      2. Indian membership
      3. Assist with monitoring responsibilities
   B. State-Tribal Agreements
      1. Need for extended definition/clarification
         - open for both concurrent & exclusive jurisdiction
         - open for Urban/Rural Indian programs and organizations
         - establish uniform guidelines/standards
   4. Compliance Regulation (use supplement)
      A. Mandatory operational & monitoring procedures
      B. Definite line of authority
      C. Establishment of Tribal and Off-Reservation committee's to oversee the monitoring procedures of the Bureau and assist with the operational monitoring plan
      1. Individual State regulations reviewed (annually)
      2. State Court/Agency reporting system (annually)
RESOLUTION

WHEREAS, the Colville Business Council is the governing body of the Confederated Tribes of the Colville Indian Reservation, Washington, by authority of the Constitution and By-laws of the Tribes as approved on February 26, 1938, by the Commissioner of Indian Affairs; and

WHEREAS, "The Indian Child Welfare Act of 1978 (PL 95-608) was enacted by the U.S. Congress to establish standards for the placement of Indian children in foster or adoptive homes and to prevent the breakup of Indian families;"

WHEREAS, "the U.S. Congress has declared that it is the policy of the Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture;"

WHEREAS, "the states, exercising Jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families;"

WHEREAS, in order to accomplish the above goals Indian tribal governments, Indian organizations, and the Bureau of Indian Affairs must develop and implement a system for monitoring and technical assistance to state courts, state agencies, and private agencies;

WHEREAS, the Colville Confederated Tribes obtained Exclusive Jurisdiction of Child Welfare matters on February 14, 1980.

THEREFORE, BE IT RESOLVED, that the Colville Business Council meeting in session this 14th day of January, 1984, at the Colville Indian Agency, Nespelem, Washington, acting for and in behalf of the Colville Confederated Tribes, do hereby authorize a committee to develop methods of monitoring State Courts on Child Welfare proceedings on a State by State basis.

The foregoing was duly enacted by the Colville Business Council by a vote of FOR AGAINST, under authority contained in Article V, Section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians on February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938.

ATTEST:

Al Aubertin, Chairman
Colville Business Council
INDIAN CHILD WELFARE ACT ISSUES

1. Funding level: We would hope that the BIA would allow the Tribe to use population figures based on populations we serve to enable us to obtain funding which would allow for true preventative work with families. Our funding level at this time is more of a "holding" level. We feel any funding level is tied to non-tribal relationships/activities.

2. Grant application process: The Tribe would support a grant application process involving a three year cycle, rather than yearly as is the current process. We find that much time and energy is devoted to the annual application for ICWA funds that could be more profitably spent serving youth and families.

3. State Court issues: We are concerned about the possibility of not being notified for review hearing of children who have been in the system for many years. We are also concerned about the lack of Court rules standardizing and including ICWA requirements for State Court proceedings.

4. Private agencies: Who monitors these agencies for compliance with ICWA? Confidentiality issues are becoming more and more evident when parents request that Tribes not be notified, yet with a private agency/state agency, there has been proper attempt to work with the families concerning Tribal notification of the proceeding.

5. State agency/DSHS: Tribal-State agreements seem to be set up by the State as Tribal-Regional agreements; CPS portions of agreements fit into regional arrangements for Muckleshoot, foster care and group care issues cover larger areas. We are concerned about custody issues, especially group care. As per Substitute House Bill No. 848, RCW 74.13.080, and WAC 388-70-013, the State of Washington, DSHS must have custody of all children in Group care in order for the group care facility to receive payment. The Muckleshoot Youth Home, a group care facility, must give DSHS custody of Muckleshoot children who need group care at the Muckleshoot Youth Home. To give DSHS custody of our children in order to be eligible for group care payments seems to contradict the language and intent of the ICWA.

6. Federal agency/BIA: Is it the BIA's responsibility to monitor private agencies, state Courts? How does the regulation concerning the use of attorneys and 638 funds affect ICWA work needed for attorneys?

7. Tribal Court: Our main concern here is the inability for the Tribal Court to order services for families, children, and teenage offenders. Tribal Court may request services. Tribal Court may not order a teenage offender into a State facility for juvenile offenders, which then leads to the need for the Tribe to use the State system for these offenses.