

HCR

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HOUSE CONCURRENT RESOLUTION NO. 43

"A resolution endorsing the concept and requesting implementation of the Indian Child Welfare Act of 1978."

House Concurrent Resolution No. 43 resolves that the legislature endorse and support the concept and policy of the Indian Child Welfare Act of 1978 (P.L. 95-608) and urgently request the Governor to direct the Department of Health and Social Services to promptly take steps necessary for implementation of the Act in Alaska.

The Department strongly supports the Indian Child Welfare Act of 1978 and certainly supports the legislature's endorsement and support of the Act. The Department, however, questions the necessity for the resolve number two in HCR No. 43. The Department has been actively involved in implementing the Act since its passage in November 8, 1978. During 1979 the Department has taken numerous steps towards full implementation of the Act (report attached).

RECOMMENDED BY:

John B. ...
for Art Holmberg, Director
Division of Social Services

DATE:

2/5/80

APPROVED BY:

Helen D. Beirne
Helen D. Beirne, Commissioner
Department of Health and Social Services

DATE:

2/5/80

REPORT ON IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT

The Department of Health and Social Services has been quite active since the passage of the Indian Child Welfare Act in working towards full implementation. As early as February 13, 1979 Department representatives met with the Area Director of BIA and representatives from various native non-profit corporations to begin mapping out strategies and procedures necessary for implementation. In early March Department Representatives met with the BIA contractors to further discuss implementation. On March 7, 1979 the Department testified at hearings held in Juneau regarding the first draft of federal regulations (testimony attached). These regulations were finally published as proposed regulations on April 23, 1979 and were not finalized until July of 1979.

During this interim period before finalization of the implementing regulations the Department's Regional Social Services Managers met with representatives of the native non-profit organizations as well as various village and IRA council leaders to discuss the Act and to begin informal working procedures. The Managers also met with court personnel and the attorney general's offices to establish appropriate court procedures. The Social Service's Field Director met with Art Snowden, the Court Administrator, his staff, the BIA Social Services Director, and the BIA Counsel to further work toward state-wide development of court procedures. As a result of this meeting the Court Administrator agreed to include a letter summarizing the Act in the next mailing to the Alaska Bar members.

Since the finalization of regulations the Department has not only attempted to comply with the formal procedures established by the regulations but has developed many cooperative projects for furthering the implementation of the Act. For example, the Division of Social Services has been working with Tanana Chiefs and United Crow Band on locating, studying, and licensing native foster homes. Similar projects have also been operating in Fairbanks (Fairbanks Native Association) and in Southeast Alaska (Tlingit-Haida). The Division also held a two day training session in Anchorage on Oct 8 & 9, 1979 on the Indian Child Welfare Act. The trainer was Bert Hirsh, one of the original drafters of the law. All the native non-profit organizations as well as state and private agencies were invited to attend. Finally, the Division's training director by request of the native non-profit in the Bethel area provided a training session in Bethel.

These are just some of the examples of the cooperative efforts that have been initiated state-wide. It should be noted however that the Department has supported the concepts embodied in the Indian Child Welfare Act before its passage in 1978. In fact the Department supported a change in 47.10.230 (Powers and duties of Department over care of child) which made placement with blood relatives mandatory if they requested custody.

The intent of this statute was to provide for placement of children in surroundings which meet their social and cultural needs.

The Department has attempted to implement this statute to the fullest extent possible. It has been very successful in areas such as Nome and Bethel but less successful in larger cities such as Anchorage, Fairbanks, and Juneau. For example, 10 years ago 92% of all native children placed for adoption were placed in non-native homes. This has been completely reversed. Presently 75% of the native children placed for adoption are placed in native homes. The only exceptions being some severely handicapped children who have special medical needs and some native children who have been in long term foster care with a non-native family. In addition, in the Nome Region in 1969 all but two Eskimo children were in non-native foster homes. Today in Nome the figures are: 32 native children in native homes and 7 in non-native homes. In the Bethel Region there are 42 native children placed in foster homes. All are placed in native foster homes. However, the placements of native children in native foster homes are significantly lower in the larger cities with Anchorage having the lowest percentage (20 out of 127 native children are in native foster homes). The Department has been working diligently to improve the situation. As noted earlier Tlingit-Haida and Fairbanks Native Association have had foster home finding projects in Juneau and Fairbanks respectively. The Department has supported and worked closely with the staff of these projects. However, the success has been limited.

In summary the Department has been supporting the concepts of the Indian Child Welfare Act for a number of years. It had implemented certain policies consistent with the Act prior to its passage. In addition the Department, has worked diligently to develop formal procedures to implement the Act as well as numerous cooperative projects. The Department realizes there is still much to be accomplished and certainly agrees to continue its present efforts of implementation and to increase its efforts whenever necessary.

PUBLIC HEARING ON THE INDIAN CHILD WELFARE ACT (PL 95-608)

TESTIMONY:

The Department of Health and Social Services appreciates the opportunity to testify at these hearings. We thank the National American Indian Court Judge Association and Tlinget-Haida Central Council for sponsoring and coordinating this public hearing which provides Alaskans a chance to speak out on such important legislation as the Indian Child Welfare Act.

The Department strongly supports the purpose of the bill which is to protect the best interests of native children and to promote the stability and security of native tribes and families by the establishment of minimum federal standards for the removal of native children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of native culture. We will diligently work to achieve this purpose and to meet these standards. This is in keeping with the revisions of the Alaska Children's Code passed in 1977. We fully recognize that implementation of both these acts will entail maximum cooperation between the Department, the various organizations representing native Americans and the Federal government. Only through cooperation will we be able to accomplish the tasks necessary to implement these legislative mandates.

The Department is particularly concerned about the fact that the draft regulations only address two areas of Title I: notification and payment for appointed counsel. There are many other areas in Title I that need clarification through regulations, particularly notification procedures (Sec. 102(a)), active efforts to provide remedial and rehabilitative programs designed to prevent the break-up of the Indian family (Sec. 102(d)), confidentiality of information regarding both parents and child (Sec. 102(a) and Sec. 105(c) and (f)), definition of qualified expert witnesses (Sec. 102 (e) and (f)), procedures for informed consent (Sec. 103 (a)). The Department would appreciate an opportunity to comment on these proposed regulations once they are drafted.

In conclusion, the Department is concerned with the best interest of all Alaskan children. The programs for children in Alaska have been struggling due to an ever decreasing commitment of resources. In this International Year of the Child, all organizations interested in the welfare of children need to cooperate to enable this landmark legislation, the Indian Child Welfare Act, to be implemented.

*This letter sent to
all members of House
& Senate*

APR 26 1979

The Honorable Clem Tillion
Alaska State Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Tillion:

The Indian Child Welfare Act was signed into law in November, 1978. The regulations implementing this law are scheduled for completion sometime in June. Due to the significant impact this law will have on the Department's operations, I wanted to take this opportunity to give each of you a brief summary of the Department's activities regarding its implementation and a review of some of the most significant changes which will result from its passage.

The Department has been quite involved in the developments concerning the implementation of this Act in Alaska. As recently as March 7th, one of my staff and a member of the Attorney General's Office testified at a hearing concerning the proposed federal regulations. In addition, Department representatives have met with the Bureau of Indian Affairs and with various native non-profit organizations to discuss and plan the process of implementation. Further meetings with these organizations are planned and the Department is in the process of developing agreements with some of the organizations.

In relation to specific change, the Indian Child Welfare Act does alter existing procedures for both adoptions and foster child placements of native children. The area of adoptions is addressed in Sec. 103 of the Indian Child Welfare Act. This section requires voluntary relinquishments of the parental rights of parents of native children to be "executed in writing and recorded before a judge's certificate that the terms and

consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian." Presently, the Division of Social Services' procedure is that "if there is no active child in need of aid case before the court, the relinquishment may be taken before a social service worker of the Department." In addition, Sec. 103 mandates that "any consent given prior to, or within ten days after birth of the Indian child shall not be valid." Once again this will result in significant change for the Division of Social Services. The Division's policy, as stated in the manual, is that "a relinquishment may not be taken prior to 48 hours following the birth of a child." Finally, Sec. 103 states that "the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination of adoption, as the case may be, and the child shall be returned to the parent." Under present Alaskan statutes, the parents have 10 days to withdraw the relinquishment. After the 10 day period, the parents must show good cause for withdrawing consent.


In regard to foster placement, the Indian Child Welfare Act addresses both custody proceedings (Sec. 102) and placement (Sec. 105). In Sec. 102(d) the Act states that "any party seeking to effect a foster care placement, or termination of parental rights to an Indian child under state law, shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the break-up of the Indian family and that these efforts have proved successful." The Act goes on to state in Sec. 102(e) that "no foster care placement may be ordered in such proceedings in the absence of a determination supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child." The standard of proof that the Indian Child Welfare Act establishes for foster placements is higher than present state law. Under present law a preponderance of the evidence is required and there is no requirement for testimony from expert witnesses.

Sec. 105(b) of the Act establishes an order of preference for placement of native children: (1) a member of the child's extended family; (2) a foster home licensed or approved by the Indian child's tribe; (3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (4) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs. The Division's policy now in effect requires workers to give consideration to placement with relatives before exploring other alternatives. This Act, however, states that "a preference shall be given in the absence of good cause to the contrary" to the order of placement delineated above. To accomplish this the Department and the native organizations in the state must develop ongoing cooperative efforts, particularly in the area of the finding and licensing of foster homes.

These are just a few of the changes which will result from the Indian Child Welfare Act. There are many other anticipated changes in the area of court proceedings. Due to the fact that the federal regulations have not been published, the Department cannot determine the total impact of this Act. The Department is working with the Attorney General's Office to develop an implementation plan.

If you have further questions, please feel free to contact my office.

Sincerely,



Helen D. Beirne
Commissioner



CENTRAL COUNCIL
Tlingit and haida Indians of Alaska
One Sealaska Plaza - Suite 200
Juneau, Alaska 99801
(907) 586-1432 or 586-3613

February 7, 1980

Thelma Buchholdt, Chairperson
Health, Education and Social Services
Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Buchholdt:

The Central Council, Tlingit and Haida Indian Tribes of Alaska supports House Concurrent Resolution No. 43, "A resolution endorsing the concept and requesting implementation of the Indian Child Welfare Act of 1978." We believe that legislative recognition and support of this act is essential to full implementation. We also believe that a directive to the Department of Health and Social Services regarding prompt implementation will facilitate the department's establishment of appropriate priorities concerning the act.

As a follow up to the resolution, a review of the existing Children's Code is necessary to identify areas of non-compliance with the Indian Child Welfare Act. Then any statutes found to be in non-compliance should be corrected with appropriate legislation.

Thank you for giving your support and attention to this issue of great concern to Alaska Native families.

Sincerely,

CENTRAL COUNCIL, TLINGIT AND
HAIDA INDIAN TRIBES OF ALASKA

Raymond Paddock, Jr.
President

	Name	Address and Phone	Organization/Self	For/Against or Observing
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✓ ^{2/}	Joanne Riley	P.O. Box 591 Douglas Division of Social Services, Pouch H-05	ANB-ANS Johnson O'Malley	For/Observing
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page 13 ✓ ^{4/}	Jennifer R. Deans	278-4641 1057 W. Firwood Lane	Cook Inlet Native Assn. AK Nat. Child Welfare Task Force	For
page 14 ✓ ^{5/}	Brenda Knapp	One-Ashtara Plaza - Suite 200 Juneau, AK 99801	Central Council, Aleutian Native Indian Wives of Alaska	For
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