

HCR

43

COMMITTEE REPORT

SENATE

FURTHER: Judiciary

2/14/80

Date: 4-11-80

Mr. President:

HEALTH, EDUCATION AND SOCIAL SERVICES

The Committee on \_\_\_\_\_ has had CSHCR 43

endorsing concept and requesting implementation of the Indian Child Welfare Act of 1978

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_

AND attaches a "Letter of Intent"  New Fiscal Note

reports it back without recommendation

referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

*W. J. ...*  
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*W. J. ...*  
 \_\_\_\_\_  
 CHAIRMAN  
*W. J. ...*

Introduced 2-14-80

Logged 2-14-80

Referrals Judiciary

Comm. Meeting 4-11-80

" Action based individual memo.

CSHCR 43 "A resolution <sup>SHSS 19-DE</sup> endorsing  
By: HESS Comm. Concept and requesting im-  
plementation of the plan<sup>2</sup>

Ron Whitcraft (3818) notified

Rep Duncanson

Brenda Knapp 586-1432

Rick Robertson 3055 (Assist. AG) notified

James D. DeWitt

Call Hayward + Fenlon 452-2211 <sup>Put letter and memo file</sup>

1919 Latrop, Suite 206

Fox 99701

Examined books - Abaka etc. etc. etc.  
No. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

Miss Wallace - Alabama Institute

Other books

Passage of time - relative to climate

Some of the books

Central & South Atlantic States

Copy of regs from Dept of HSS

No federal money

# Alaska State Legislature

SENATOR  
ROBERT H. ZIEGLER, SR.  
307 BAWDEN STREET  
KETCHIKAN, ALASKA 99901

POUCH V  
JUNEAU, ALASKA 99811



Senate

CHAIRMAN  
SENATE JUDICIARY COMMITTEE  
IMMEDIATE PAST CHAIRMAN  
WESTERN CONFERENCE - COUNCIL OF  
STATE GOVERNMENTS

VICE CHAIRMAN  
SENATE RULES COMMITTEE

MEMBER  
SENATE STATE AFFAIRS COMMITTEE  
SENATE COMMITTEE ON COMMITTEES  
LEGISLATIVE COUNCIL  
WESTERN STATES LEGISLATIVE  
FORESTRY TASK FORCE

February 26, 1980

The Honorable Frank Ferguson,  
Alaska State Senator  
Room 123 Capitol Building  
Juneau, Alaska

*File  
2-21-80*

and

The Honorable Patrick Rodey,  
Alaska State Senator  
Room 427 Capitol Building  
Juneau, Alaska

Dear Senators Ferguson and Rodey:

I spoke to you the other day about the Indian Child Welfare Act (P.L. 95-608, 92 Stat. 3069) which became effective May 7 last year. No doubt the intent was great, but the difficulty the bill addresses is a non-problem in this day and age. The Act also has the following citation: 25 U.S.C.A. 1901 et seq.

Ordinarily, in adoption proceedings, the adoptive parents are well motivated and are not dealing in a "hot baby" market. The complications and barricades that the federal Act places in the way tend to discourage, not promote, adoption of Native children.

You can read, if you're so inclined, the names, dates, places etc. on the legal documents; please don't; they have no relevance.

Regards,

A handwritten signature in dark ink, appearing to be "RHZ", written over a horizontal line.

Robert H. Ziegler, Sr.

RHZ:lk

Enclosures

bcc: Senator Glenn Hackney  
with cc of enclosures

# STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

RH3  
J. S. HAMMOND, GOVERNOR

POUCH H 01 - JUNEAU 99811

APR 27 1979

The Honorable Robert Ziegler  
Alaska State Senate  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Senator Ziegler:

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.

*JohW*

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

Sincerely,

*Helen D. Beirne*

Helen D. Beirne  
Commissioner



UNITED STATES  
DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

Juneau Area Office  
P. O. Box 38000  
Juneau, Alaska 99802



June 12, 1979

Dear Alaska Bar Member:

RE: Indian Child Welfare Act (25 U.S.C.A. 1901 et seq.)

The Alaska Supreme Court has permitted the United States Bureau of Indian Affairs (BIA) to include this informational letter in this mailing.

We wish to advise you that the Indian Child Welfare Act (P.L. 95-608, 92 Stat. 3069) became effective on May 7, 1979. All child custody proceedings initiated in State courts after that date must be conducted under the procedures set out in the Act. These include specific consent requirements for voluntary foster care, termination of parental rights, preadoptive placement and adoptive placement as well as certain notice requirements and preferences for placement of Indian children in involuntary "child custody proceedings" as defined in the Act. The Act pertains to all State courts proceedings involving Indian children, except custody disputes between biological parents and juvenile delinquency proceedings.

Bureau of Indian Affairs offices throughout the country are beginning to receive inquiries concerning the meaning of the Act, frequently in regard to a specific proceeding or situation. The Act covers any child who is a member of a tribe or who is the son or daughter of a tribal member and who is eligible to be a member. Many inquiries involve efforts to determine whether a particular child meets these requirements. In Alaska, such questions should be referred to the Alaska Area Director for the Bureau of Indian Affairs at the above address.

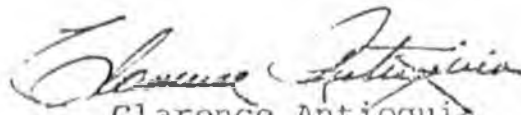
Other inquiries pertain to the criteria and requirements which the Act imposes on State court proceedings. With the exception of enrollment matters, these questions usually involve legal determinations that are best made by attorneys. Questions of this nature, if addressed

to the BIA Area Office, will generally be referred to our solicitors for a legal opinion and, of course, are always subject to clarification by the courts.

Finally, you should be aware that the Department has published proposed rules for the implementation of the Indian Child Welfare Act and recommended guidelines for State courts in the handling the Indian child custody proceedings. These proposed regulations may be found at 44 Fed. Reg. 23992 (April 23, 1979). Final regulations are expected to be published in the near future in the Federal Register. Because this legislation and these regulations will have a significant impact on Indian child custody proceedings in Alaska, we are sure that those of you representing clients in such proceedings will want to fully acquaint yourselves with the Act and its impact.

Once again, I wish to express my appreciation to the Supreme Court for permitting the Bureau of Indian Affairs to include this letter in the Court's regular mailings.

Sincerely yours,



Clarence Antioquia  
Area Director



1 [redacted] from whom petitioner's wife was divorced in Ketchikan, Alaska,  
2 on September 2, 1976.

3 IV

4 Your petitioner's name is [redacted]; his age  
5 is thirty (30) years. He has lived in [redacted] Alaska, all of  
6 his life.

7 V

8 The said [redacted] the mother of the said minor  
9 child, consents to her adoption by petitioner above named and has  
10 executed her written consent to such adoption, which has already  
11 been filed with the Court.

12 VI

13 Petitioner alleges that [redacted] the mother of  
14 said minor child, joins in this petition only for the purpose of  
15 giving her consent to this adoption and, by executing a consent  
16 herein, does recommend the granting of said adoption, retaining,  
17 however, all of her maternal rights as the mother of said minor  
18 child.

19 VII

20 The minor child to be adopted herein has no assets or  
21 any other thing of value in her own name other than a savings  
22 account in the [redacted] California;  
23 the amount on deposit is approximately Two Thousand One Hundred  
24 Fifty (\$2,150.00) Dollars; the birth certificate of said minor  
25 child has already been filed with this Court.

26 VIII

27 [redacted] the biological father of said minor  
28 child, has indicated that he will consent to this adoption. It is  
29 anticipated that said parental consent will be filed herein by the  
30 time this matter comes on for hearing.

31 IX

32 The said [redacted] is in all respects a fit and

1 proper person to adopt said minor child, financially and other-  
2 wise, and is able to care for, maintain and support the said minor  
3 child, and it will be for the best interests of the said minor  
4 child that she be adopted by said petitioner and that her name be  
5 changed to [REDACTED]

7 WHEREFORE, petitioner prays that an order be made and  
8 entered by this Court fixing the time and place of hearing upon  
9 this petition; that upon such hearing, the Court make and enter  
10 the decree granting this petition and authorizing the adoption of  
11 the said minor child by petitioner above named and further autho-  
12 rizing that the name of the minor child be changed as follows:

13 from [REDACTED] to [REDACTED]

14 Dated at [REDACTED] Alaska, this 1st day of <sup>September</sup> August,  
15 1979.

[REDACTED]

20 STATE OF ALASKA )  
21 First District ) ss:

22 [REDACTED], being first, duly sworn, on oath,  
23 deposes and says:

24 I am the petitioner above named; I have read the within  
25 and foregoing Petition for Leave to Adopt, know the contents  
26 thereof, and the same are true, as I verily believe.

[REDACTED]

29 Subscribed and sworn to before me this 1st day of <sup>September</sup> August, 1979.

30 [STAMP]

31 S. Patricia A. Samsky, Postmaster  
32 United States Postmaster

ZIEGLER, CLOUDY, SMITH, KING & BROWN  
Phone (907) 225-4145  
307 Bowden Street  
Ketchikan, Alaska 99901



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II

That your petitioner desires to adopt [REDACTED], who was born in [REDACTED] California, on November 10, 1969, unto [REDACTED] and [REDACTED] his then wife.

III

That the said minor child is now in the custody of petitioner herein in [REDACTED] Alaska, and within the jurisdiction of this Court, and has been in his custody and has resided at the home of petitioner and his wife, the mother of said child, since the marriage of the parties. That the father of said child is [REDACTED] from whom petitioner's wife was divorced in [REDACTED] Alaska, on September 2, 1976.

IV

That your petitioner's full name is [REDACTED]; his age is thirty (30) years. He has lived in [REDACTED] Alaska, all of his life.

V

That the said [REDACTED] the mother of the said minor child, consents to her adoption by petitioner above-named and has executed her written consent to such adoption which has already been filed with this Court.

VI

That the petitioner alleges that [REDACTED] the mother of said child, joins in this petition only for the purpose of giving her consent to this adoption, and by executing a consent herein, does recommend the granting of said adoption, retaining, however, all of her maternal rights as the mother of said child.

VII

That the said minor child to be adopted herein has no assets or any other thing of value in her own name other than a savings account in the [REDACTED] California; the amount on deposit is approximately Two Thousand One

ZIEGLER, CLOUDY, SMITH, KING & BROWN  
Phone (907) 225-4145  
307 Bowden Street  
Ketchikan, Alaska 99901

1 Hundred Fifty (\$2,150.00) Dollars; the birth certificate of said  
2 minor child has already been filed with this Court.

3 VIII

4 That [REDACTED] the biological father of said  
5 minor child, has consented to her adoption by petitioner above-  
6 named and has executed his written consent to such adoption, which  
7 is on file with this Court.

8 IX

9 That petitioner's wife [REDACTED] and said [REDACTED]  
10 [REDACTED] have been fully advised as to the provisions of the  
11 Indian Child Welfare Act (P.L. 95-603, 29 Stat. 3069); the paren-  
12 tal consents on file herein acknowledge that their rights have  
13 been fully explained to them, that any and all such rights have  
14 been waived and that the right of tribal intervention was likewise  
15 waived.

16 X

17 That the said [REDACTED] is in all respects a fit  
18 and proper person to adopt said minor child, financially and  
19 otherwise, and is able to care for, maintain, and support the said  
20 minor child, and that it will be for the best interests of the  
21 said minor child that she be adopted by said petitioner, and that  
22 her name be changed to [REDACTED]

23 And the Court being satisfied with the identities and  
24 relations mentioned herein, and that said petitioner is of suf-  
25 ficient ability in all respects, and is a fit, proper and suitable  
26 person to bring up said minor child, and to furnish her with  
27 suitable nurture and education; that it is fit and proper for said  
28 adoption to take place; that all the requirements of law appli-  
29 cable to adoptions having been met and fully complied with, and no  
30 objections having been filed or made by anyone to said adoption;  
31 and the Court being fully advised in the premises.

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

2 1. That the petition of [REDACTED] for leave to  
3 adopt [REDACTED] as his child be granted, and that he  
4 is authorized to take said minor child as his own child, and to  
5 give her such nurture, care and education as is meet and proper.

6 2. That from this date nenceforth the said minor child  
7 shall, to all legal intents and purposes, be the child of the  
8 above-named petitioner, and shall be treated by him in all re-  
9 spects as his own lawful child should be treated, including the  
10 right of his inheritance, and that said petitioner and said minor  
11 child shall bear toward each other the relationship of parent and  
12 child.

13 3. That from this date henceforth, the name of [REDACTED]  
14 [REDACTED] shall be, and the same hereby is declared to be,

15 [REDACTED]  
16 Dated at Ketchikan, Alaska, this 20<sup>th</sup> day of October,  
17 1979.

18  
19 Dr. Thomas E. Schulz  
20 Superior Court Judge  
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ZIEGLER, CLOUDY, SMITH, KING & BROWN  
Phone (907) 225-4145  
307 Bowdon Street  
Ketchikan, Alaska 99901

POSITION PAPER

CS FOR HOUSE CONCURRENT RESOLUTION NO. 43

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

Committee Substitute for House Concurrent Resolution No. 43 resolves that: 1) the legislature endorse and support the concept and policy of the Indian Child Welfare Act of 1978 (P.L. 95-608); 2) urgently requests the Governor to direct the Department of Health and Social Services to promptly take the steps necessary for implementation of the Act in Alaska and provide the financing necessary for this implementation; and 3) requests the Chief Justice of the Alaska Supreme Court to direct the court system to promptly take steps necessary to cooperate in the implementation of the Act.

The Department strongly supports the concepts and policies embodied in the Indian Child Welfare Act of 1978 and, therefore, supports the legislature's endorsement and support of the Act. The Department has been actively involved in implementing the Act since its passage in November, 1978. During calendar year 1979, the Department has taken numerous steps towards full implementation of the Act (report attached). The Department plans to increase its efforts during 1980 through close coordination with the various Indian Child Welfare programs established under Title II of P.L. 95-608 and recently funded by the Bureau of Indian Affairs, and through close monitoring and evaluation of its own programs to ensure compliance with the Act.

Attachment

RECOMMENDED BY: Art Holmberg DATE: 2/26/80  
 Art Holmberg, Director  
 Division of Social Services

APPROVED BY: Helen D. Beirne DATE: 3-3-80  
 Helen D. Beirne, Commissioner  
 Department of Health and Social Services

## 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 wherever necessary.

THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS FOR HOUSE CONCURRENT RESOLUTION NO. 43  
 Title endorsing concept/requesting implementation of the Indian Child Welfare Act of 1978  
 Requested by \_\_\_\_\_ Date February 26, 1980

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services  
 Program Category Affected All Program Categories  
 BRU, Program, or Subprogram(s) Affected All BRU's

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

|                          | FY 80 | FY 81 | FY 82 | FY 83 | FY 84 | FY 85 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| 100 PERSONAL SERVICES    |       |       |       |       |       |       |
| 200 TRAVEL               |       |       |       |       |       |       |
| 300 CONTRACTUAL          |       |       |       |       |       |       |
| 400 COMMODITIES          |       |       |       |       |       |       |
| 500 EQUIPMENT            |       |       |       |       |       |       |
| 600 LAND & STRUCTURES    |       |       |       |       |       |       |
| 700 GRANTS, CLAIMS, ETC. |       |       |       |       |       |       |
| TOTAL                    | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |

FUNDING (Thousands of Dollars)

|                             |     |     |     |     |     |     |
|-----------------------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND                | -0- | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS               | -0- | -0- | -0- | -0- | -0- | -0- |
| OTHER (Specify Fund Source) | -0- | -0- | -0- | -0- | -0- | -0- |
|                             | -0- | -0- | -0- | -0- | -0- | -0- |
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POSITIONS

|           |     |     |     |     |     |     |
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| FULL TIME | -0- | -0- | -0- | -0- | -0- | -0- |
| PART TIME | -0- | -0- | -0- | -0- | -0- | -0- |
| TEMPORARY | -0- | -0- | -0- | -0- | -0- | -0- |

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This Resolution has no fiscal impact on the Department of Health and Social Services.

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

Prepared by: [Signature] Date: 2/26/80  
 Division/XXXXX: Social Services PH: 465-3170  
 Department of Health & Social Services

CALL, HAYCRAFT & FENTON

AN ASSOCIATION OF  
DAVID H. CALL AND THOMAS E. FENTON  
PROFESSIONAL CORPORATIONS  
1919 LATHROP - SUITE 208  
FAIRBANKS, ALASKA 99701

DAVID H. CALL  
THOMAS E. FENTON  
JAMES D. DEWITT  
PAUL A. BARRETT

TELEPHONE  
907 - 452-2211  
452-2296

March 13, 1980

Representative Sarah J. Smith  
Pouch V  
Juneau, AK 99811

Re: House Concurrent Resolution No. 43  
Indian Child Welfare Act of 1978

Dear Sally:

I am writing to state my opposition to House Concurrent Resolution No. 43, "a resolution endorsing the concept and requesting implementation of the Indian Child Welfare Act of 1978."

As background, I have never represented any parent whose parental rights were being terminated or involuntarily relinquished or otherwise being surrendered by force. I have never represented the State of Alaska in an action to take away parental rights. I have, however, on numerous occasions, represented the children in these proceedings for termination. My official title has always been "guardian ad litem" but my duties have frequently involved reconciliation, peacemaking and negotiation.

Under Alaska law, a guardian ad litem represents the "best interests of the child" in the proceeding; not necessarily what the child wants and not necessarily what the parents or the State of Alaska want. It is a difficult assignment and I confess I am uncomfortable with it in many situations. However, I accept appointments as guardian ad litem because all too frequently the children themselves are not otherwise a concern in a parental rights termination proceeding. It is very easy for the other parties involved to lose sight of the fact that while their lives may be impacted by whatever decision a court may reach, the children will live with the results and be affected by the results for the rest of their lives. The Alaska Supreme Court has begun to recognize that the children are a party in interest, that they have constitutional rights in custody and termination proceedings and that those rights deserve to be represented. The Indian Child Welfare Act, as to the class of children who happen to be of fractional Native blood, removes those rights and removes the right of the children to be represented in a meaningful sense in those kinds of proceedings.

*NOTE  
This letter sent  
to most departments  
from Fisher &  
Alan Cherry H. New*

March 13, 1980

Page Two

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And it is effectively impossible to terminate the parental rights of a parent whose child is an Alaska Native. To terminate those parental rights, someone must prove beyond a reasonable doubt (1) that there is a clear and present physical danger to the children; (2) that the danger has caused harm or imminently will cause harm to the children; and (3) that that conduct constituting a clear and present danger is likely to continue. Check with your legislative counsel, but in my view it is effectively impossible to prove beyond a reasonable doubt that a pattern of conduct is likely to continue. It is hard enough to establish beyond a reasonable doubt that something has happened; ask any district attorney.

So the parental rights cannot be terminated, the parents will continue to have contact with their children, no matter how abusive they have been in the past and no matter how harmful that conduct may be to the children themselves.

In my view, the Indian Child Welfare Act of 1978 is unconstitutional since it unfairly imbalances the constitutional rights of the children as against the constitutional rights of their parents. I emphasize that is my opinion alone, and has not been endorsed by any court of which I am aware.

Another serious problem with the Act is its application in Alaska. Assuming the Act exists to preserve a Native culture, its avowed purpose, then it operates without regard to that avowed purpose. An Alaska Native family, regardless of its ties to its culture, is entitled to the protections of the Indian Child Welfare Act. If I may, I would like to analyze a specific hypothetical.

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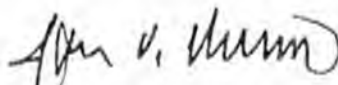
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Obviously, I oppose House Concurrent Resolution No. 43. While I cannot pretend to make up your minds for you, I urge you to give the Act, its implications and the points I have raised in this letter serious consideration before proceeding further with this Resolution. The State of Alaska and the Department of Health and Social Services have not attempted to force all of the diverse cultures of Alaska into one white, suburban, middle class mold. Whatever the rationale for the Indian Child Welfare Act in other jurisdictions, Alaska has acted in every way to protect the cultural identities of its peoples. The Act is unnecessary, harmful to the children it is intended to protect and possibly unconstitutional. I urge you to resist adoption and passage of the Resolution.

Thank you for your time and patience in reviewing the points that I have set out. Please feel free to contact me if you have questions regarding my position.

Sincerely yours,

CALL, HAYCRAFT & FENTON



James D. DeWitt

JDD:so

CALL, HAYCRAFT & FENTON

AN ASSOCIATION OF  
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1919 LATHROP - SUITE 206  
FAIRBANKS, ALASKA 99701

DAVID H. CALL  
THOMAS E. FENTON  
JAMES D. DEWITT  
PAUL A. BARRETT

TELEPHONE  
907-452-2211  
452-2296

March 13, 1980

Representative Thelma Buchholdt  
Pouch V  
Juneau, AK 99811

Re: House Concurrent Resolution No. 43  
Indian Child Welfare Act of 1978

Dear Representative Buchholdt:

I am writing to state my opposition to House Concurrent Resolution No. 43, "a resolution endorsing the concept and requesting implementation of the Indian Child Welfare Act of 1978."

As background, I have never represented any parent whose parental rights were being terminated or involuntarily relinquished or otherwise being surrendered by force. I have never represented the State of Alaska in an action to take away parental rights. I have, however, on numerous occasions, represented the children in these proceedings for termination. My official title has always been "guardian ad litem" but my duties have frequently involved reconciliation, peacemaking and negotiation.

Under Alaska law, a guardian ad litem represents the "best interests of the child" in the proceeding; not necessarily what the child wants and not necessarily what the parents or the State of Alaska want. It is a difficult assignment and I confess I am uncomfortable with it in many situations. However, I accept appointments as guardian ad litem because all too frequently the children themselves are not otherwise a concern in a parental rights termination proceeding. It is very easy for the other parties involved to lose sight of the fact that while their lives may be impacted by whatever decision a court may reach, the children will live with the results and be affected by the results for the rest of their lives. The Alaska Supreme Court has begun to recognize that the children are a party in interest, that they have constitutional rights in custody and termination proceedings and that those rights deserve to be represented. The Indian Child Welfare Act, as to the class of children who happen to be of fractional Native blood, removes those rights and removes the right of the children to be represented in a meaningful sense in those kinds of proceedings.

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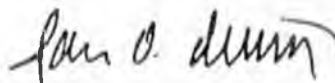
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CALL, HAYCRAFT & FENTON

  
James D. DeWitt

JDD:so

# CHARLIE PARR

ALASKA LEGISLATURE

S. R. Box 50599  
Fairbanks, Alaska 99701  
456-5029


Pouch V  
Juneau, Alaska 99811  
465-3797

March 19, 1980

## MEMORANDUM

TO: Senator Glenn Hackney, Chairman  
Health, Education and Social Services Committee

Senator Robert Ziegler, Chairman  
Judiciary Committee

FROM: Representative Charles H. Parr 

SUBJECT: House Concurrent Resolution No. 43

Enclosed is a letter from Mr. James DeWitt expressing what appear to be some valid concerns about HCR 43. I believe Mr. DeWitt's comments will be of interest to you as you consider the resolution.

*File*

CHP:vc  
Encl.

CALL. HAYCRAFT & FENTON

AN ASSOCIATION OF  
DAVID H. CALL AND THOMAS E. FENTON  
PROFESSIONAL CORPORATIONS  
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DAVID H. CALL  
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JAMES D. DEWITT  
PAUL A. BARRETT

TELEPHONE  
907 - 452-2211  
452-2206

March 13, 1980

Representative Charles H. Parr  
Pouch V  
Juneau, AK 99811

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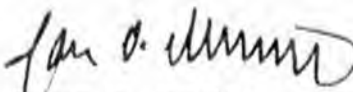
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Sincerely yours,

CALL, HAYCRAFT & FENTON



James D. DeWitt

HCR 43

<sup>Child</sup>  
Indiana Welfare - sd HCR but was taken  
by Tennison's office also - HCR. Brenda Knapp.  
586-1432



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

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April 11, 1980

Mr. Glenn Hackney, Chairperson  
Health, Education & Social  
Services Committee  
State Senate  
Pouch V  
Juneau, AK 99811

Dear Senator Hackney:

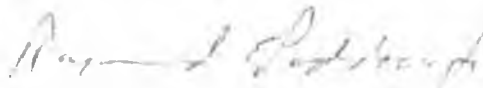
The Central Council of Tlingit and Haida Indian Tribes of Alaska supports the Committee Substitute for House Concurrent Resolution Number 43, "A resolution endorsing the concept and requesting implementation of the Indian Child Welfare Act of 1978." We believe that legislative recognition and support of this act is essential to full implementation. We also believe that a directive to the Department of Health and Social Services and the Alaska Supreme Court regarding prompt implementation will facilitate the 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 OF TLINGIT AND  
HAIDA INDIAN TRIBES OF ALASKA

  
Raymond E. Paddock, Jr.  
President