

ALASKA LEGISLATURE COMMITTEES 1900-1900

3993 SHEB HB 255

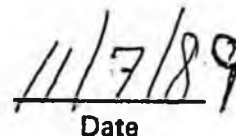
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Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: HB 255

Sponsor: Wallis

Date referred to committee: 4/10/80

Synopsis completed:

Fiscal note:

Further referrals:

CONTACTS:

- ✓ Rep Wallis (Dwayne) 3732
- ✓ DFYS 3170 Hank Barthel
- ✓ Dept Law (Doug Mertz 3600)
- Mary Bishop 455-6151

HB 255

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES

P O BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
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Senate Committee on Health, Education and Social Services

M E M O R A N D U M

TO: Members, Senate Committee on Health, Education and Social Services

FROM: Committee Staff

RE: Committee Meeting, April 24, 1986

DATE: April 22, 1986

On Thursday, April 24, 1986 from 1:30-3:30 p.m. in the Beltz Room, the Senate Committee on Health, Education and Social Services will hear the following bills:

CSHB 255 (HESS) Authorizing the Department of Health and Social Services to enter into agreements concerning the care and custody of Native children.

Under the federal Indian Child Welfare Act (ICWA), the state is authorized to enter into agreements with "Indian tribes," which is defined in ICWA to include "Alaskan Native villages." (As background, it should be noted that ICWA is one of the few federal statutes which authorizes Native entities to exercise tribal powers whether or not they exist on reservations). According to the Department of Health and Social Services, HB 255 does not add to the Department's authority as it currently exists under federal law, and the Department is in fact already involved in such agreements with Native organizations.

The House Letter of Intent clarifies that the bill would not empower the Department to recognize the jurisdiction of tribal courts whose authority has not been established by the legislature.

COMMITTEE REPORT
SENATE

FURTHER: FINANCE

4/10/86

Date 4-29-86

Mr. President

The Committee on HESS considered CSHB 255 (HESS)

authorizing the Department of Health and Social Services to enter into agreements concerning the care and custody of Native children.

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

- do pass
- do pass with attachment(s)
- replace with/or add. - SCS for (CSHB 255 (HESS))
- new title
- same title and recommends Do Pass
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

Joe Decker

William Stupple

MEMBERS HAVING
OTHER RECOMMENDATIONS

Edna De Vries N.R.

Debbie Faber Do Pass

Chairman

Chairman recommendation

POSITION PAPER

SPONSOR SUBSTITUTE FOR HOUSE BILL 255

For an Act entitled: "An Act authorizing the Department of Health and Social Services to enter into agreements concerning the care and custody of Native children."

HB 255 would authorize the department to enter into agreements for child protection with Native tribes under 25 U.S.C. 1919 (Indian Child Welfare Act [ICWA]).

The department has and will continue to award monetary grants and contracts to Native nonprofit organizations and to enter into non-monetary social services agreements with Native organizations so that Natives may actively participate in the care and custody of Native children. The department actively supports the Indian Child Welfare Act provisions whereby Native children who must be separated from their families are placed in Native homes and village council authorities must be allowed to recommend the type of placement for Native children.

The Department of Law has informed the department that the Department of Health and Social Services currently has the authority to enter into, and has already entered into, some agreements with Native organizations. Therefore, according to the Attorney General, HB 255 does not add to the department's authority to enter into the agreements. The Attorney General, however, states that the Department of Health and Social Services cannot enter into agreements that would delegate the State's discretionary (police power) duties, and cannot enter into agreements affecting the judicial branch's jurisdiction over Native children.

It is possible for the State to enter into cooperative social services agreements with Native organizations. For example, such agreements were entered into with the Ketchikan Indian Corporation and the United Crow Band. The intent of these agreements is for the parties "to cooperate with each other towards mutual goals of protecting the best interests of Native children, establishing a more effective provision of child protection service, and promoting the stability and security of Native families and villages." (United Crow Band agreement). These social service agreements do not provide state funding directly to the Native villages or organizations for social services.

The Department of Health and Social Services supports this bill.

RECOMMENDED: Michael L. Price
Michael L. Price, Director
Division of Family
and Youth Services

DATE: March 10, 1986

APPROVED: John R. Pugh
John R. Pugh, Commissioner
Department of Health
and Social Services

DATE: 3/10/86

HOUSE BILL 255

"An Act Authorizing the Department of Health and Social Services to enter into agreements concerning the care and custody of Native children"

Under Section 1919 of the Federal Indian Child Welfare Act, 25 U.S.C. 1919, "States and Indian Tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings. . ."

Despite this federal authorization, the Attorney General has taken the position that the State cannot exercise this power until a State law is passed authorizing a particular State agency to execute agreements on the State's behalf (see March 30, 1983 opinion attached).

HB 255 is the specific authorization which the Attorney General requires. It simply authorizes the Department of Health and Social Services to act for the State in the execution of State-tribal Native children custody agreements. HB 255 does not add to the State's existing power to enter into such agreements--it merely removes the reluctance the Department has because of the Attorney General's opinion.

Nor would HB 255 violate the Alaska Constitution. Under Federal law, states are empowered to pass laws which implement Federal Indian laws. The sole purpose of HB 255 is to implement the Federal Indian Child Welfare Act. It is therefore consistent with Federal law. And, under the Federal Supremacy Clause, State laws which are passed to implement Federal Indian laws cannot be successfully challenged on State constitutional grounds.

HB 255 neither enlarges, diminishes nor in any^{way} affects the existing power of Alaska Native villages to establish tribal courts and exercise jurisdiction over Native child custody matters. Native governments in Alaska are taking increased interest in exercising their federally guaranteed rights. This bill authorizes DH&SS to do what it ought to do--cooperate with Native governments and Native people to alleviate the problems that led to Congressional passage of the Indian Child Welfare Act.

In passing the Indian Child Welfare Act (ICWA), Congress expressly found:

"...the States exercising their recognized 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." (25 U.S.C. 1901(5))

By authorizing the Department of Health and Social Services to contract with Native governments, HB 255 will ensure that the State of Alaska recognizes and protects "the cultural and social standards prevailing in Native communities and families" in the administration of Native child welfare proceedings. Agreements have been arrived at in other states. Minnesota, for example, has entered into an agreement with some of its tribes to ensure tribal input and State compliance with the ICWA. H&SS, too, should be free to work with Native people and entities so that these important issues may be dealt with in a spirit of cooperation, rather than confrontation.

HB 255 merely authorizes the Department to enter into such agreements--it does not mandate that they must.

Patrick M. Rodey
Senator

Alaska State Legislature

1024 W 6th Avenue, Suite 308
Anchorage, Alaska 99501
(907) 276-6731



Senate

During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-3717

April 29, 1986

TO : Senator Bettye Fahrenkamp, Chair
Senate Health, Education & Social Services Committee

FROM: Senator Patrick M. Rodey

RE : CS HB 255 (HESS) - An Act authorizing the Department
of HESS to enter into agreements concerning the care
and custody of Native children

Attached is a copy of a letter I received expressing concern over the use of the word "tribes" in the above-mentioned bill (see line 12 of the bill).

I understand this proposal is before the committee for consideration and would appreciate you reviewing the suggestion to change the language if you feel it is appropriate.

Attachment



NATIONAL RIFLE ASSOCIATION OF AMERICA
INCORPORATED 1971

1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20036

RUPE ANDREWS
FIELD REPRESENTATIVE
ALASKA

9416 LONGRUN DRIVE
JUNEAU AK 99801
907/789-7422

April 18, 1986

Senator Pat Rodey
Alaska State Senate
Pouch V
Juneau, AK

Dear Pat:

The attached House Bill (CS HB 255) relating to the care and custody of Native children, while a very worth while bill on its' face contains language that says the State of Alaska will conduct business with Indian tribes. The HESS committee must know something that no one else in Alaska does about Indian tribes in that to the best research there is only one tribe as such in Alaska, and that is Metlakatla. If this language is left in then the State is recognizing tribes as legal entities. Does the Alaska Legislature want to do that? It seems that this is one more step in the paper trail that we are seeing to gain village sovereignty recognition.

Off hand I cannot suggest amended wording but 'tribe' is a mis-leading word. I feel that native or non-native we should be talking about Alaskans and the custody of Alaskan children. Is it possible for your committee to request this bill for hearings?

Best,


Rupe Andrews

Offered: 3/12/86
Referred: Finance

Original sponsor: Wallis, Adams,
Taylor, et al

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

2

SCS CS FOR HOUSE BILL NO. 255 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act authorizing the Department of Health and
7 Social Services to enter into agreements concerning
8 the care and custody of Native children."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 47.10.230 is amended by adding a new subsection to
11 read:

12 (g) The department may enter into agreements with Alaska native villages
13 under 25 U.S.C. 1919 (Indian Child Welfare Act of 1978) respecting the
14 care and custody of Native children and jurisdiction of Native child
15 custody proceedings.

Letter of Intent
needs to be
inserted.



Official Business

Alaska State Legislature

House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: SENATOR BETTYE FAHRENKAMP
CHAIR, SENATE HESS COMMITTEE

FR: REPRESENTATIVE F. KAY WALLIS

RE: HB 255 AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND
SOCIAL SERVICES TO ENTER INTO AGREEMENTS CONCERNING THE
CARE AND CUSTODY OF NATIVE CHILDREN.

DATE: APRIL 25, 1986

I would like to address the use of the word "Tribes" in HB 255 and the "Letter of Intent" attached by the House HESS Committee.

First, the language in HB 255 is taken directly from the Indian Child Welfare Act 25 U.S.C. Sec. 1919(a) (attached). The definition of "Indian Tribes" in this statute encompasses Alaska Native Villages: "...including any Alaska Native village as defined in Sec. 1602(c) of Title 43 (ANCSA)." HB 255 cannot create "Indian Tribes" in Alaska because they can only be established by Congress.

I have also attached an amendment offered on the House floor by the Honorable Representative Pettyjohn who indicated it should be adopted in order for the bill to pass the Senate. His amendment proposed to delete the word "Tribes" and insert "native entities". The Indian Child Welfare Act (ICWA) does not use the term "native entities", therefore this amendment would be incompatible with Federal law. The House voted 28-12 not to adopt the amendment (and of course did not try to determine Senate preferences).

Second, with all due respect, I feel that the "Letter of Intent" is superfluous. It is not the intent of HB 255 to establish jurisdiction ("the power to hear and determine a case", *Gifis Law Dictionary*). Indeed, this would be impossible as ICWA already recognizes Indian Tribal jurisdiction in Native children's proceedings. I refer you to 25 U.S.C. Sec. 1911(a) (attached).

For purposes of Native child custody proceedings, 25 U.S.C. Sec. 1903(12) (attached) defines "Tribal Court" as "...a

court established and operated under the code or custom of an Indian Tribe, or any other administrative body of a tribe...." Alaskan Native Village Tribal Councils are administrative bodies of the Tribes and therefore authorized to also operate as "Tribal Courts" for purposes of ICWA. To reiterate, these "Tribal Courts" cannot interfere in other matters over which our State Courts have jurisdiction.

With respect to Indian Tribes in Alaska, HB 255 is simply a vehicle by which the State can implement ICWA. Despite this federal authorization, in 1983 the Attorney General took the position that the State cannot exercise this power until a State law is passed authorizing a particular agency to execute agreements on the State's behalf. This bill would not add to nor subtract from the authority of the State, but would merely mirror the existing federal statute and provide this enabling legislation.

The whole point here in regard to Tribal Courts in the "Letter of Intent" is that it is unnecessary, dubious, redundant and superfluous. The reason it was written, I understand, was to make State Court jurisdiction absolutely clear and not sabotage our Court System. Again, it is not the intent of this legislation to limit or in any way interfere with the powers of State Courts. This idea that this bill would do that is ridiculous simply because such powers are granted under our Federal and State Constitutions to our State Courts. I would appreciate your counsel on the "Letter of Intent".

Thank you Senator Fahrenkamp.

(d) Pending actions or proceedings unaffected

Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

(Pub. L. 95-608, Title I, § 100, Nov. 8, 1978, 92 Stat. 3074.)

Historical Note

References in Text. The Act of Aug. 15, 1953, referred to in subsec. (a) is Act Aug. 15, 1953, c. 268, 67 Stat. 268, as amended, which enacted section 1102 of Title 18, Crimes and Criminal Procedure, and section 1360 of Title 28, Judiciary and Judicial Procedure, and provisions set out in notes under

section 1360 of Title 28. For complete classification of this Act to the Code, see Title 28, Volume.

Legislative History. For legislative history and purpose of Pub. L. 95-608, see 1978 U.S. Code Cong. and Adm. News, p. 7550.

Cross References

Appointed, consideration and determination of petition for appointment of guardian of child custody, see title 18, and generally Title 28, Probate and Naturalization, and Title 29, section 4715 of this title.

Code of Federal Regulations

Procedures governing trial resumption of jurisdiction over Indian child custody proceedings, see 25 CFR 15.1 et seq.

Library References

Indians § 27(2)
Infants § 13.

C.J.S. Indians §§ 8, 16 et seq.
C.J.S. Infants §§ 5 to 7, 10, 12, 17.

§ 1919. Agreements between States and Indian tribes

(a) Subject coverage

States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected

Such agreement may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

(Pub. L. 95-608, Title I, § 100, Nov. 8, 1978, 92 Stat. 3074.)

Historical Note

Legislative History. For legislative history and purpose of Pub. L. 95-608, see 1978 U.S. Code Cong. and Adm. News, p. 7550.

Library References

Indians § 27(2)
Infants § 13.

C.J.S. Indians §§ 8, 16 et seq.
C.J.S. Infants §§ 5 to 7, 10, 12, 17.

§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child; danger exception

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger. (Pub. L. 95-608, Title I, § 110, Nov. 8, 1978, 92 Stat. 3075.)

Historical Note

Legislative History. For legislative history and purpose of Pub. L. 95-608, see 1978 U.S. Code Cong. and Adm. News, p. 7550.

Library References

Indians § 27(2)
Infants § 13.

C.J.S. Indians §§ 8, 16 et seq.
C.J.S. Infants §§ 5 to 7, 10, 12, 17.

§ 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

(Pub. L. 95-608, Title I, § 111, Nov. 8, 1978, 92 Stat. 3075.)

Historical Note

Legislative History. For legislative history and purpose of Pub. L. 95-608, see 1978 U.S. Code Cong. and Adm. News, p. 7550.

Library References

Indians § 27(2)

C.J.S. Indians § 27(2)

§ 1922. Emergency removal or placement of child; termination; appropriate action

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian

I.C.W.A.



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

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of Title 43;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of Title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(Pub.L. 95-608, § 4, Nov. 8, 1978, 92 Stat. 3059)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 95-608, see 1978 U.S. Code Cong. and Adm. News, p. 7530.

Cross References

Indian tribe defined to include Hauden Band of Maliseet Indians, see section 1727 of this title. Reservation defined to include Passamaquoddy and Penobscot Indian Reservations, see section 1727 of this title.

Library References

Indians ☞ 1

C.J.S. Indians, §§ 1, 2.

Notes of Decisions

Child custody proceeding: 1
Indian custodian: 2

placement based upon an award, in a divorce proceeding, of custody to one of the parents, does not apply to award of custody of a child or children to one or the other parent as a result of a divorce proceeding. *Malterre v. Malterre*, N.D.1960, 293 N.W.2d 139.

1. Child custody proceeding

This chapter, enacted to establish standards to be used in child custody proceedings for placement of Indian children in foster or adoptive homes, but providing that term "child custody proceeding" shall not include

2. Indian custodian

Indian child's maternal aunt, who did not have legal custody of child but who assumed foster care of child and accepted state funds

for child support, was not an "Indian child custody proceeding" within meaning of part (b) of this section, so as to be entitled to notice prior to termina-

tion of child custody proceeding. *Malterre v. Malterre*, N.D.1962, 640 P.2d 608.

I.C.W.A.

CHAPTER I--CHILD CUSTODY PROCEEDINGS

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) Exclusive jurisdiction

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe. *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) State court proceedings; intervention

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

(Pub.L. 95-608, Title I, § 101, Nov. 8, 1978, 92 Stat. 3071)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 95-608, see 1978 U.S. Code Cong. and Adm. News, p. 7530.

4. Fiduciary relationship

In its relation to up with native villages, the Government owes a special duty analogous to those of a trustee, such that fiduciary standards apply to the federal Government in its conduct toward Alaskan natives. *Agard v. U.S.*, D.C. Alaska, 1979, 474 F. Supp. 134.

5. Native rights

This section does not confer on municipalities who possess over Department of Agriculture management of wilderness and related lands, except for land in mining service or reclamation, control of minerals not required prior to entry by Department, new contract concerning wildland. *Id.*, Code of Comp. U.S., 4 C.F.R. 223.

Title 43

§ 1602. Definitions

For the purposes of this chapter, the term:

(a) "Secretary" means the Secretary of the Interior;

(b) "Native" means a citizen of the United States who is, or is one-fourth degree or more Alaska Indian (including Tsimshian Indians enrolled in the Metlakatla Indian Community) Eskimo, or Aleut blood combination thereof. The term includes any Native as so defined either both of whose adoptive parents are not Natives. It also includes, in absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother (or if deceased, was) regarded as Native by any village or group. Any determination of the Secretary regarding eligibility for enrollment shall be final;

(c) "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 1610 and 1615 of this title which meets the requirements of this chapter, and which the Secretary determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Native

(d) "Native group" means any tribe, band, clan, village, community, village, or association of Natives in Alaska composed of less than twenty-five Natives, who comprise a majority of the residents of the territory;

(e) "Public lands" means all Federal lands and interests thereon in Alaska except: (1) the smaller practicable tracts, as determined by the Secretary, including land actually used in connection with the administration of any Federal installation, and (2) land selections under section 202 of the Alaska Statehood Act, as amended (72 Stat. 341, 75 Stat. 223) identified for selection by the State prior to January 17, 1969;

(f) "State" means the State of Alaska;

(g) "Regional Corporation" means an Alaska Native Regional Corporation established under the laws of the State of Alaska in accordance with the provisions of this chapter;

(h) "Person" means any individual, firm, corporation, partnership, or partnership.

(i) "Municipal Corporation" means any general unit of municipal government under the laws of the State of Alaska;

(j) "Village Corporation" means an Alaska Native Village Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of a Native village in accordance with the terms of this chapter;

(k) "Fund F" means the Alaska Native Fund in the Treasury of the United States established by section 1605 of this title; and

(l) "Planning Commission" means the Joint Federal-State Land Use Planning Commission established by section 1616 of this title;

(m) "Native Corporation" means any Regional Corporation, any Village Corporation, any Urban Corporation, and any Native Group.

(Pub.L. 92-203, § 3, Dec. 16, 1971, 85 Stat. 689; Pub.L. 96-487, Title XIV, § 1401(d), Dec. 2, 1980, 94 Stat. 2492.)

(S) in original. Probably should be a semicolon.
(S) in original.

Historical Note

References in this section (19) of the Alaska Statehood Act, as amended, referred to in subtitle (c) is section (19) of Pub.L. 85-508, July 7, 1958, 72 Stat. 339, which is listed as a repealed section 21 of Title 43, Territories and Insular Possessions.

The Planning Commission established by section 1616 of this title, referred to in section (17) was omitted from the Code pursuant to former section 1616(d)(10) which provided that the Commission was to cease to exist effective June 30, 1970. See Codification note set out under section 1616 of this title.

and effective June 30, 1970. See Codification note set out under section 1616 of this title.

1980 Amendment. Statute (a) Pub.L. 96-487 added subsec. (m).

Legislative History. For background and purpose of Pub.L. 92-203, see 1971 U.S. Code Cong. and Adm. News, p. 2192. See also, Pub.L. 96-487, 1980 U.S. Code Cong. and Adm. News, p. 2970.

Cross References

- "Native village" as defined in this section included in term "Indian tribe" for purposes of Indian Self-Determination Act, section 1903 of Title 25, Indians.
- "Native village" as defined in this section having same meaning for purposes of carrying out the Alaska Corporation Act, section 1641 of this title.
- "Native Corporation", "Village Corporation", "Native Group", and "Native Group" as defined in this section having same meaning for purposes of Alaska National Interest Lands Conservation Act, see section 3102 of Title 16, Conservation.
- "Native village" as defined in this section having same meaning for purposes of Alaska Health Planning Agency or proposed use of Federal funds for program serving Alaska Native village, see section 3002 of Title 42, The Public Health and Welfare.
- "Native village" as defined in this section having same meaning for purposes of applicability of Indian preference laws defined as a "Native village" or "Native village", see sections 472a and 2014 of Title 25, Indians.
- "Native village" as defined in this section having same meaning for purposes of Alaska Railroad Transfer Act of 1982, see section 1202 of Title 46, Public Works.
- "Native village" as defined in this section having same meaning for purposes of selection of, see section 1605 of this title.

Notes of Definitions

(S) in original. Probably should be a semicolon.
(S) in original. Probably should be a semicolon.
(S) in original. Probably should be a semicolon.
(S) in original. Probably should be a semicolon.

SB 295 REQUIRING INSURERS TO OFFER COVERAGE FOR THE TREATMENT OF A MENTAL OR NERVOUS CONDITION IN CERTAIN HEALTH INSURANCE POLICIES.

(WE'VE BEEN ASKED TO CONSIDER THE SEN. LABOR & COMMERCE C.S.)

TO TESTIFY: SENATOR FAIKS, SPONSOR (STAFF: STEVE WHITE)

DR. WOLFE, PSYCHOLOGICAL ASSOCIATION

MARTIN TIRADOR, BLUE CROSS

JAT CLASBY, MENTAL HEALTH ALLIANCE

CONCERN: DEFINITION OF WHAT COVERAGE WILL BE PROVIDED.

OUTPATIENT LIMITS TO PSYCHOLOGISTS AND PSYCHIATRISTS. WE ALSO LICENSE PSYCH. ASSOCIATES, WHO DO RECEIVE COVERAGE NOW.

AN AMENDMENT HAS BEEN PREPARED.

~~CSHB 255 (HESS)~~ AUTHORIZING THE DEPT. HEALTH & SOCIAL SERVICES TO ENTER INTO AGREEMENTS CONCERNING THE CARE AND CUSTODY OF NATIVE CHILDREN. + Letter Intent RE tribal courts.

TO TESTIFY: REPRESENTATIVE WALLIS, SPONSOR (STAFF: DWAYNE)

FRANK BARTHEL, DEPT. HEALTH & SOCIAL SERVICES

DOUG MERTZ, DEPT. OF LAW

CONCERN: USE OF WORD TRIBE. INDIAN CHILD WELFARE ACT DEFINES

"TRIBE" TO INCLUDE ANY ALASKA NATIVE VILLAGE AS DEFINED IN

SECTION 1602(c) OF TITLE 43. COULD WE USE THIS LANGUAGE INSTEAD

NOTE: 9th CIRCUIT COURT OF APPEALS IS CURRENTLY HEARING CASE FILED AGAINST THE STATE BY THE NATIVE VILLAGE OF STEVENS OVER PAYMENTS FOR FOSTER CARE THAT WAS ARRANGED BY THE VILLAGE. COURT HAS RULED THAT THE PLACEMENT BY THE VILLAGE WAS LEGAL -- THAT THE VILLAGE COUNCIL'S DETERMINATION THAT THE CHILD SHOULD BE TAKEN INTO CUSTODY AND THE LICENSING OF THE FOSTER HOME BY THE VILLAGE ARE BOTH LEGAL PER THE TERMS OF THE INDIAN CHILD WELFARE ACT. STATE PAYMENT FOR THE CARE IS NOT REQUIRED, BECAUSE THERE WAS NO AGREEMENT FOR SUCH. HB 255 WOULD ALLOW THESE AGREEMENTS TO BE MADE (WOULDN'T REQUIRE). DEPT. LAW SAYS THE ABILITY TO ENTER AGREEMENTS EXISTS WITH OR WITHOUT HB 255.



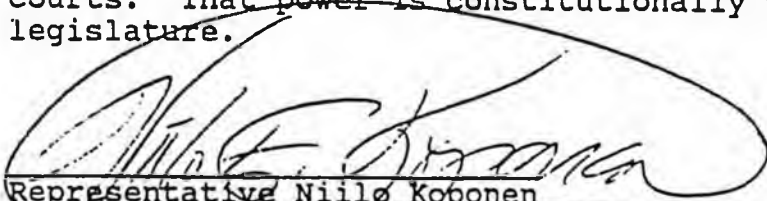
Alaska State Legislature
House of Representatives
COMMITTEE ON HEALTH, EDUCATION
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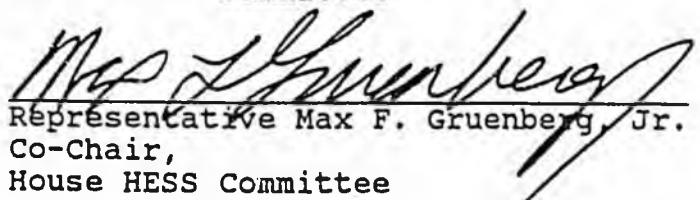
OFFICIAL BUSINESS

POUCH V
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LETTER OF INTENT

It is the intent of the Health, Education and Social Services Committee in passing CS HB 255 (HESS) that this bill would not empower the Department of Health and Social Services to recognize the legal jurisdiction of tribal courts whose authority has not been legally established yet, nor would it permit DHSS to agree to limit the jurisdiction of the state courts. That power is constitutionally vested in the legislature.


Representative Niilo Koponen
Co-Chair,
House HESS Committee


Representative Max F. Gruenberg, Jr.
Co-Chair,
House HESS Committee

(b) List of Native villages subject to chapter; review; eligibility for benefits, expiration of withdrawals for villages; alternative eligibility; eligibility of unlisted villages

(1) The Native villages subject to this chapter are as follows:

NAME OF PLACE AND REGION

Afognak, Afognak Island.
Akhiok, Kodiak.
Akiachak, Southwest Coastal Lowland.
Akiak, Southwest Coastal Lowland.
Akutan, Aleutian.
Alakanuk, Southwest Coastal Lowland.
Alatna, Koyukuk-Lower Yukon.
Aleknagik, Bristol Bay.
Allakaket, Koyukuk-Lower Yukon.
Ambler, Bering Strait.
Anaktuvuk, Pass, Arctic Slope.
Andreafsey, Southwest Coastal Lowland.
Aniak, Southwest Coastal Lowland.
Anvik, Koyukuk-Lower Yukon.
Arctic Village, Upper Yukon-Porcupine.
Atka, Aleutian.
Atkasook, Arctic Slope.
Atmautluak, Southwest Coastal Lowland.
Barrow, Arctic Slope.
Beaver, Upper Yukon-Porcupine.
Belkofsky, Aleutian.
Bethel, Southwest Coastal Lowland.
Bill Moore's, Southwest Coastal Lowland.
Biorka, Aleutian.
Birch Creek, Upper Yukon-Porcupine.
Brevig Mission, Bering Strait.
Buckland, Bering Strait.
Candle, Bering Strait.
Cantwell, Tanana.
Canyon Village, Upper Yukon-Porcupine.
Chalkyitsik, Upper Yukon-Porcupine.
Chanilut, Southwest Coastal Lowland.
Cherfornak, Southwest Coastal Lowland.
Chevak, Southwest Coastal Lowland.
Chignik, Kodiak.
Chignik Lagoon, Kodiak.
Chignik Lake, Kodiak.
Chistochina, Copper River.
Chitina, Copper River.
Chukwuktoligamute, Southwest Coastal Lowland.
Circle, Upper Yukon-Porcupine.

Chapter; review; eligibility for benefits; expenses; alternative eligibility; eligibility of settled villages

to this chapter are as follows:

PLACE AND REGION

Lowland.
and.

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Lowland.
and.

Porcupine.

Lowland.

and.

Lowland.

Porcupine.

Porcupine.

Porcupine.

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Lowland.

and.

Coastal Lowland.

Clark's Point, Bristol Bay.
Copper Center, Copper River.
Crooked Creek, Upper Kuskokwim.
Deering, Bering Strait.
Dillingham, Bristol Bay.
Dot Lake, Tanana.
Eagle, Upper Yukon-Porcupine.
Eek, Southwest Coastal Lowland.
Egegik, Bristol Bay.
Eklutna, Cook Inlet.
Ekuk, Bristol Bay.
Ekwok, Bristol Bay.
Elim, Bering Strait.
Emmonak, Southwest Coastal Lowland.
English Bay, Cook Inlet.
False Pass, Aleutian.
Fort Yukon, Upper Yukon-Porcupine.
Gakona, Copper River.
Galena, Koyukuk-Lower Yukon.
Gambell, Bering Sea.
Georgetown, Upper Kuskokwim.
Golovin, Bering Strait.
Goodnews Bay, Southwest Coastal Lowland.
Grayling, Koyukuk-Lower Yukon.
Gulkana, Copper River.
Hamilton, Southwest Coastal Lowland.
Holy Cross, Koyukuk-Lower Yukon.
Hooper Bay, Southwest Coastal Lowland.
Hughes, Koyukuk-Lower Yukon.
Huslia, Koyukuk-Lower Yukon.
Igiugig, Bristol Bay.
Iliamna, Cook Inlet.
Inalik, Bering Strait.
Ivanof Bay, Aleutian.
Kaguyak, Kodiak.
Kaktovik, Arctic Slope.
Kalskag, Southwest Coastal Lowland.
Kaltag, Koyukuk-Lower Yukon.
Karluk, Kodiak.
Kasigluk, Southwest Coastal Lowland.
Kiana, Bering Strait.
King Cove, Aleutian.
Kipnuk, Southeast Coastal Lowland.
Kivalina, Bering Strait.
Kobuk, Bering Strait.
Kokhanok, Bristol Bay.

Koliganek, Bristol Bay.
Kongiganak, Southwest Coastal Lowland.
Kotlik, Southwest Coastal Lowland.
Kotzebue, Bering Strait.
Koyuk, Bering Strait.
Koyukuk, Koyukuk-Lower Yukon.
Kwethluk, Southwest Coastal Lowland.
Kwigillingok, Southwest Coastal Lowland.
Larsen Bay, Kodiak.
Levelock, Bristol Bay.
Lime Village, Upper Kuskokwim.
Lower Kalskag, Southwest Coastal Lowland.
McGrath, Upper Kuskokwim.
Makok, Koyukuk-Lower Yukon.
Manley Hot Springs, Tanana.
Manokotak, Bristol Bay.
Marshall, Southwest Coastal Lowland.
Mary's Igloo, Bering Strait.
Medfra, Upper Kuskokwim.
Mekoryuk, Southwest Coastal Lowland.
Mentasta Lake, Copper River.
Minchumina Lake, Upper Kuskokwim.
Minto, Tanana.
Mountain Village, Southwest Coastal Lowland.
Nabesna Village, Tanana.
Naknek, Bristol Bay.
Napaimute, Upper Kuskokwim.
Napakiak, Southwest Coastal Lowland.
Napaskiak, Southwest Coastal Lowland.
Nelson Lagoon, Aleutian.
Nenana, Tanana.
Newhalen, Cook Inlet.
New Stuyahok, Bristol Bay.
Newtok, Southwest Coastal Lowland.
Nightmute, Southwest Coastal Lowland.
Nikolai, Upper Kuskokwim.
Nikolski, Aleutian.
Ninilchik, Cook Inlet.
Noatak, Bering Strait.
Nome, Bering Strait.
Nondalton, Cook Inlet.
Nooiksut, Arctic Slope.
Noorvik, Bering Strait.
Northeast Cape, Bering Sea.
Northway, Tanana.
Nulato, Koyukuk-Lower Yukon

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Nunapitchuk, Southwest Coastal Lowland.
Ohogamiut, Southwest Coastal Lowland.
Old Harbor, Kodiak.
Oscarville, Southwest Coastal Lowland.
Ouzinkie, Kodiak.
Paradise, Koyukuk-Lower Yukon.
Pauloff Harbor, Aleutian.
Pedro Bay, Cook Inlet.
Perryville, Kodiak.
Pilot Point, Bristol Bay.
Pilot Station, Southwest Coastal Lowland.
Pitkas Point, Southwest Coastal Lowland.
Platinum, Southwest Coastal Lowland.
Point Hope, Artic Slope.
Point Lay, Arctic Slope.
Portage Creek (Ohgsenakale), Bristol Bay.
Port Graham, Cook Inlet.
Port Heiden (Meshick), Aleutian.
Port Lions, Kodiak.
Quinhagak, Southwest Coastal Lowland.
Rampart, Upper Yukon-Porcupine.
Red Devil, Upper Kuskokwim.
Ruby, Koyukuk-Lower Yukon.
Russian Mission or Chauthalue (Kuskokwim), Upper Kuskokwim.
Russian Mission (Yukon), Southwest Coastal Lowland.
St. George, Aleutian.
St. Mary's, Southwest Coastal Lowland.
St. Michael, Bering Strait.
St. Paul, Aleutian.
Salamatof, Cook Inlet.
Sand Point, Aleutian.
Savonoski, Bristol Bay.
Savoonga, Bering Sea.
Scammon Bay, Southwest Coastal Lowland.
Selawik, Bering Strait.
Seldovia, Cook Inlet.
Shageluk, Koyukuk-Lower Yukon.
Shaktoolik, Bering Strait.
Sheldon's Point, Southwest Coastal Lowland.
Shishmaref, Bering Strait.
Shungnak, Bering Strait.
Slana, Copper River.
Sleetmute, Upper Kuskokwim.
South Naknek, Bristol Bay.
Squaw Harbor, Aleutian.
Stebbins, Bering Strait.

Stevens Village, Upper Yukon-Porcupine.

Stony River, Upper Kuskokwim.

Takotna, Upper Kuskokwim.

Tanacross, Tanana.

Tanana, Koyukuk-Lower Yukon.

Tatilek, Chugach.

Tazlina, Copper River.

Telida, Upper Kuskokwim.

Teller, Bering Strait.

Tetlin, Tanana.

Togiak, Bristol Bay.

Toksook Bay, Southwest Coastal Lowland.

Tulusak, Southwest Coastal Lowland.

Tuntutuliak, Southwest Coastal Lowland.

Tununak, Southwest Coastal Lowland.

Twin Hills, Bristol Bay.

Tyonek, Cook Inlet.

Ugashik, Bristol Bay.

Unalakleet, Bering Strait.

Unalaska, Aleutian.

Unga, Aleutian.

Uyak, Kodiak.

Venetie, Upper Yukon-Porcupine.

Wainwright, Arctic Slope.

Wales, Bering Strait.

White Mountain, Bering Strait.

(2) Within two and one-half years from December 18, 1971, the Secretary shall review all of the villages listed in subsection (b)(1) hereof, and a village shall not be eligible for land benefits under section 1613(a) and (b) of this title, and any withdrawal for such village shall expire, if the Secretary determines that—

(A) less than twenty-five Natives were residents of the village on the 1970 census enumeration date as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance; or,

(B) the village is of a modern and urban character, and the majority of the residents are non-Native.

Any Native group made ineligible by this subsection shall be considered under section 1613(h) of this title.

(3) Native villages not listed in subsection (b)(1) hereof shall be eligible for land and benefits under this chapter and lands shall be withdrawn pursuant to this section if the Secretary within two and one-half years from December 18, 1971, determines that—

(A) twenty-five or more Natives were residents of an established village on the 1970 census enumeration date as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance; and

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§ 1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 1606 of Title 43;

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

AMENDMENT

1

OFFERED IN THE HOUSE:

By:

Pettyjohn

To: CS (HESS)

HOUSE BILL No.

255

SENATE BILL No.

PAGE:

1

LINE:

12

Delete: "tribes"

insert "native entities"

Fritz -

Thank you for your
input. Your amendment
is OK with me ~~but~~, however,
HB 255 language ^{is} taken directly

from 25 U.S.C. § 1919 (a). The definition
of "Indian Tribes" in ICWA explicitly adds
AK Native Villages: "... including any
AK Native village as defined in Section
1602 (c) of Title 43 (ANCSA). Therefore,
feel we must use "tribes" in the bill.

Thank you!
Ray

file HB 255

Sec. 47.10.210. Youth counsellors. The department may employ youth counsellors. Youth counsellors shall exercise the duties of probation officers and shall prepare preliminary investigations for the information of the court. They shall also carry out other duties in the care and treatment of minors which are consistent with the intent of this chapter. Youth counsellors have the powers of a peace officer with respect to the service of process, the making of arrests of minors who violate state or municipal law, and the execution of orders of the court relating to juveniles. The youth counsellors shall assist and advise the courts in the furtherance of the welfare and control of minors under the court's jurisdiction. (§ 11 art II ch 145 SLA 1957)

Sec. 47.10.220. Grants-in-aid. The Department of Health and Social Services may accept grants-in-aid from the federal government or private foundations and may accept other gifts consistent with the purposes of this chapter. (§ 13 art II ch 145 SLA 1957; am § 6 ch 104 SLA 1971)

Article 3. Care of Children.

Section	Section
230. Powers and duties of department over care of child	250. Standards of care
240. Adequacy of home or institution	260. Payment of costs

Sec. 47.10.230. Powers and duties of department over care of child. (a) Subject to (e) and (f) of this section, the Department of Health and Social Services shall arrange for the care of every child committed to its custody by placing the child in a foster home or in the care of an agency or institution providing care for children inside or outside the state. The department may place a child in a suitable family home, with or without compensation, and may place a child released to it, in writing verified by the parent, or guardian or other person having legal custody, for adoptive purposes, in a home for adoption in accordance with existing law.

(b) The department may pay the costs of maintenance which are necessary to assure adequate care of the child, and may accept funds from the federal government which are granted to assist in carrying out the purposes of this chapter, or which are paid under contract entered into with a federal department or agency. A child under the care of the department may not be placed in a family home or institution that does not maintain adequate standards of care.

(c) The department may receive, care for, and make appropriate placement of minors accepted for care for a period of up to six months on the basis of an individual voluntary written agreement between the minor's parent, legal guardian, or other person having legal custody and the department. The agreement may include provisions for payment, in whole or in part, to the department for the minor's care

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and treatment. The agreement entered into shall not operate to prohibit a minor's parent, legal guardian, or other person who had legal custody from regaining care of the minor at any time.

(d) In addition to funds paid for the maintenance of foster children under (b) of this section, the department shall pay the costs of caring for physically or mentally handicapped foster children, including the additional costs of medical care, habilitative and rehabilitative treatment, services and equipment, special clothing, and the indirect costs of medical care, including child care, transportation expenses, and respite care. In this subsection "respite care" means child care not to exceed 12 hours in any 30-day period; it also means child care for a period not to exceed seven days in a year for the purpose of providing emergency protection for the child when the foster parent is away from the home because of an emergency and no other care is available for the child or when the foster parent is on vacation and the child, because of age or infirmity, cannot be placed in any other type of temporary care facility.

(e) A child may not be placed in a foster home or in the care of an agency or institution providing care for children if a blood relative exists who requests custody of the child. However, the department may retain custody of the child and provide for its placement in the same manner as for other children if it makes a determination, supported by clear and convincing evidence, that the custody of the child by the blood relative will result in physical or emotional damage. In making that determination, poverty, including inadequate or crowded housing, on the part of the blood relative, is not considered prima facie evidence that physical or emotional damage to the child will occur. This determination may be appealed to the superior court to hear the matter de novo.

(f) If a blood relative of the child specified under (e) of this section exists and agrees that the child should be placed elsewhere, before placement elsewhere the department shall fully communicate the nature of the placement proceedings to the relative. Communication under this subsection shall be made in the relative's native language, if necessary. Nothing in this subsection or in (e) of this section applies to child placement for adoptive purposes. (§ 1 art III ch 145 SLA 1957; am § 5 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am § 1 ch 76 SLA 1976; am §§ 36, 37 ch 126 SLA 1977; am § 132 ch 6 SLA 1984)

Cross references. — For the legislative intent of amendments made in 1977, see § 35, ch. 126, SLA 1977.

Effect of amendments. — The 1984

amendment substituted "subsection" for "section" in the last two sentences of subsection (f).

1 § 672 regardless of the fact that foster care placement is
2 arranged by tribal authority. The district court granted the
3 State's cross-motion for summary judgment and dismissed Stevens's
4 complaint. For reasons set forth below, we affirm.

5 Stevens is an Athabascan Indian tribe. The Tanana Chiefs
6 Conference (Tanana) is a tribal consortium which contracts on
7 behalf of Stevens and other Athabascan Villages for the provision
8 of social service programs, including foster care, for Indian
9 children. On August 10, 1983, a member of Stevens, T.O., was
10 taken into tribal custody by order of the tribal council. With
11 Tanana's assistance, the council placed T.O. with another
12 Athabascan family. The foster home in which he was placed was not
13 licensed by the State for foster care.

14 Tanana, on behalf of Stevens, later sought foster care
15 payments from the State on behalf of T.O. The State refused,
16 asserting that it does not pay for foster care ordered by tribal
17 courts, arranged by other social services agencies, or for
18 children committed to the custody of other agencies. Stevens
19 brought its suit for declaratory relief shortly thereafter.

20 The district court held that Alaska need not recognize
21 Stevens' determinations of eligibility for foster care, that the
22 Indian Child Welfare Act does not require Alaska to reach an
23 agreement concerning foster care with the tribe, and that the
24 State need not grant full faith and credit to the tribe's
25 eligibility determinations.
26

*District
Court*

1 Standard of Review

2 The standard of review in this case is de novo, since we are
3 reviewing a grant of summary judgment, Jung v. FMC Corp., 755 F.2d
4 708, 710 (9th Cir. 1985)¹, and an issue of statutory construction
5 is involved. Dumdeang v. CIR, 739 F.2d 452, 453 (9th Cir. 1984)¹.

6 The Foster Care Program

7 Part E of Subchapter IV in Title 42 (Title IV-E)¹ sets forth a
8 federally funded foster care and adoption assistance program.

9 Part E is but one part of Subchapter IV, which establishes the Aid
10 to Families with Dependent Children Program. See generally S.
11 Rep. No. 336, 96th Cong., 2d Sess. 16, reprinted in, 1980 U.S.
12 Code Cong. & Ad. News 1448, 1459. The AFDC program is based upon
13 cooperative federalism--states are not obligated to participate,
14 but if they choose to do so and receive federal funds, they must
15 conform to the requirements of the Social Security Act. King v.
16 Smith, 392 U.S. 309, 316-17 (1968)¹. Alaska participates in Title
17 IV-E, and it is therefore obligated under 42 U.S.C. § 672 to make
18 foster care maintenance payments for dependent children eligible
19 for AFDC.^{1/}

20 Congress has established several requirements which must be
21 met before a state is obligated to make foster care payments on
22 behalf of an eligible child:

23 (1) the removal from the home occurred . . .
24 pursuant to a voluntary placement agreement
25 entered into by the child's parent or legal
26 guardian, or was the result of a judicial
determination to the effect that continuation
therein would be contrary to the welfare of
such child * * *

1 (2) such child's placement and care are the
2 responsibility of (A) the State agency
3 administering the State plan * * * or (B) any
4 other public agency with whom the State agency
5 administering or supervising the
6 administration of the State plan approved
7 under section 671 of this title has made an
8 agreement which is still in effect;

9 (3) such child has been placed in a foster
10 family home or child-care institution * * *

11 * * * *

12 42 U.S.C. § 672(a). The statute defines both "foster family home"
13 and "child care institution" as institutions licensed by a state.

14 42 U.S.C. § 672(c). In evaluating Stevens's claim that Alaska
15 should make foster care payments on T.O.'s behalf, we must
16 consider whether the requirements of section 672 have been met.

17 a. Removal from the home

18 T.O. was removed from his home after the tribal council
19 decided it would be in his best interests, and taken into tribal
20 custody. Under section 101(d) of the Indian Child Welfare Act,
21 states are to give full faith and credit to the public acts,
22 records and judicial proceedings of Indian tribes applicable to
23 Indian child custody proceedings. 25 U.S.C. § 1911(d).

24 Therefore, the requirement in section 672(a) that removal be the
25 result of a judicial determination has been met.^{2/}

26 b. State licensing

Section 672(c) defines "foster family home" as one which has
been licensed by a state or approved by the state agency
responsible for licensing. Alaska has neither licensed nor
approved the foster home in which T.O. was placed. However, the

1 Indian Child Welfare Act provides that:

2 [f]or purposes of qualifying for assistance
3 under a federally assisted program, licensing
4 or approval of foster or adoptive homes or
5 institutions by an Indian tribe shall be
6 deemed equivalent to licensing or approval by
7 a State.

8 25 U.S.C. § 1931(b)'. Congress clearly intended by this section
9 that tribal approval be recognized as equivalent to state
10 licensing or approval. H.R. Rep. No. 1386, 95th Cong., 2d Sess.
11 26, reprinted in 1978 U.S. Code Cong. & Ad. News 7530, 7549.

12 Therefore, contrary to the district court's determination, a
13 tribally approved foster home is the equivalent to and substitute
14 for state approval or licensing. Section 672(c)' has been complied
15 with, since the tribal council approved T.O.'s foster home
16 placement.

17 c. Agreement between Alaska and Stevens

18 The crux of this case is the requirement in section 672(a)(2)'
19 that a child's placement be the responsibility of a state agency
20 or a public agency with whom the state has an agreement. Stevens
21 concedes that there is no agreement between it and the State
22 regarding foster care. However, it argues that it unsuccessfully
23 tried to negotiate such an agreement with Alaska, and that 42
24 U.S.C. § 671(a)(4)', as well as 25 U.S.C. § 1919(a)' require the
25 State to enter into an agreement. It would have us apply the
26 equitable maxim that equity regards as being done what ought to
have been done, e.g., Montana Power Co. v. Federal Power
Commission, 330 F.2d 781, 788 (9th Cir. 1964)', and presume that an

1 agreement existed between the parties.

2 Section 671(a)(4) provides that in order for a state to
3 receive federal funds to operate a foster care maintenance
4 program, it must have a plan which

5 provides that the State shall assure that the
6 programs at the local level assisted under
7 this part will be coordinated with the
8 programs at the State or local level assisted
9 under parts A and B of this subchapter, under
10 subchapter XX of this chapter, and under any
11 other appropriate provision of Federal law.

12 Stevens reads this section to require Alaska to coordinate its
13 Title IV-E foster care program with the foster care program
14 operated by Tanana and funded by the Bureau of Indian Affairs, and
15 it maintains that coordination requires an agreement between the
16 State and the tribe.

17 We disagree. Nothing in section 671(a)(4) requires the State
18 involuntarily to enter into an agreement concerning foster care
19 services with Stevens. Moreover, Stevens' sole evidence of a lack
20 of coordination is the absence of an agreement between it and the
21 State. There is no indication of competition or interference
22 between the tribe and the State. The State declined to pay for
23 T.O.'s foster care because he was in the tribe's custody; it did
24 offer to accept referral of T.O. and his family and to assess
25 their eligibility for services offered by the State.

26 It is true that section 109 of the Indian Child Welfare Act
authorizes agreements between states and tribes respecting the
care of Indian children:

1 States and Indian tribes are authorized to
2 enter into agreements with each other
3 respecting care and custody of Indian children
4 and jurisdiction over child custody
5 proceedings, including agreements which may
6 provide for orderly transfer of jurisdiction
7 on a case-by-case basis and agreements which
8 provide for concurrent jurisdiction between
9 States and Indian tribes.

6 25 U.S.C. § 1919(a)'. But section 1919 does not require entry into
7 state-tribal agreements--it simply authorizes them. See also,
8 H.R. Rep. 1386, 95th Cong., 2d Sess. 25, reprinted in 1978 U.S.
9 Code Cong. & Ad. News 7530, 7547. Examination of the statute
10 indicates that it is permissive.

11 As we previously observed, states choosing to participate in
12 the AFDC program must conform to the requirements of the Social
13 Security Act, as well as rules and regulations promulgated by the
14 Department of Health and Human Services. King v. Smith, 392 U.S.
15 at 316-17. Indeed, a state risks losing federal funds if its plan
16 for foster care does not comply with the statute. 42 U.S.C. §
17 671(b)'. Thus, the threatened loss of federal funds provides
18 states with a powerful incentive for compliance with the mandatory
19 requirements of the statutory scheme. When Congress wishes to
20 compel action by a state, it does not hesitate to do so.

21 In contrast, neither 42 U.S.C. § 671(a)(4) nor 25 U.S.C. §
22 1919(a)' require states and tribes to enter into foster care
23 agreements under section 672(a)(2)(B)'. These statutes are not
24 cast in mandatory terms. It may be more consonant with the
25 statutory spirit to undertake such an agreement, but Congress did
26 not provide that a state or a tribe has the right to force an

1 agreement upon the other. For whatever reason, Alaska does not
2 wish to negotiate an agreement with Stevens concerning foster
3 care. As a federal court, we interpret statutes as they are
4 written--the statutes at issue here do not mandate an agreement,
5 and it is not our role to force Alaska to enter into one. Should
6 Stevens desire different statutory language that compels an
7 agreement, recourse to Congress would be appropriate.

8 We therefore decline to infer the existence of an agreement
9 between Stevens and Alaska under 42 U.S.C. § 672(a)(2)(B). The
10 judgment of the district court is AFFIRMED.

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FOOTNOTES

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1/ According to 42 U.S.C. § 672, states shall make foster care maintenance payments with respect to children who would meet the requirements of sections 606(a) or 607. Sections 606(a) and 607 define the term "dependent child" for purposes of receiving AFDC benefits. The State notes that it has never determined whether T.O. is a "dependent child" under 42 U.S.C. §§ 606(a) or 607 and eligible for foster care maintenance. This is not a material factual issue rendering summary judgment inappropriate, since the State's policy would deny foster care to Indian children placed by a tribe regardless of AFDC eligibility.

2/ On appeal, the State suggests that this requirement in section 672 (a)(1) has not been met. It argues that T.O. may have been removed from his home due to a judicial determination by the tribe, or as a result of a voluntary placement agreement created when his parents consented to the village assuming custody. In either case, section 672(a)(1) would be satisfied. Moreover, the State conceded in district court that section 672(a)(1) had been met.

HB 255

ATTORNEY GENERAL

NOV 20 1984

4th JUDICIAL DISTRICT
STATE OF ALASKA

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

NOV 16 1984

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By *JW*

NATIVE VILLAGE OF STEVENS,)
)
 Plaintiff,)
)
 vs.)
)
 ROBERT L. SMITH, in his official)
 capacity as the Commissioner of)
 Health and Human Services, WILLIAM)
 SHEFFIELD, in his capacity as the)
 Governor of the State of Alaska,)
 and the STATE OF ALASKA,)
)
 Defendants.)

No. F84-003 Civil

ORDER

The Plaintiff, Native Village of Stevens, assumed custody of one of its children, removed him from his home, put him in a foster home, and sought funds from the State of Alaska to make foster care maintenance payments. The Alaska Division of Family and Youth Services of the Alaska Department of Health and Human Services participates in a federally-assisted foster care program through federal transfer payments authorized by the Adoption Assist-

(21)

ance and Child Welfare Act of 1980 (referred to by both parties as the "Social Security Act"), P.L. 96-272, codified at 42 U.S.C. §§ 670-676. The State of Alaska has concluded a plan with the Secretary of Health and Human Services pursuant to 42 U.S.C. § 671. The Tanana Chiefs Conference on behalf of the Village of Stevens requested payments pursuant to the above-stated Adoption Assistance and Child Welfare Act and pursuant to the Indian Child Welfare Act of 1978, P.L. 95-608, codified at 25 U.S.C. §§ 1901-1966. Defendant State of Alaska denied the request for foster care benefits because the child in tribal protective custody was placed there under tribal authority rather than state authority.

Plaintiff filed a complaint in this Court seeking a declaratory judgment that foster homes licensed or approved by the Native Village of Stevens shall be equivalent to licensing by the State of Alaska for the purpose of qualifying for assistance from such programs. Plaintiff also sought a declaration that payments under 42 U.S.C. § 672 shall be made irrespective of the fact that the foster care placement is made by tribal authority. Plaintiff moved for summary judgment; Defendants opposed the motion and moved for summary judgment.

Plans concluded with the Secretary of Health and Human Services pursuant to 42 U.S.C. § 671 obligate participating states to administer or supervise administration of the plan. The plan concluded by the State of Alaska with the Secretary obligates the

state to establish an agency which is to make determinations of eligibility. The agency which makes determinations of eligibility, the Division of Family and Youth Services, noted that "the Division does not pay for foster care for children committed to the custody of any other agency, or ordered by any other state's court or a tribal court, or arranged for by any other social services agency."

Plaintiff Village of Stevens notes that, pursuant to 42 U.S.C. § 671(a)(4), the State of Alaska is obligated to assure that the programs at the local level under Part E will be coordinated with the programs at the state or local level assisted under Parts A and B of the Social Security Act. 42 U.S.C. §§ 601-615 and 42 U.S.C. §§ 620-628. Plaintiff further contends that this subsection requires the State of Alaska to recognize the Village's determinations of eligibility. Nothing in the Act, the legislative history or the case law requires the State of Alaska to recognize the Village's determinations of eligibility. 1980 U.S. Code Cong. & Ad. News 1448.

Plaintiff further alleges that 25 U.S.C. § 1919 of the Indian Child Welfare Act requires the State of Alaska to conclude an agreement with the Village. The statute and the legislative history state clearly that these agreements are voluntary. 1978 U.S. Code Cong. & Ad. News 7530, 7547. The State of Alaska has not passed any enabling legislation which would allow the Division of Family and Youth Services to negotiate any agreement pursuant to 25 U.S.C. § 1919.

ORDER

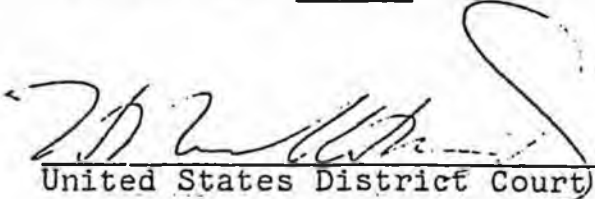
Page 3 of 4

*Part A = Title
IVA
Part B = Title
W-B*

Plaintiff finally alleges that 25 U.S.C. § 1931(b) requires the State of Alaska to grant full faith and credit to the Village's determinations of eligibility for purposes of funding eligibility under the Adoption Assistance and Child Welfare Act. There is no evidence in either act or in either legislative history or in the interrelationship of the two acts to suggest that Section 1931(b) of the Indian Child Welfare Act is to govern the Adoption Assistance and Child Welfare Act. 1978 U.S. Code Cong. & Ad. News 7530, 7549. This subsection, moreover, appears to command the federal government to grant full faith and credit to Indian tribal decisions; this provision does not appear to command the various states to accord full faith and credit to Indian tribal decisions.

For these reasons, the Plaintiff's motion for summary judgment is DENIED, and Defendants' motion for summary judgment is GRANTED. The Clerk of Court shall enter judgment dismissing Plaintiff's complaint.

DATED at Anchorage, Alaska, this 8th day of November, 1984.


United States District Court Judge

cc: ✓ Michael J. Walleri, Esq.
 D. Rebecca Snow, Esq.
sw

ORDER

Page 4 of 4

AGREEMENT BETWEEN
KETCHIKAN INDIAN CORPORATION
AND
STATE OF ALASKA, DIVISION OF FAMILY AND YOUTH SERVICES

1.

PREAMBLE

The Indian Child Welfare Act of 1978 (hereafter referred to as the Act or ICWA); authorizes states and Indian tribes to enter into agreements regarding the care and custody of Indian children, 25 USC 1919. The undersigned enter into this agreement to further communication and cooperation between the parties so that the Indian families and children of Alaska can receive services most likely to result in the protection of Indian children and the stability of Indian families.

This agreement is to be liberally construed in the full spirit of cooperation with the overriding goal of carrying out the stated policy of the Act, to protect the best interests of Indian children and promote the stability and security of Indian tribes and families.

II.

PARTIES

This agreement is made between Ketchikan Indian Corporation (KIC), as the lawful representative of the KIC Indian tribe, as defined in the Act, 43 USC.1602, and the State of Alaska, Division of Family and Youth Services (hereafter referred to as DFYS.)

III.

PLACEMENT COMMITTEE

- A. Formation and Purpose: KIC and DFYS agree to form a placement committee to provide consultation to the DFYS section in Ketchikan and other referring agencies about decisions to seek legal or physical custody of Indian children and about placement decisions and practices affecting Indian children, and to provide assistance to DFYS in its homefinding efforts. Consultation will be delivered to help the referring agency identify the most appropriate course of service delivery, ensure compliance with ICWA, and explore the most appropriate placement, when placement is required.
- B. Meeting Time: The Ketchikan Placement Committee shall meet once every two weeks in Ketchikan at a time and place to be decided by its members.
- C. Membership: The Ketchikan Placement Committee shall be comprised of:
1. The Family Services Manager for the Ketchikan Office of DFYS (hereafter RSSM) or if unavailable, the Social work supervisor.
 2. One KIC designated tribal representative, or alternate, to be designated by the IRA Council of KIC.
- D. Confidentiality:
1. Disclosure to the Ketchikan Placement Committee:
 - a. Voluntary Placements Under AS 47.10.230(c):

DFYS - Ketchikan shall encourage all parents of Indian children, who ask DFYS - Ketchikan to enter into a Voluntary Placement Agreement under AS 47.10.230.(c), to sign a release of information about the child subject to placement, and the child's family, to the Ketchikan Placement Committee. If the parent refuses, DFYS - Ketchikan shall obtain a signed statement from the parent stating that the parent does not want any

disclosure made to the Ketchikan Placement Committee. DFYS - Ketchikan shall also inform the parent(s) that non-identifying information will be shared with the committee.

- b. Placements of Indian Children in Legal Custody of DHSS for Foster Care or Residential Placement: DFYS - Ketchikan shall inform the parents of an Indian child that all information required by this Agreement for a referral (see E.2 of this part) will be disclosed to the Ketchikan Committee for the purposes of ensuring compliance with ICWA and of acquiring appropriate services for the child and the child's family. DFYS - Ketchikan shall inform the parents of these purposes.

3. Disclosure by Committee Members:

Committee members shall be bound by applicable State laws and regulations and the policies of the agency they represent when disclosing information acquired in their role as a member of the Ketchikan Placement Committee.

- E. Referrals:

1. DFYS - Ketchikan shall refer all placements, or anticipated placements of Indian children handled by DFYS - Ketchikan to the Ketchikan Placement Committee at the next regularly scheduled meeting following the placement or decision to consider placement.
2. The referring worker shall describe for the Ketchikan Placement Committee:
 - a. the identities, ages, addresses, and tribal or village affiliations of family members, except in adoptive or pre-adoptive placements where the parent requested anonymity under 25 USC 1915(c) and in voluntary placements made under AS 47.10.230(c) where the parent refuses to authorize disclosure, only ages and tribes

or village affiliation will be revealed;

- b. the events precipitating the need for placement;
- c. the history of previous placements and family disruptions;
- d. the history of services provided to the family;
- e. the legal status of the child and anticipated legal actions; and
- f. the worker's plan concerning placement, visitation, and delivery of remedial services.

F. Home Finding Efforts: KIC agrees to search for homes higher in the placement preferences, 25 USC 1915, whenever DFYS - Ketchikan has been unable to secure placement in the first order of preference. KIC will work directly with the DFYS - Ketchikan worker and will report the outcome of their efforts at the next Placement Committee meeting.

G. Record Keeping and Consultation:

- 1. The Ketchikan Placement Committee shall decide on procedures for keeping records, provided that it shall maintain a log of all cases referred to it and of the recommendations made in each case.
- 2. The Ketchikan Placement Committee shall consider the cases referred to it in the presence of the referring worker and shall give its recommendations immediately.
- 3. The Ketchikan Placement Committee may ask for a follow-up report by the referring worker or KIC, where KIC is engaged in home finding efforts or providing services, at a meeting of the Committee specified by the Committee. DFYS -

Ketchikan and KIC shall provide follow-up reports as requested by the Ketchikan Placement Committee.

IV.

ACCESS TO RECORDS

DFYS shall provide to KIC upon its request, all information DFYS has concerning any child, who is a member of or eligible for membership in KIC and who is subject to the provisions of the Act, provided:

- A. DFYS shall first review the case materials and remove any information which is not related to the child or which unduly invades the privacy of someone else and is not needed to evaluate the need for placement or the appropriateness of services to the child or family;
- B. DFYS shall not reveal any identifying information concerning voluntary adoptive and pre-adoptive placements, where the parent has requested anonymity under 25 USC 1915(c), unless the parent has authorized disclosure to KIC; and
- C. DFYS shall not reveal any information, other than that which indicates efforts to comply with the placement preferences of the Act, 25 USC concerning a child placed under a Voluntary Placement Agreement, unless the parent has authorized disclosure to KIC or to the Ketchikan Placement Committee.

V.

TERMS AND CONDITIONS

- A. Definitions:
 1. "DFYS" means Division of Family and Youth Services section, except in Part II where it means all sections of the Division.

2. "DFYS" - Ketchikan means the Ketchikan office of the Family Services section to the Division of Family and Youth Services.

B. Terminations:

Either of the parties to this agreement may terminate it, without cause, upon 60 days prior written notice to the other. Written notice shall be deemed given under this agreement on the date delivered to the Central Office of DFYS or KIC in Ketchikan, if hand delivered, or on postmark date, if mailed.

C. Violation or Interpretation of the Agreement:

The parties to the agreement realize there may be instances in which one of the parties believes another party has violated the agreement or clarification is necessary to interpret provisions of the agreement. It is agreed the parties will attempt to resolve the matter at the lowest level possible. If unable to do so, the matter will be referred to the IRA Council for KIC, the Family Services Field Administrator of DFYS, and the Court Coordinator of DFYS.

D. Effective Date:

This agreement shall become effective February 1, 1983 or upon signing by the parties, whichever is later.

Indian Child In Substitute Care

_____/_____/_____
Case Name

Birthdate

Age

Worker

Tribal Enrollment or Affiliation: _____

Name of Tribal/Community

Child's Current Whereabouts:

Indian Foster Home

Non-Indian Foster Home

Relative: _____

Other: _____

Natural Family Composition:

Mother: _____

Age _____

Address _____

Father: _____

Age _____

Address _____

Relatives: _____

Age _____

Whereabouts _____

Legal Status:

Emergency Court Ward

Voluntary Placement

Adjudication Court Ward

Review Hearing

Date of Placement: _____

Change of Placement: _____

Reason For Placement or Recommendation: _____

VII.


APPROVAL

The following in their representative capacities hereby approve
this agreement.



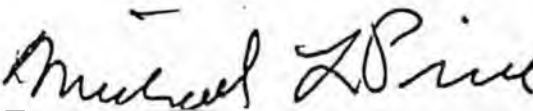
Floyd H. Guthrie, President

2-25-83
Date



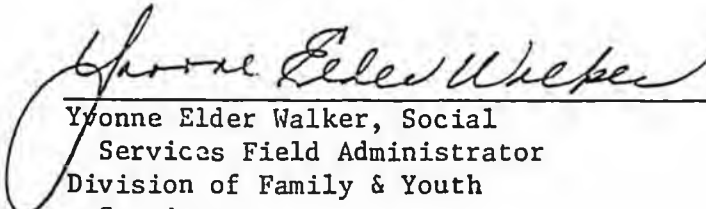
Edward K. Thomas
Executive Director
Ketchikan Indian Corporation

2-25-83
Date



Mike Price, Director
Division of Family & Youth
Services
Department of Health & Social
Services
State of Alaska

4-5-83
Date



Yvonne Elder Walker, Social
Services Field Administrator
Division of Family & Youth
Services
Department of Health & Social
Services
State of Alaska

4-1-83
Date

AGREEMENT BETWEEN
CENTRAL COUNCIL OF TLINGIT AND
HAIDA INDIAN TRIBES OF ALASKA
and ..
STATE OF ALASKA
DIVISION OF FAMILY AND YOUTH SERVICES

I. PREAMBLE

The Central Council of Tlingit and Haida Indian Tribes of Alaska and the State of Alaska, Division of Family and Youth Services enter into this agreement in order to provide extended and enhanced services which are directed at child protection and promotion of family stability in specified rural Southeast Alaska communities.

This agreement is entered into a spirit of cooperation, one which supports services to children and their families that are complementary, rather than divisive or competitive, between Tribe and State. The child protection needs of Alaska are enormous, and mounting. Through this joint effort, it is hoped that our children will be provided the protection and support to which they are inalienably entitled, whether as Alaska citizens or tribal members.

II. PARTIES

This agreement is made between the Central Council of Tlingit and Haida Indian Tribes of Alaska (hereafter referred to as the Central Council) and the State of Alaska, Division of Family and Youth Services (hereafter referred to as the Division).

III. GEOGRAPHIC AREAS TO BE SERVED

Services, described in Article IV., will be provided to the following communities:

Hydaburg
Kasaan
Craig
Klawock
Kake
Hoonah

III. GEOGRAPHIC AREAS TO BE SERVED (Con't)

Hydaburg, Kasaan, Craig and Klawock are located on Prince of Wales Island.

Kake is located on Kupreanof Island.

Hoonah is located on Chichagof Island.

In Kake and Hoonah, the Central Council worker will make available direct services to all community members. Preventive services will be shared between the on-site Central Council workers and Division workers, stationed in Petersburg and Juneau.

On Prince of Wales Island, the Central Council worker will provide direct services only to Alaska Natives. The State worker, stationed in Craig, will provide direct services to non-Native residents and Native residents who choose to receive services from the state. Preventive services will be shared between the Central Council worker and the Division worker.

All investigations into allegations of abuse and neglect, in all communities participating in this agreement, will be performed by Division personnel.

IV. SERVICES TO BE PROVIDED BY THE CENTRAL COUNCIL

1. Counseling and Advocacy Services. The Central Council agrees to provide counseling and advocacy services to all in need of said services in the communities of Kake and Hoonah. Clients will include those children adjudicated In Need of Aid, and the families of these children. The Central Council further agrees to provide these same services to all Alaska Natives in need of such services in the communities of Hydaburg, Kasaan, Craig and Klawock. The only exception would be in those cases where clients request that they would prefer service delivery by the Division worker.

Individual case plans will be co-developed by the Central Council and the Division. It will be the responsibility of the Central Council to implement plans and the responsibility of the Division to review and monitor said plans for appropriateness. The Central Council agrees to provide the Division with such forms, records and reports as the Division deems necessary to meet its responsibilities, both legal and programmatic.

IV. SERVICES TO BE PROVIDED BY THE CENTRAL COUNCIL
(Con't)

2. Prevention and Community Organization. The Central Council agrees to provide prevention and community organization services in all communities participating in this agreement. The prevention and community organization activities will follow those described in the attached material entitled: CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA/SOUTHEAST ALASKA COMMUNITY SOCIAL SERVICES DELIVERY PART IV/PROGRAM NARRATIVE. Further, as this material does not include the Community of Kake, the Central Council agrees to provide these services to Kake as they are described for the Community of Hoonah in this attachment.

3. Child Protective Services. The Central Council agrees to refer all observed, referred, or reported instances of child abuse and or neglect to the appropriate authority, as designated by the Division. What constitutes child abuse and or neglect shall be defined by the Division and accepted by the Central Council.

The Central Council agrees to submit to the Division full and complete information regarding all observed, referred or reported cases of child abuse and neglect. The Central Council will not be involved in the preparation of litigation, but agrees to testify without subpoena in those cases where it has obtained direct information regarding child abuse and neglect.

4. Substitute Care Placements and Supervision. The Central Council, after jointly developing case plans with the Division, will recommend specific placements, whether they are with extended family members, or in foster or institutional care. All supervision of these placements will be provided by the Central Council. The Central Council will provide the Division with any forms, records and reports the Division deems necessary to fulfill its responsibilities.

5. Foster and Adoptive Homes Licensing Services. The Central Council agrees to recruit, prepare licensing studies and conduct reviews for foster and adoptive homes in all communities named in this agreement. The Central Council agrees to follow any and all procedures established by the Division.

V. SERVICES TO BE PROVIDED BY THE DIVISION

1. Investigation of Reported Cases of Child Abuse and Neglect. The Division will investigate all reported cases of child abuse and neglect and follow through with all appropriate litigation. The Division agrees to advise the Central Council of any legal actions it is taking in respect to all such cases in Kake and Hoonah, and in any cases involving Alaska Native children on Prince of Wales Island.

The Division agrees to request assistance regarding emergency placements of Children in Need of Aid if at all possible. If emergency placement must proceed without the involvement of Central Council, the Division agrees to notify the Central Council within forty-eight (48) hours, unless prevented by communication difficulties.

2. Counseling and Advocacy Services. The Division agrees to provide counseling and advocacy services to non-Native clients on Prince of Wales Island.
3. Prevention and Community Organization. The Division agrees to coordinate prevention and community organization activities regarding issues of child abuse and neglect with the Central Council. In each community the appropriate Division and Central Council workers will together organize and facilitate community groups according to the PROGRAM NARRATIVE (IV. 2. above). The Central Office will participate in the evaluation process, as described in the PROGRAM NARRATIVE.
4. Foster and Adoptive Home Licensing. Upon approval of foster and adoptive home studies, submitted by the Central Council, the Division will issue the appropriate licenses to these homes.
5. Orientation. The Division will provide orientation to the Central Council staff involved in the agreement. This orientation will include information regarding the Division's responsibilities for child protection as they are set forth in Alaska statutes and regulations, and in Division policies and manuals.

VI. CONFIDENTIALITY

The Central Council agrees to follow confidentiality procedures as developed by the Division.

VII. FAIR HEARINGS

The Central Council agrees to comply with procedures concerning Fair Hearings as developed by the Division.

VIII. FINANCIAL RESPONSIBILITIES

1. Central Council.

- A. Staff. The Central Council agrees to meet all costs related to the participation of the Central Council staff involved in this agreement, including salaries and benefits, travel, supervision and overhead (office space, utilities, supplies, etc.).
- B. Evaluation. The Central Council agrees to meet the travel and per diem costs of selected community members participating in the evaluation meeting in Juneau, as described in the PROGRAM NARRATIVE.

2. Division.

- A. Staff. The Division agrees to meet all costs related to the participation of Division personnel involved in this agreement, including salaries and benefits, travel supervision and overhead.
- B. Court Related Costs. The Division absolves the Central Council from any and all court related costs the Division may accrue in fulfilling its responsibilities as the party conducting investigations and preparing for Child In Need of Aid Proceedings. This would include client and witness travel costs.
- C. Substitute Care Payments. The Division agrees to pay all costs related to vendor payments to foster homes, adoptive homes and institutions.

IX. APPROVAL

The following in their representative capacities hereby approve the agreement.

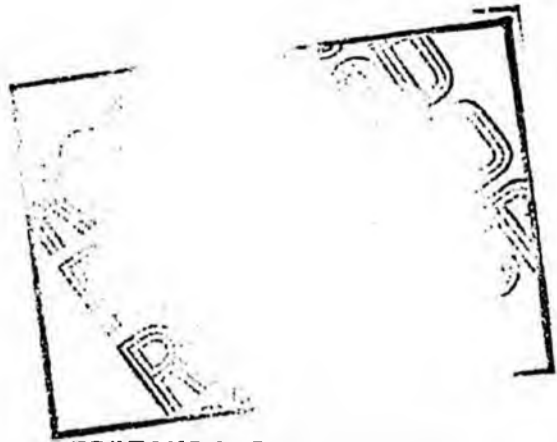
Edward K. Thomas November 26, 1984
Edward K. Thomas, President Date
Central Council of Tlingit and
Haida Indian Tribes of Alaska

Gus Adams 11-27-84
Gus Adams, Executive Director Date
Central Council of Tlingit and
Haida Indian Tribes of Alaska

Arthur C. Holmberg 11-27-84
Arthur C. Holmberg, Director Date
Department of Human Services
Central Council of Tlingit and
Haida Indian Tribes of Alaska

Michael Price, Director Date
Division of Family and Youth
Services
Department of Health and
Social Services
State of Alaska

Katherine Tibbles December 7, 1984
Katherine Tibbles Date
Regional Manager
Division of Family and Youth
Services
Department of Health and
Social Services
State of Alaska



MEMORANDUM OF UNDERSTANDING BETWEEN
UNITED CROW BAND AND
DIVISION OF FAMILY AND YOUTH SERVICES

WHEREAS, the Division of Family and Youth Services of the State of Alaska, Northern Regional Office (hereafter "DFYS-NRO") has the responsibility of administering the State's programs for child welfare services in the Interior under AS 44.29.020; and

WHEREAS, DFYS has the responsibility of furthering the public policies enunciated in AS 47.05.050 and AS 47.05.060, and in pursuit of these goals is authorized to accept offers of assistance from, and enter into agreements with, appropriate agencies; and

WHEREAS, the United Crow Band, Inc., is a non-profit agency which has been requested by the Village Councils of the Native Villages of Northway, Tetlin, Mentasta, and Tanacross, and by the Tok Native Association, (hereafter "the Villages") to assist them in protecting the best interests of Native children and promoting the stability and security of Native families; and

WHEREAS, both United Crow Band, Inc. and DFYS-NRO are anxious to cooperate with each other towards their mutual goals of protecting the best interests of Native children, establishing a more effective provision of child protection services, and promoting the stability and security of Native families and villages;

THEREFORE, DFYS-NRO and the United Crow Band enter into the following Memorandum of Understanding.



I. FORMATION AND PURPOSES OF COORDINATING COMMITTEE.

The United Crow Band and DFYS-NRO agree to form a Coordinating Committee to provide the DFYS-NRO with consultation regarding the child welfare matters listed herein, including but not limited to decisions to seek legal or physical custody of Native children; consultation regarding placement decisions and practices affecting Native children; and assistance in home-finding efforts. This consultation and assistance will be delivered to help the DFYS-NRO identify the most appropriate course of service delivery, ensure compliance with the Indian Child Welfare Act, and explore the most appropriate placement when such is required.

II. MEMBERSHIP.

The coordinating Committee shall be composed of between one and three representatives of United Crow Band, to be selected by its Executive Director, and between one and three representatives of DFYS-NRO, to be selected by the head of its Regional Office. Attendance by at least one representative of each organization shall constitute a quorum. Attendance by other individuals or agency representatives for all or part of any meeting may be permitted upon mutual consent of the representatives of both organizations, with the understanding that any such attendance shall be subject to the same rules of confidentiality as apply to United Crow Band and DFYS-NRO.

III. MEETINGS.

The Coordinating Committee shall hold regular monthly meetings at a time and place to be designated by its members.

Special meetings can be called by mutual consent of both organizations. Both organizations will cooperate in arranging telephonic communication when in-person meetings are impracticable, or when time limitations require a decision before a meeting can be scheduled. The Committee will designate one individual to keep records of Committee meetings, including cases discussed and Committee recommendations.

IV. ADVISEMENT AND CONSULTATION.

A. Generally.

The parties recognize that confidentiality requirements may in instances limit the ability of DFYS-NRO to share information with United Crow Band. This agreement is intended to lay out the general parameters of information-sharing, leaving specific details to be worked out on a case-by-case basis.

B. Involuntary Proceedings.

In situations where DFYS-NRO assumes custody, including emergency custody, of a child who is a member of a village within the service area of United Crow Band, DFYS-NRO agrees, for purposes of consultation, to advise United Crow Band of such action, in advance whenever possible, and further to advise United Crow Band in advance whenever possible of any court hearing scheduled in the matter under AS 47.10.142(d). Failure to comply with this paragraph does not restrict DFYS-NRO from proceeding under AS 47.10.142(d).

C. Voluntary Proceedings.

In voluntary relinquishment or foster care cases, DFYS-NRO agrees that, prior to obtaining the consent of the parent

of a Native child within the service area of United Crow Band to relinquishment of parental rights or to foster care, DFYS-NRO will encourage the appropriate individuals to grant permission to disclose information to the Coordinating Committee, and, whether or not such permission is forthcoming, DFYS-NRO will inform the individuals of the availability of counseling and other services from United Crow Band. In the event that such permission is not forthcoming, DFYS-NRO will only inform United Crow Band of the existence of the case, of such non-identifying information as DFYS-NRO is allowed to reveal, and of the fact that the possibility of obtaining services with United Crow Band was explained to the individual and declined.

D. Changes in status of children committed to DFYS or in foster care.

In cases in which DFYS-NRO has custody of a child, the Coordinating Committee will be regarded as a source of consultation and services for DFYS-NRO and information will be shared accordingly, absent circumstances tending to the contrary. For cases in which a child is voluntarily committed to foster care, the procedures of paragraph (C) will be followed prior to a change in status. Consultation will occur prior to changes in placement, except in emergencies.

E. Adoption Investigation.

DFYS-NRO will, absent circumstances tending to the contrary, either engage the assistance of United Crow Band, Inc., as a cooperating agency in the preparation of the report, or encourage the court to utilize directly the services of United Crow Band, Inc., in cases involving Native children or parents

within the United Crow Band service area, except to the extent that a consenting parent has requested anonymity under 25 U.S.C. 1915(c).

F. Licensing and Placement of Children in Foster Homes.

The Coordinating Committee will be advised of any applications for foster home licenses, or any renewals, or revocations of such licenses, as to foster homes within the United Crow Band service area.

V. CONFIDENTIALITY.

A. Access to Information.

When the Coordinating Committee is consulted in a particular case, DFYS will provide members of the Committee with access to its information on the case to the maximum extent allowed by law & regulation.

B. Confidentiality Standards.

All persons acquiring information under the agreement shall be bound by the same standards of confidentiality as DFYS-NRO. All applicable state laws and regulations on this point will be adhered to. In the event of any ambiguity as to whether disclosure of a piece of information supplied to a committee member under this agreement is permissible, it is agreed that the question will be referred to DFYS-NRO and its decision on the matter will be controlling.

VI. UNITED CROW BAND SERVICES.

A. Home-finding efforts.

United Crow Band agrees to search and recruit for suitable homes within its service area to meet the placement preferences of 25 U.S.C. 1915.

B. Provision of supportive and remedial services.

Wherever possible, United Crow Band will assist the Coordinating Committee in providing supportive and remedial services to Native families within the United Crow Band service area.

C. Reporting of child abuse and neglect.

United Crow Band agrees that, when in the course of its performance of its duties under this memorandum or in the course of its provision of other family support services, a situation is brought to its attention in which a child is suspected to have suffered harm as a result of abuse or neglect, this will be immediately reported to DHSS.

D. Liaison role.

United Crow Band agrees to act as a liaison between the Coordinating Committee and the Villages, as well as any other Native Village which seeks similar services from United Crow Band. United Crow Band agrees to convey any requests for information or assistance from or to the Villages, and specifically agrees that it will inquire as to whether the Villages are willing to be regarded as one unitary entity for purposes of the placement preferences listed in 25 U.S.C. 1915.

VII. TERMS AND CONDITIONS

A. Definitions.

"United Crow Band's service area" is to be construed to include any Native families enrolled in, or residing within the geographical area encompassed by, the Villages in Tanacross, Tok, Tetlin, Mentasta, or Northway, or residing within the area

commonly referred to as the Tetlin Reserve.

B. Termination.

Either of the parties to this agreement may terminate it, without cause, upon 30 days prior written notice to the other.

C. Order of Resolution.

It is agreed that any disputes under this agreement are to be resolved at the lowest echelon possible. For United Crow Band, the order of resolution is to progress from the Indian Welfare Act Specialist to the Executive Director. For DFYS, the order of resolution is to progress from the Delta Junction field office workers to the Field Office Supervisor in Fairbanks to the Regional Social Services Manager in Fairbanks.

D. Interpretation and Construction.

This agreement is to be liberally construed in the full spirit of cooperation, with the overriding goal that of protecting the best interests of Native children, establishing a more effective provision of child protective services, and promoting the stability and security of Native families and villages.

E. Effective Date.

This agreement becomes effective as of the date of the last signator.

3/16/84
DATE

Rose Woods
Rose Woods
Executive Director, United Crow Band

3/16/84
DATE

James G. Fox
James Fox
Regional Social Services Manager
Department of Family & Youth
Services, Northern Regional Office

HB 255

Frank Butthell

Mike Price - 4/23/86

Think this is the more appropriate vehicle to do business w/ the natives.

Interested in Duncan's bill - want to develop \$1 M grant program: → HB 686 -- in H. Fin.

□ - to native organizations in better carrying out ICWA.

OFF'S deals disproportionately w/ natives.

Intent: Build better relationship in working w/ these groups.

HB 255

Admin. supports & way it's written. Just short of raising sovereignty issue, but some people are fearful it's gone too far.

Grants w/ Maniilaq + Kawarek. } Vague, 'cause Agreement w/ Tlingit / Haida. } on advice of AG have been careful of sovereignty issue.

Native Villages of Stevens - may go to U.S. Supreme Ct: If there are agreements w/ native villages, state may have to recognize foster parents designated by Indian tribes. Set into what is a tribe & recognition of any courts they might have set up.

Becky Snow, AG, 46c - concerned



Price's
feeling: Wallis's intent = to better implement
ICWA. not sovereignty.

As a native tribe do you have
jurisdiction - are you a court?

Discretionary - so state can control.
If said shall enter into agreements,
would raise more sovereignty questions.

APR 21 1986

Bruce W. Campbell, Pres.
Box 82245
Fairbanks, Ak. 99708

Senator Bett, e Fahrenkamp
Pouch V
Juneau, Ak. 99811



**Tanana Valley Sportsmen's
Rifle & Pistol Club**

Dear Bettye,

I am writing to oppose the House Bill 255, which incorporates references to "Indian Tribes" and reasserts the role of the federal government in dealing with Native Alaskans as Native Americans. (An excellent discussion of this is available from our congressional delegation: "Alaska Native Claims Settlement Act of 1971: History and Analysis Together with Subsequent Amendments" by Richard S. Jones Analyst in American Government, Government Division, Congressional Research Service, Library of Congress.)

As a former Bush School Teacher (Noatak 76-77-78), I have often found it difficult to relate my day-to-day experiences to urban Fairbanksan's. I find other teachers have the same experience, we are either accused of being "racists" by those who have a "noble" view of the Alaskan Native, or are accepted as a fellow right-winger by those I despise as racists, but who also have already made their mind up on the "native issue".

My professional opinion on subsistence, for instance, is that the initiation of enforcement in the bush would slow the incidence of violent crime against wildlife, but would radically slow the ^{rate of} intrapersonal crime (sexual abuse, assault, child abuse, elder abuse, and especially suicide, etc.). I base my opinion on the importance of hunting to the rites of manhood, the difficulty with which an adult communicates to an oftentimes better educated youngster, the male dominance of family life in a village, and the present lack of any "authority" symbol ^{such as} ~~or sense of~~ the rule of law by which our culture abides.

Perhaps the enclosed articles from the Minneapolis Star Tribune will add depth to my opposition to HB 255, and any of the numercus ^{fragment} little efforts to establish sovereignty in Alaska.

Bruce W. Campbell

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465 3300

March 10, 1986

ANALYSIS OF SSHB 255
by the Alaska Department of Law

The purpose of HB 255 is to authorize the Department of Health and Social Services to enter into agreements with Native villages for implementation of the Indian Child Welfare Act, (ICWA), 25 U.S.C. § 1901 et seq. State-tribal agreements are specifically authorized by 25 U.S.C. § 1919(a). The language of HB 255 is taken directly from 25 U.S.C. § 1919(a).

As background, it should be noted that ICWA is one of the few federal statutes which authorizes Native entities to exercise tribal powers whether or not they exist on reservations. The definition of "Indian tribe" in ICWA explicitly adds Alaska Native Villages: "... including any Alaska Native village as defined in section 1602(c) of Title 43 [the Alaska Native Claims Settlement Act]." ICWA requires state court proceedings involving Native children to meet certain minimal standards, and it also authorizes tribal courts to exercise concurrent jurisdiction with state courts in certain cases involving Native children. HB 255 would authorize the Department of Health and Social Services to enter into agreements with tribes, i.e., Native villages, regarding care and placement of Native children and regarding jurisdiction of Native child custody proceedings.

Agreements on care and placement would include cooperative arrangements for foster care and for developing local provision for child welfare assistance. It could include provisions for cross-licensing of foster homes, for example, or such arrangements regarding contract foster homes or payments for foster care as the parties were able to negotiate.

Agreements on jurisdiction of Native child custody proceedings could deal with the complexities caused by the fact that over 200 Native villages exist in the state and that Native children may have connections to several villages. Methods need to be arrived at for sorting through such complications and deciding what notice and procedures are to be followed in particular cases. We note that this bill would not empower the Department of Health and Social Services to recognize the legal jurisdiction of tribal courts whose authority has not been legally established yet, nor would it permit DHSS to agree to limit the jurisdiction

of the state courts. That power is constitutionally vested in the legislature. Otherwise DHSS would have fairly broad discretion on which agreements to enter into and which to decline as not in the best interests of the state.

Because DHSS will necessarily be using its discretion in negotiating and deciding whether to enter into specific agreements, we support the bill as now amended. The proposed changes clarify that DHSS must consider the best interests of the state and the public in evaluating a proposed agreement and is not obligated to accept any agreement offered by a village without negotiating its terms.

In our opinion, HB 255, as amended by the sponsor substitute, merits the support of the Department of Law.

HAROLD M. BROWN
ATTORNEY GENERAL

By: 

Douglas K. Mertz
Assistant Attorney General

DKM:dlm

FEB 28 RECD

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 28, 1985

SUBJECT: Indian Child Welfare Act
(Work Order No. 14-0618)

TO: Representative Kay Wallis

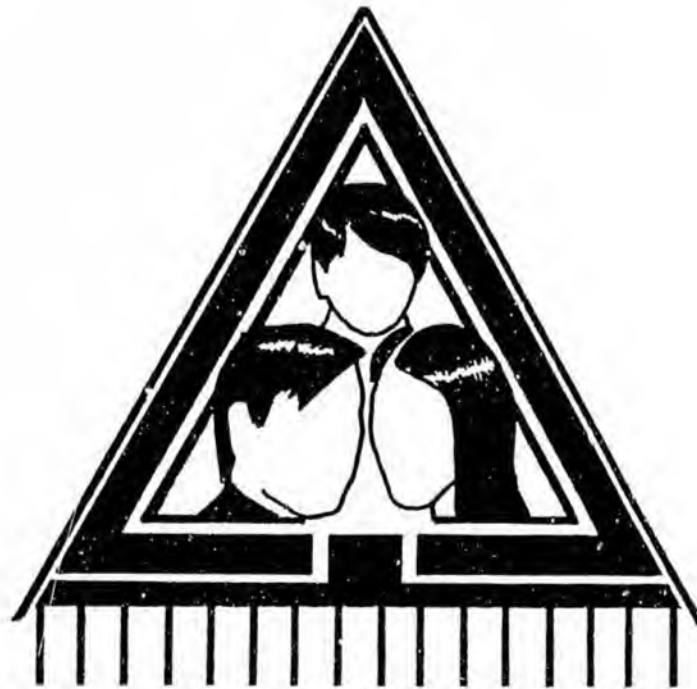
FROM: Michael F. Ford *M.F.*
Legislative Counsel

The bill draft you requested would authorize the Department of Health and Social Services to enter into agreements with Indian tribes concerning care, custody, and jurisdiction of Native children. This authority is already granted to the States by federal law under the Indian Child Welfare Act (25 U.S.C. 1919). Therefore the bill you have requested would not add to the authority of the State, but would merely mirror the existing federal statute. In this same manner, the use of the term "jurisdiction" in the bill draft does not give the State any more or less authority to act in a childrens' proceeding than exists under present law.

Please contact me if you have further questions on this matter.

MFF:ojb
J12/033

*Adoption
and the
American Indian
Child*



A manual for social service workers who are working with Indian child welfare cases in which adoption through a state court is being considered.

Adoption and the American Indian Child: A Manual for Social Service Workers

In 1978 a federal law, entitled the Indian Child Welfare Act, was enacted to address the alarmingly high rate at which American Indian children were being removed from their families for adoption and foster placement by nontribal public and private agencies. This law, which became known as the ICWA, focused on establishing standards which would work toward keeping Indian families intact and which would lessen the numbers of children being removed from their homes.

Since its enactment, the ICWA has generally been felt to have benefited Indian peoples by shifting emphasis towards strengthening and reconciling families. Indiscriminate removal of Indian children appears to have lessened dramatically.

But, paradoxically, with these positive changes comes a new concern. The Indian Child Welfare Act, it appears, is mistakenly being interpreted by many social service agencies as prohibiting the adoption of *any* Indian child. This mistaken notion, it is feared, will remove a viable means for providing a permanent living situation for the Indian child who, for whatever reason, cannot live with his/her parent(s) or extended family.

Adoptions, it is clear, continue to have value for Indian children in certain situations. Adoption, for example, is an appropriate option in cases where continued custody of a child by his/her parent* may result in serious emotional or physical damage to the child. It may also be appropriate when remedial services and rehabilitative programs have failed to prevent family breakup. Or it may be the chosen alternative when a child's parent feels unable to provide the type of nurturing, stable environment he/she wants the child to have.

*The word "parent" will be used in this brochure to mean any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established.

As part of its Linkages project to disseminate information on topics important to the welfare of American Indian children, the National American Indian Court Judges Association offers this brochure on the subject of adoption. The information provided is intended for social service personnel who are handling Indian child welfare cases in which adoption through a state court is being considered. Special effort is given to delineating the requirements which PL 95-608 (the Indian Child Welfare Act of 1978) imposes on the state adoption process.

The text was written by Louise Zokan delos Reyes, Child Welfare Specialist for the Division of Social Services, Bureau of Indian Affairs, Washington, DC. It has been arranged in the provided format by Linkages editor, Nancy Gale.

National American Indian Court Judges Association
1000 Connecticut Avenue, NW #401
Washington, DC 20036
(202) 296-0685

When necessary, social service workers may still select adoption as the option for some Indian children. When adoption is chosen for an Indian child, however, the social worker must assume certain added responsibilities. These include a willingness: to focus on the child's tribal affiliation(s); to pay careful attention to specific tribal cultural perceptions and preferences; and to vigorously work to assure that the mandates of the Indian Child Welfare Act are carefully followed.

The questions and answers offered in the following pages are intended to help social service personnel through the Indian adoption process in a state court. (Procedures for adoptions through a tribal court are determined by the codes of the individual tribal courts.)

HOW IS ADOPTION PERCEIVED BY INDIAN PEOPLE?

A social worker who is recommending adoption for an Indian child will be helped by anticipating the possible reactions such a suggestion may initially elicit from Indian people.

First, the worker should be aware that the U.S. concept of adoption, as it has been historically practiced with American Indian children, is not viewed favorably by Native American tribes. Indeed most tribes feel that, on the whole, the legal process, by which non-Indian peoples have until recently adopted Indian children, has been harmful to the children and tribes involved: a foreign means of separating Indian children from the families, communities, and cultures to which they belong.

In addition, the way most Indian people view the parent-child relationship is distinctly different than the way most of the rest of U.S. society views it. In the Anglo legal system on which U.S. law is built, a child who is to be adopted must first be severed from his parent through a legal process which terminates the parent/child rights. This severance relieves both the parent and the child from future obligations to one another and dissolves the child's family bonds.

Many Indian people do not accept the proposition that a parent-child relationship can be legally terminated or, if so terminated, that family ties would also be affected. Instead, most tribal people traditionally see the child as part of a large kinship system which involves multiple inter-relationships. These multiple relationships may supplement or complement the relationship between the biological parent and the child, but remain viable and intact regardless of what may happen between the parent and the child.

Accordingly, in most Indian tribes it is expected that a child who is not cared for by his/her biological parents will automatically be cared for by

other members of the kinship system. It is hard for traditional Indian people to understand the idea that responsibility for a child might have to be turned over to someone outside the "extended" family.

These expectations will make tribal people reluctant to accept adoption as an option for an Indian child *unless* it is clear that it is the best alternative. The social worker must, therefore, be prepared to demonstrate his/her reasons for suggesting adoption and must keep in mind that what Indian people see as best for their children will be influenced by cultural values which may be very different from those held by the social worker.

HOW DOES THE INDIAN CHILD WELFARE ACT ADDRESS ADOPTION?

The primary focus of the Indian Child Welfare Act is on establishing standards which help keep Indian families intact and prevent unnecessary out-of-home placement. However, the Act does recognize situations in which an Indian child would benefit by being placed in an alternative permanent living situation, such as that offered by adoption.

WHEN WOULD ADOPTION BE CONSIDERED APPROPRIATE UNDER THE ICWA?

Adoption is considered an appropriate course of action for an Indian child when all efforts at providing support services and/or rehabilitative programs to prevent separation of the family have failed and when an alternative permanent living situation is felt to be in the child's best interests.

In involuntary terminations of parental rights, evidence must, additionally, be presented to show that the continued custody of the child by his/her parent or Indian custodian is likely to result in serious emotional or physical damage to the child. In voluntary relinquishments, evidence must be provided that consent was given with full understanding of the consequences.

WHO IS CONSIDERED AN 'INDIAN CHILD'?

An Indian child is an unmarried person under 18 who is a tribal member, or is eligible for tribal membership and is the biological child of a member of an Indian tribe.

To determine if any specific child is an Indian child, the following information should be gathered: the child's name and birthdate; the names,

birthdates, and tribal affiliation of his/her biological parent; and some verification of the parent-child relationship by birth certificate or court order. This information should be presented directly to the tribe with which the child is known to be affiliate or, where that is not known, to a Bureau of Indian Affairs' Social Services Area Office, which will assist in determining the child's Indian heritage.

Social service workers seeking to establish an Indian child's tribal membership should be aware that each tribe establishes its own membership requirements and there is no comprehensive central listing of people who are of Indian heritage.

If a child is eligible for membership in more than one tribe, his/her tribe for purposes of the ICWA is the tribe with which he has the most significant contacts.

HOW IS AN INDIAN CHILD LEGALLY RELEASED FOR ADOPTION THROUGH A STATE COURT?

Adoption, in a state court system, is only an option for children where parental rights have been voluntarily or involuntarily terminated.

In a voluntary relinquishment, a child's parent gives consent to termination of his/her parental rights. In an involuntary termination, a state court decrees that the parent's rights to the child are terminated against the will of the parent or without his/her consent.

When parental rights to an Indian child are terminated in a state court, procedures prescribed by the Indian Child Welfare Act must be followed. These procedures differ depending upon whether the termination is voluntary or involuntary.

In both cases, ICWA procedures must be carefully followed or the adoption may be invalidated.

WHAT ARE THE ICWA REQUIREMENTS IN AN INVOLUNTARY TERMINATION OF PARENTAL RIGHTS?

When parental rights to an Indian child are terminated by a state court against the will of the parent, a very special procedure must be followed. This procedure is more involved than the one used to involuntarily terminate parental rights to a non-Indian child.

The first step in an involuntary termination proceeding involves verifying the child's Indian status. Whenever there is *any* suspicion that a child being considered for adoption may be Indian, a careful investigation must be undertaken to determine tribal membership. Such an investigation can be

time-consuming and frustrating because there is no central registry of Indian people. Help can, however, be obtained through the Bureau of Indian Affairs' Social Service Area Offices. (See section on *Who Is Considered An 'Indian Child'?* for more detail.)

Once the child's tribe has been identified, that tribe (and the child's parent or Indian custodian*) must be given written notice that proceedings involving termination of parental rights are being considered. They must also be informed that they have a right to intervene in these proceedings; and any time limitations for this intervention must be spelled out.

In addition, if the child's tribe operates a tribal court which is exercising jurisdiction over child welfare matters, the proceedings will be transferred to that court unless the tribal court or the child's parent objects or if good cause is shown to the state court to prevent the transfer.

If—after the above steps have been taken—the termination proceedings are retained in the state court, the party seeking termination must show that active efforts have been made to provide remedial services and rehabilitation to the family and that these efforts have failed. In addition, the state must prove that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. This latter charge must be supported by evidence beyond a reasonable doubt and by testimony of an expert witness.

WHAT ARE THE ICWA REQUIREMENTS IN A VOLUNTARY TERMINATION OF PARENTAL RIGHTS?

If a parent chooses to voluntarily give an Indian child for adoption through a state court, the consent to terminate parental rights must be given no earlier than ten days after the birth of the child. Such consent must, in addition, be executed in writing and recorded before a judge or magistrate of a court of competent jurisdiction. Further, the state court must certify that the terms and consequences of the consent were explained in detail in the language of the parent.

The consent should contain the name and birthdate of the Indian child; the child's tribal affiliation and any tribal enrollment or membership number; the name and address of the consenting parent; and the name and address of the person or agency which will arrange the adoptive or pre-adoptive placement.

*Indian custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

In a voluntary relinquishment procedure, the Indian child's parent may withdraw consent any time prior to a final decree of voluntary termination or adoption. The parent may do this by filing, with the state court, an instrument executed under oath stating his/her intention to withdraw consent. The clerk of court shall notify the party through whom the adoptive placement had been arranged, and the child shall be returned to the parent as soon as practicable.

Up to two years after the final decree of adoption, a parent who had voluntarily agreed to termination of his/her parental rights may withdraw consent on the grounds that such consent was obtained through fraud or duress and may subsequently petition the state court to vacate the adoption decree. Upon the filing of such a petition, the court must give notice to the interested parties and hold a hearing. If the court decides that fraud or duress was involved in the release, it must order the child returned to the petitioning parent.

In any voluntary relinquishment, the social service agency should assure that counseling is provided to the parent so he/she is well informed of his/her rights.

The parent should also be made aware that the adopted child, upon reaching 18, will be able to enroll as a tribal member and (unless confidentiality is requested by the biological parent), may be able to obtain information on the biological parents' names and tribal affiliations. (The ICWA is not an open-adoption law but it does provide for disclosure, upon request from the child once he/she is 18 or from the adoptive parents, of information necessary for the child's tribal enrollment. If an affidavit of confidentiality is included in the child's file, the Secretary of the Interior shall certify the information necessary for enrollment to the Indian child's tribe.)

WHO MAY ADOPT INDIAN CHILDREN?

The Indian Child Welfare Act outlines preferences for the kinds of families into which Indian children may be adopted under state law.

In the absence of good cause to the contrary, the Act states that preference shall be given to placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

Good cause to modify the above placement preferences is described in the November 1979 Federal Register's *Guidelines for State Courts* to include: (1) the requests (including requests for anonymity) of the parent or of the child when the child is of sufficient age; (2) the special physical or

emotional needs of the child as established by expert witness testimony; and (3) the unavailability, after a diligent search has been completed, of suitable placement families.

Tribes, on occasion, have established a different order of preference than the one set forth in the Act. The agency or court affecting a placement shall follow a tribally-amended preference order as long as the placement is to the least restrictive setting appropriate to the child's needs.

Standards for determining if the specific home is suitable as an adoptive home shall be the prevailing social and cultural standards of the community in which the parent or extended family resides or maintains cultural ties.

WHAT CONSTITUTES A DILIGENT SEARCH FOR A SUITABLE ADOPTIVE HOME?

A diligent search by a non-tribal placement agency seeking to meet the placement preference criteria set forth under the ICWA should begin with the Indian child's tribe. Here, the placement worker should speak with appropriate tribal social services and court personnel to determine what placement resources are available. Names and phone numbers for appropriate personnel can be obtained from the various BIA Area Offices, a listing of which is provided on page 10.

If no families satisfying the ICWA preference criteria can be found within the tribal setting, a review should be made of all relevant county and state adoptive resources to determine, first, if these resources list any adoptive families from the tribe involved and, second, if they list prospective Indian adoptive families from other tribes. (An Indian family is considered one in which at least one parent is a member of an Indian tribe or an Alaskan Native Regional Corporation.)

Regional and national adoption resource exchanges should also be contacted. A list of several organizations which maintain registers of prospective Indian adoptive families and children is provided on page 11. These organizations, in turn, can provide referral to other possible resources.

Throughout the search process, the non-tribal placement worker should maintain close contact with the appropriate tribal personnel. The tribe should be consulted as each stage in the search is undertaken. The worker should carefully document the search and record contacts made.

When an Indian home within the placement priorities cannot be found, the adoption should not be delayed unnecessarily. (Some professionals recommend that a search be no longer than six months.)

When the family chosen is not within the preference priorities identified

by the ICWA, the worker making the placement must clearly delineate the reasons for which the adoptive family was selected. A justification as to why the family best meets the needs of the waiting child should also be written. Appropriate tribal personnel may be asked to assist in this written documentation.

The placement worker must remember that the burden of proof, when an exception to the ICWA placement preferences is necessary, is on the worker. Clear documentation of a diligent search is protection, not only for the worker, but most important for the child so his/her placement is not at-risk for violation of the ICWA.

DOES A STATE HAVE ANY SPECIAL OBLIGATIONS ONCE AN INDIAN ADOPTION IS FINALIZED?

Yes, any state court that enters a final decree or order in an Indian adoptive placement is required by Section 301 of the Indian Child Welfare Act to file a copy of the order/decreed with the Secretary of the Interior.

This copy shall be accompanied by the following information: (1) the name and tribal affiliation of the child; (2) names and addresses of the biological parents; (3) names and addresses of the adoptive parents; and (4) the identity of any agency having information relative to the adoptive placement. If the court record contains an affidavit from the biological parents requesting that his/her identity remain confidential, the court shall include that as well.

In addition the Indian Child Welfare Act requires the state to take special action in cases where the adoption of an Indian child fails and the adoption decree is vacated or set aside. The action required involves notifying the biological parent or prior Indian custodian that he/she has the right to petition for return of the child. The parent or Indian custodian may waive their right to notice by executing a waiver of notice with the court.

HOW CAN AN ADOPTED INDIAN CHILD BECOME A MEMBER OF HIS/HER TRIBE?

When an adopted Indian child reaches age 18, he/she may apply to the court which entered his adoption or to the Secretary of the Interior to obtain information for tribal enrollment or for determining any rights or benefits which may be associated with that membership.

If the child's records contain an affidavit of confidentiality, the Secretary of the Interior shall certify to the tribe involved that, under the criteria established by that tribe, the child is eligible for membership.

WHAT RESOURCES ARE AVAILABLE?

Special resources may be available for Indian children or adoptive families. These may include subsidies through state or government programs to pay for legal adoption fees; medical or psychological costs related to the child's special needs; and/or maintenance costs for the adopted child. Resources may vary from state to state and from tribe to tribe.

If a social worker is unable to identify a subsidy or other needed resource for any particular Indian Child, he/she should contact a Bureau of Indian Affairs Social Service Area Office for assistance. The BIA office may be able to help identify an appropriate resource.

BUREAU OF INDIAN AFFAIRS AREA OFFICES

The Bureau of Indian Affairs Area Offices each serve BIA Agencies in a given area, which may include several states. The Agencies, in turn, serve a tribe or tribes. The list below provides mailing and telephone information for each Area Office and indicates the states served by each.

Aberdeen Area Office
Bureau of Indian Affairs
115 4th Avenue, S.E.
Aberdeen, SD 57401
(605) 225-0250
(NB, ND & SD)

Albuquerque Area Office
Bureau of Indian Affairs
536. Central Avenue, N.E.
P.O. Box 8327
Albuquerque, NM 87108
(505) 766-3321
(CO & NM)

Anadarko Area Office
Bureau of Indian Affairs
Federal Building
P.O. Box 368
Anadarko, OK 73005
(405) 247-6673
(KS & West OK)

Billings Area Office
Bureau of Indian Affairs
316 North 26th Street
Billings, MT 59101
(406) 657-6651
(MT & WY)

Eastern Area Office
Bureau of Indian Affairs
1951 Constitution Avenue, N.W.
Washington, D.C. 20245
(703) 235-2794
(NY, NC, LA, MS & FL)

Juneau Area Office
Bureau of Indian Affairs
Federal Building
P.O. Box 3-8000
Juneau, AK 99801
(907) 566-7209
(AK)

Minneapolis Area Office
Bureau of Indian Affairs
831 Second Avenue, So.
Minneapolis, MN 55402
(612) 349-3607
(MN, IA, MI & WI)

Muskogee Area Office
Bureau of Indian Affairs
Federal Building
Muskogee, OK 74401
(918) 687-2507
(East OK)

Navajo Area Office
Bureau of Indian Affairs
Window Rock, AZ 86515
(602) 871-5151
(Navajo Reservation Only)

Phoenix Area Office
Bureau of Indian Affairs
3030 N. Central/P.O. Box 7007
Phoenix, AZ 85011
(602) 241-2261
(AZ, NV & VT)

Portland Area Office
Bureau of Indian Affairs
1425 Irving St., N.E.
P.O. Box 3785
Portland, OR 97208
(503) 231-6785
(OR, WA & ID)

Sacramento Area Office
Bureau of Indian Affairs
Federal Office Building
2800 Cottage Way
Sacramento, CA 95825
(916) 978-4691
(CA)

(the needs program office)

ADOPTION RESOURCES SPECIFIC TO INDIAN CHILDREN

The following is a listing of agencies and organizations which sponsor an adoption-related program or component which focuses specifically on Indian children and/or families.

Additional Indian-specific resources may be identified through your state social service department and the Bureau of Indian Affairs Area Office serving your area.

Organizations which maintain a national register of both prospective Native American families and children

American Indian Program
Friends of Children of Various Nations
600 Gilpin Street
Denver, Colorado 80218 (303) 321-8251

Indian Child Adoption Network
Seattle Indian Center
2222 Second Avenue
Seattle, Washington 98121 (206) 624-8700

Native American Adoption Resource Exchange
Council of Three Rivers
200 Charles Street
Dorseyville, PA 15238 (412) 782-4457

Organizations which maintain a national register of prospective Native American adoptive families

Indian Adoptive Family Circle
New Mexico Adoptive Family Circle
New Mexico Department of Human Services, Adoptions
P.O. Box 2349
Santa Fe, New Mexico 87503-2348 (505) 827-4109

Rocky Mountain Adoption Exchange
5350 Leetsdale Drive, Suite #10
Denver, Colorado 80222 (303) 333-0845

Organizations which maintain regional registers of prospective Native American adoptive families and/or children

Fos-Adopt Program
The Urban Indian Child Resource Center
390 Euclid Avenue
Oakland, California 94610 (415) 832-2386

Maintains a listing of prospective Indian adoptive families in Northern California, particularly the San Francisco Bay Area.

Rocky Mountain Adoption Exchange
5350 Leetsdale Drive, Suite #10
Denver, Colorado 80222

(303) 333-0845

Maintains a listing of American Indian children, from a five-state area, who are available for adoption. The states include Colorado, New Mexico, South Dakota, Utah and Wyoming.

Organizations which provide similar services and which are not included in the above listing, are asked to contact: Louise Zokan delos Reyes, Division of Social Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW, Washington, DC 20245. Telephone: (202) 343-6434.

This brochure was published by the *Linkages* project of the National American Indian Court Judges Association with funds from the Children's Bureau, Administration for Children, Youth and Families, Office of Human Development Services, U.S. Department of Health and Human Services. Copies may be obtained, including mailing costs, from the National Indian Law Library, 1506 Broadway, Denver, Colorado 80302.

Hector Sanchez, Project Officer
Homer Bluehouse, Project Director
Nancy Gale, Linkages Editor

August 1985



**National American Indian
Court Judges Association**

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Washington, DC 20036

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201 1ST AVE.,
FAIRBANKS AK 99701

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 255
 Title : An Act authorizing the Department of Health & Social Services to enter into agreements concerning Native Children.
 Sponsor : _____
 Requestor : _____
 Date of Request : 2/24/86

FISCAL DETAIL

Agency Affected : Health & Social Services
 BRU : Social Services
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL		-0-	-0-	-0-	-0-	-0-
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REVENUE		-0-	-0-	-0-	-0-	-0-
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FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL			-0-	-0-	-0-	-0-

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by : Michael V. Price, Director Phone : 465-3170
 Division : Family and Youth Services Date : 2/24/86

Approved by Commissioner : John R. Pugh Date : _____
 Agency : Department of Health & Social Services

- Distribution (by Agency preparing fiscal note):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

604 BARNETTE ST., RM 228
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

March 30, 1983

Mike Walleri
Tanana Chiefs Conference
Building 201 - First Avenue
Fairbanks, Alaska 99701

Dear Mike:


Many months ago you sent me a draft of a "109-Agreement" that you have been working on with the villages in your region. Jim Fox responded with some Division of Family and Youth Services' concerns. I have not responded previously because the Department of Law does not have a settled position on negotiation of Section 109 agreements.

At this point, in fact, we recognize that there has been no enabling legislation enacted by the State of Alaska which would authorize any State agency to enter into such an agreement with a village or an entity such as Tanana Chiefs Conference. Until such legislation is enacted setting the limits of any such authority, we feel that it would be impossible to enter into good faith negotiations on the substance of such an agreement. Thus, while I would suggest ordinarily that the proper process for arriving at such an agreement would be for a representative of the villages and/or Tanana Chiefs Conference to sit down with a representative of the Division of Family and Youth Services and a representative of the Department of Law, regretfully at this time I cannot offer to participate in such negotiations. Please be assured that should the necessary enabling legislation be enacted, we would be very willing to sit down with anyone designated by the villages to work on such an agreement.

Very truly yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


D. Rebecca Snow
Assistant Attorney General

DRS:bsw

cc: Ron Lorensen
Deputy Attorney General

TOBY GROSSMAN, Director

University of New Mexico
Indian Law Center
Domestic Relations
Albuquerque, NM 87131

"Certain states, including New Mexico, have just simply added the word 'tribe' to their definitions of public agencies, and then continue with the language that public agencies may enter into agreements with the state. They have, strictly by definition, added 'tribes' so that states can enter into intergovernmental agreements with the state that either party wishes. North Dakota has a specific chapter entitled 'agreements between public agencies and Indian tribes' ...I'm happy to see that Alaska is seeking to provide enabling legislation to at least enact the intent of the Indian Child Welfare Act. There are a number of agreements in affect already that are working well or being negotiated."

LLOYD MILLER, Partner

Law Offices of Sonosky, Chambers & Sachse
2550 Denali, Suite 1500
Anchorage, AK

"I am testifying today on behalf of the Tanana IRA Councils, and the Aleut Community of St. Paul Island, two federally recognized Native American tribes, as well as the Aleutian-Pribilof Island Association, Copper River Native Association, and Kawuruk, Inc., three nonprofit organizations providing social services in various parts of the State. I'm here to testify in support of the bill. I have not seen the substitute mentioned by Representative Wallis; I'm speaking to the bill as introduced. Sect. 109 authorizes agreements between states and Indian tribes. The state AG has offered his opinion that enabling legislation is required of such agreements. This legislation will clear the way for these agreements and we therefore wish to express our support for it and urge the Committee to pass it."