

Calendar No. 541

104TH CONGRESS
2D Session

S. 1962

[Report No. 104-335]

A BILL

To amend the Indian Child Welfare Act of 1978,
and for other purposes.

JULY 26, 1996

Reported without amendment

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2D SESSION**S. 1962****[Report No. 104–335]**

To amend the Indian Child Welfare Act of 1978, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 16, 1996

Mr. MCCAIN (for himself, Mr. INOUE, Mr. GLENN, Mr. THOMAS, Mr. DOMENICI, Mrs. KASSEBAUM, Mr. COCHRAN, Mr. MURKOWSKI, Mr. CAMPBELL, Mr. SIMON, and Mr. DORGAN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

JULY 26, 1996

Reported by Mr. MCCAIN, without amendment

A BILL

To amend the Indian Child Welfare Act of 1978, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Indian Child Welfare Act Amendments of 1996”.

1 (b) REFERENCES.—Whenever in this Act an amend-
 2 ment or repeal is expressed in terms of an amendment
 3 to or repeal of a section or other provision, the reference
 4 shall be considered to be made to a section or other provi-
 5 sion of the Indian Child Welfare Act of 1978 (25 U.S.C.
 6 1901 et seq.).

7 **SEC. 2. EXCLUSIVE JURISDICTION.**

8 Section 101(a) (25 U.S.C. 1911(a)) is amended—

9 (1) by inserting “(1)” after “(a)”; and

10 (2) by striking the last sentence and inserting
 11 the following:

12 “(2) An Indian tribe shall retain exclusive jurisdiction
 13 over any child custody proceeding that involves an Indian
 14 child, notwithstanding any subsequent change in the resi-
 15 dence or domicile of the Indian child, in any case in which
 16 the Indian child—

17 “(A) resides or is domiciled within the reserva-
 18 tion of the Indian tribe and is made a ward of a
 19 tribal court of that Indian tribe; or

20 “(B) after a transfer of jurisdiction is carried
 21 out under subsection (b), becomes a ward of a tribal
 22 court of that Indian tribe.”.

23 **SEC. 3. INTERVENTION IN STATE COURT PROCEEDINGS.**

24 Section 101(c) (25 U.S.C. 1911(c)) is amended by
 25 striking “In any State court proceeding” and inserting

1 “Except as provided in section 103(e), in any State court
2 proceeding”.

3 **SEC. 4. VOLUNTARY TERMINATION OF PARENTAL RIGHTS.**

4 Section 103(a) (25 U.S.C. 1913(a)) is amended—

5 (1) by inserting “(1)” before “Where”;

6 (2) by striking “foster care placement” and in-
7 serting “foster care or preadoptive or adoptive place-
8 ment”;

9 (3) by striking “judge’s certificate that the
10 terms” and inserting the following: “judge’s certifi-
11 cate that—

12 “(A) the terms”;

13 (4) by striking “or Indian custodian.” and in-
14 serting “or Indian custodian; and”;

15 (5) by inserting after subparagraph (A), as des-
16 ignated by paragraph (3) of this subsection, the fol-
17 lowing new subparagraph:

18 “(B) any attorney or public or private agency
19 that facilitates the voluntary termination of parental
20 rights or preadoptive or adoptive placement has in-
21 formed the natural parents of the placement options
22 with respect to the child involved, has informed
23 those parents of the applicable provisions of this
24 Act, and has certified that the natural parents will

1 be notified within 10 days of any change in the
2 adoptive placement.”;

3 (6) by striking “The court shall also certify”
4 and inserting the following:

5 “(2) The court shall also certify”;

6 (7) by striking “Any consent given prior to,”
7 and inserting the following:

8 “(3) Any consent given prior to,”; and

9 (8) by adding at the end the following new
10 paragraph:

11 “(4) An Indian custodian who has the legal authority
12 to consent to an adoptive placement shall be treated as
13 a parent for the purposes of the notice and consent to
14 adoption provisions of this Act.”.

15 **SEC. 5. WITHDRAWAL OF CONSENT.**

16 Section 103(b) (25 U.S.C. 1913(b)) is amended—

17 (1) by inserting “(1)” before “Any”; and

18 (2) by adding at the end the following new
19 paragraphs:

20 “(2) Except as provided in paragraph (4), a consent
21 to adoption of an Indian child or voluntary termination
22 of parental rights to an Indian child may be revoked, only
23 if—

24 “(A) no final decree of adoption has been en-
25 tered; and

1 “(B)(i) the adoptive placement specified by the
2 parent terminates; or

3 “(ii) the revocation occurs before the later of
4 the end of—

5 “(I) the 180-day period beginning on the
6 date on which the Indian child’s tribe receives
7 written notice of the adoptive placement pro-
8 vided in accordance with the requirements of
9 subsections (c) and (d); or

10 “(II) the 30-day period beginning on the
11 date on which the parent who revokes consent
12 receives notice of the commencement of the
13 adoption proceeding that includes an expla-
14 nation of the revocation period specified in this
15 subclause.

16 “(3) The Indian child with respect to whom a revoca-
17 tion under paragraph (2) is made shall be returned to the
18 parent who revokes consent immediately upon an effective
19 revocation under that paragraph.

20 “(4) Subject to paragraph (6), if, by the end of the
21 applicable period determined under subclause (I) or (II)
22 of paragraph (2)(B)(ii), a consent to adoption or voluntary
23 termination of parental rights has not been revoked, be-
24 ginning after that date, a parent may revoke such a con-
25 sent only—

1 “(A) pursuant to applicable State law; or

2 “(B) if the parent of the Indian child involved
3 petitions a court of competent jurisdiction, and the
4 court finds that the consent to adoption or voluntary
5 termination of parental rights was obtained through
6 fraud or duress.

7 “(5) Subject to paragraph (6), if a consent to adop-
8 tion or voluntary termination of parental rights is revoked
9 under paragraph (4)(B), with respect to the Indian child
10 involved—

11 “(A) in a manner consistent with paragraph
12 (3), the child shall be returned immediately to the
13 parent who revokes consent; and

14 “(B) if a final decree of adoption has been en-
15 tered, that final decree shall be vacated.

16 “(6) Except as otherwise provided under applicable
17 State law, no adoption that has been in effect for a period
18 longer than or equal to 2 years may be invalidated under
19 this subsection.”.

20 **SEC. 6. NOTICE TO INDIAN TRIBES.**

21 Section 103(c) (25 U.S.C. 1913(c)) is amended to
22 read as follows:

23 “(c)(1) A party that seeks the voluntary placement
24 of an Indian child or the voluntary termination of the pa-
25 rental rights of a parent of an Indian child shall provide

1 written notice of the placement or proceeding to the Indian
2 child's tribe. A notice under this subsection shall be sent
3 by registered mail (return receipt requested) to the Indian
4 child's tribe, not later than the applicable date specified
5 in paragraph (2) or (3).

6 “(2)(A) Except as provided in paragraph (3), notice
7 shall be provided under paragraph (1) in each of the fol-
8 lowing cases:

9 “(i) Not later than 100 days after any foster
10 care placement of an Indian child occurs.

11 “(ii) Not later than 5 days after any
12 preadoptive or adoptive placement of an Indian
13 child.

14 “(iii) Not later than 10 days after the com-
15 mencement of any proceeding for a termination of
16 parental rights to an Indian child.

17 “(iv) Not later than 10 days after the com-
18 mencement of any adoption proceeding concerning
19 an Indian child.

20 “(B) A notice described in subparagraph (A)(ii) may
21 be provided before the birth of an Indian child if a party
22 referred to in paragraph (1) contemplates a specific adop-
23 tive or preadoptive placement.

24 “(3) If, after the expiration of the applicable period
25 specified in paragraph (2), a party referred to in para-

1 graph (1) discovers that the child involved may be an In-
 2 dian child—

3 “(A) the party shall provide notice under para-
 4 graph (1) not later than 10 days after the discovery;
 5 and

6 “(B) any applicable time limit specified in sub-
 7 section (e) shall apply to the notice provided under
 8 subparagraph (A) only if the party referred to in
 9 paragraph (1) has, on or before commencement of
 10 the placement, made reasonable inquiry concerning
 11 whether the child involved may be an Indian child.”.

12 **SEC. 7. CONTENT OF NOTICE.**

13 Section 103(d) (25 U.S.C. 1913(d)) is amended to
 14 read as follows:

15 “(d) Each written notice provided under subsection
 16 (c) shall contain the following:

17 “(1) The name of the Indian child involved, and
 18 the actual or anticipated date and place of birth of
 19 the Indian child.

20 “(2) A list containing the name, address, date
 21 of birth, and (if applicable) the maiden name of each
 22 Indian parent and grandparent of the Indian child,
 23 if—

24 “(A) known after inquiry of—

1 “(i) the birth parent placing the child
2 or relinquishing parental rights; and

3 “(ii) the other birth parent (if avail-
4 able); or

5 “(B) otherwise ascertainable through other
6 reasonable inquiry.

7 “(3) A list containing the name and address of
8 each known extended family member (if any), that
9 has priority in placement under section 105.

10 “(4) A statement of the reasons why the child
11 involved may be an Indian child.

12 “(5) The names and addresses of the parties in-
13 volved in any applicable proceeding in a State court.

14 “(6)(A) The name and address of the State
15 court in which a proceeding referred to in paragraph
16 (5) is pending, or will be filed; and

17 “(B) the date and time of any related court
18 proceeding that is scheduled as of the date on which
19 the notice is provided under this subsection.

20 “(7) If any, the tribal affiliation of the prospec-
21 tive adoptive parents.

22 “(8) The name and address of any public or
23 private social service agency or adoption agency in-
24 volved.

1 “(9) An identification of any Indian tribe with
2 respect to which the Indian child or parent may be
3 a member.

4 “(10) A statement that each Indian tribe iden-
5 tified under paragraph (9) may have the right to in-
6 tervene in the proceeding referred to in paragraph
7 (5).

8 “(11) An inquiry concerning whether the Indian
9 tribe that receives notice under subsection (c) in-
10 tends to intervene under subsection (e) or waive any
11 such right to intervention.

12 “(12) A statement that, if the Indian tribe that
13 receives notice under subsection (c) fails to respond
14 in accordance with subsection (e) by the applicable
15 date specified in that subsection, the right of that
16 Indian tribe to intervene in the proceeding involved
17 shall be considered to have been waived by that In-
18 dian tribe.”.

19 **SEC. 8. INTERVENTION BY INDIAN TRIBE.**

20 Section 103 (25 U.S.C. 1913) is amended by adding
21 at the end the following new subsections:

22 “(e)(1) The Indian child’s tribe shall have the right
23 to intervene at any time in a voluntary child custody pro-
24 ceeding in a State court only if—

1 “(A) in the case of a voluntary proceeding to
2 terminate parental rights, the Indian tribe filed a
3 notice of intent to intervene or a written objection
4 to the termination, not later than 30 days after re-
5 ceiving notice that was provided in accordance with
6 the requirements of subsections (c) and (d); or

7 “(B) in the case of a voluntary adoption pro-
8 ceeding, the Indian tribe filed a notice of intent to
9 intervene or a written objection to the adoptive
10 placement, not later than the later of—

11 “(i) 90 days after receiving notice of the
12 adoptive placement that was provided in accord-
13 ance with the requirements of subsections (c)
14 and (d); or

15 “(ii) 30 days after receiving a notice of the
16 voluntary adoption proceeding that was pro-
17 vided in accordance with the requirements of
18 subsections (c) and (d).

19 “(2)(A) Except as provided in subparagraph (B), the
20 Indian child’s tribe shall have the right to intervene at
21 any time in a voluntary child custody proceeding in a State
22 court in any case in which the Indian tribe did not receive
23 written notice provided in accordance with the require-
24 ments of subsections (c) and (d).

1 “(B) An Indian tribe may not intervene in any vol-
2 untary child custody proceeding in a State court if the
3 Indian tribe gives written notice to the State court or any
4 party involved of—

5 “(i) the intent of the Indian tribe not to inter-
6 vene in the proceeding; or

7 “(ii) the determination by the Indian tribe
8 that—

9 “(I) the child involved is not a member of,
10 or is not eligible for membership in, the Indian
11 tribe; or

12 “(II) neither parent of the child is a mem-
13 ber of the Indian tribe.

14 “(3) If an Indian tribe files a motion for intervention
15 in a State court under this subsection, the Indian tribe
16 shall submit to the court, at the same time as the Indian
17 tribe files that motion, a certification that includes a state-
18 ment that documents, with respect to the Indian child in-
19 volved, the membership or eligibility for membership of
20 that Indian child in the Indian tribe under applicable trib-
21 al law.

22 “(f) Any act or failure to act of an Indian tribe under
23 subsection (e) shall not—

24 “(1) affect any placement preference or other
25 right of any individual under this Act;

1 “(2) preclude the Indian tribe of the Indian
2 child that is the subject of an action taken by the
3 Indian tribe under subsection (e) from intervening in
4 a proceeding concerning that Indian child if a pro-
5 posed adoptive placement of that Indian child is
6 changed after that action is taken; or

7 “(3) except as specifically provided in sub-
8 section (e), affect the applicability of this Act.

9 “(g) Notwithstanding any other provision of law, no
10 proceeding for a voluntary termination of parental rights
11 or adoption of an Indian child may be conducted under
12 applicable State law before the date that is 30 days after
13 the Indian child’s tribe receives notice of that proceeding
14 that was provided in accordance with the requirements of
15 subsections (c) and (d).

16 “(h) Notwithstanding any other provision of law (in-
17 cluding any State law)—

18 “(1) a court may approve, as part of an adop-
19 tion decree of an Indian child, an agreement that
20 states that a birth parent, an extended family mem-
21 ber, or the Indian child’s tribe shall have an enforce-
22 able right of visitation or continued contact with the
23 Indian child after the entry of a final decree of
24 adoption; and

1 “(2) the failure to comply with any provision of
 2 a court order concerning the continued visitation or
 3 contact referred to in paragraph (1) shall not be
 4 considered to be grounds for setting aside a final de-
 5 cree of adoption.”.

6 **SEC. 9. FRAUDULENT REPRESENTATION.**

7 Title I of the Indian Child Welfare Act of 1978 is
 8 amended by adding at the end the following new section:

9 **“SEC. 114. FRAUDULENT REPRESENTATION.**

10 “(a) IN GENERAL.—With respect to any proceeding
 11 subject to this Act involving an Indian child or a child
 12 who may be considered to be an Indian child for purposes
 13 of this Act, a person, other than a birth parent of the
 14 child, shall, upon conviction, be subject to a criminal sanc-
 15 tion under subsection (b) if that person—

16 “(1) knowingly and willfully falsifies, conceals,
 17 or covers up by any trick, scheme, or device, a mate-
 18 rial fact concerning whether, for purposes of this
 19 Act—

20 “(A) a child is an Indian child; or

21 “(B) a parent is an Indian; or

22 “(2)(A) makes any false, fictitious, or fraudu-
 23 lent statement, omission, or representation; or

24 “(B) falsifies a written document knowing that
 25 the document contains a false, fictitious, or fraudu-

1 lent statement or entry relating to a material fact
2 described in paragraph (1).

3 “(b) CRIMINAL SANCTIONS.—The criminal sanctions
4 for a violation referred to in subsection (a) are as follows:

5 “(1) For an initial violation, a person shall be
6 fined in accordance with section 3571 of title 18,
7 United States Code, or imprisoned not more than 1
8 year, or both.

9 “(2) For any subsequent violation, a person
10 shall be fined in accordance with section 3571 of
11 title 18, United States Code, or imprisoned not more
12 than 5 years, or both.”.