

**RESOLUTION OF THE  
WHITE MOUNTAIN APACHE TRIBE  
OF THE FORT APACHE INDIAN RESERVATION**

WHEREAS, the United States Congress is now considering legislation that will amend the Indian Child Welfare Act (ICWA) as proposed by H.R. 1448 introduced by Congresswoman Pryce of Ohio and S. 764 sponsored by Senator Glenn from Ohio; and

WHEREAS, the proposed legislation will severely limit the number of Indian children who receive the protection of the ICWA by (1) changing the definition of "Indian child" to exclude a child eligible for membership in a tribe if the child's parents were not a member of the tribe at the time of the child's birth; and (2) allowing state courts to review challenges to tribal determinations of membership; and

WHEREAS, the proposed legislation would undermine the congressional intent of the ICWA to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families; and

WHEREAS, there is no resource that is more vital to the continued existence and integrity of the White Mountain Apache Tribe than its children and families and it has always been the policy of the White Mountain Apache Tribe to protect the best interest of its children and to promote the stability and security of the Tribe and its families; and

WHEREAS, the Tribal Council recognizes the importance of the ICWA to curtail the number of tribal families which are broken up by the removal, often unwarranted, of their children by non-tribal public and private agencies which place children in non-Indian foster and adoptive homes and institutions, and further to remedy the failure of states to recognize the essential Tribal relations of the White Mountain Apache people and the cultural and social standards prevailing in the White Mountain Apache Tribal community and its families; and

WHEREAS, the National Indian Child Welfare Association has drafted proposed alternative ICWA amendments which would:

- (1) require notice to Indian tribes and certain extended family members in all voluntary child custody proceedings;
- (2) bring under the ICWA all children whose parents are tribal members regardless of whether the child is eligible for membership;

- (3) provide for criminal sanctions for anyone who assist a person to lie about their Indian ancestry for the purposes of avoiding the application of the ICWA;
- (4) include a clarification of tribal exclusive jurisdiction over involuntary custody proceedings in P.L. 280 states; and
- (5) provide a provision authorizing state courts to enter orders allowing for continuing contact with tribes and their children who were adopted; and

WHEREAS, the Tribal Council supports the ICWA and recognizes that the Act has conferred upon Indian Tribes certain authority and responsibilities relating to the welfare of its children and further recognizes that the responsibilities and concern for the welfare of the children of the Tribe would be best served through the tribal judicial system; and

WHEREAS, the Tribal Council agrees that the National Indian Child Welfare Association's proposed amendments to the ICWA strengthen the purpose of the Act and are in the best interest of the White Mountain Apache children and families; and

WHEREAS, the Tribal Council supports the attached proposed amendments to the ICWA as drafted by the National Indian Child Welfare Association.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby adamantly opposes H.R. 1448 and S. 764 and fully supports the proposed amendments to the ICWA drafted by the National Indian Child Welfare Association attached hereto and made a part of this resolution.


BE IT FURTHER RESOLVED by the Tribal Council that it hereby directs that this resolution be forward to Senator John Glenn, S.H. 503 Hart Senate Office Building, Washington, D.C. 20515-3515 and Congresswoman Deborah Pryce, 221 Cannon House Office Building, Washington, D.C. 20515-3515.

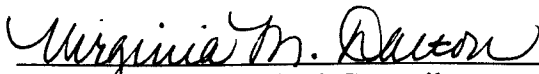
BE IT FURTHER RESOLVED by the Tribal Council that it further directs that a copy of this resolution be sent to Kathy Deserly and David Simmons, National Indian Child Welfare Association, 3611 SW Hood Street, Suite 201, Portland OR 97201 and to Polly Sharp, Inter Tribal Council of Arizona, Inc., 4205 North 7th Avenue, Suite 200, Phoenix, Arizona 85013.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby directs that a copy of this Resolution be sent to the Arizona Congressional Delegation and the State

Legislators with a request that they utilize their good offices to oppose H.R. 1448 and S. 764.

The foregoing resolution was on October 12, 1995 duly adopted by a vote of 8 for and 0 against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (p), (t) and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

  
Chairman of the Tribal Council

  
Secretary of the Tribal Council

September 5, 1995 DRAFT

PROPOSED AMENDMENTS TO THE INDIAN CHILD WELFARE ACT  
FOR REVIEW BY INDIAN TRIBES AND OTHERS INTERESTED

Sec. 4 (4) (25 U.S.C. §1903(4)) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) the biological child of a member of an Indian tribe.

Sec. 4(9) (25 U.S.C. §1903(9)) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child under tribal law or custom. It does not include an unwed father unless such father has established paternity under tribal or State law or has openly proclaimed paternity to the court, tribe, child's family, child's community or a child placement or adoption agency prior to (in the absence of fraud or duress) a final adoption decree or within 90 days after termination of the father's parental rights, whichever is sooner.

Sec. 4(10) (25 U.S.C. §1903(10)) "reservation" means Indian country as defined in section 1151 of Title 18, United States Code, 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, and any lands located within an Alaska Native village.

Sec. 101. (a) (25 U.S.C. §1911(a)) Except where the Act of August 15, 1953 (67 Stat. 588), as amended by Title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or any other Federal law has vested in any State concurrent jurisdiction over voluntary Indian child custody proceedings, 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. Where an Indian child who resides or is domiciled within the reservation of an Indian tribe is a ward of a tribal court or where an Indian child is made a ward of a tribal court following a transfer of jurisdiction pursuant to subsection (b) of this section, the Indian tribe shall retain exclusive jurisdiction over any child custody proceeding involving such a child, notwithstanding any change in the residence or domicile of the child subsequent to the child having become a ward of the tribal court.

Sec. 103. (a)(1) (25 U.S.C. §1913(a)(1)) Where any parent or Indian custodian of an Indian child voluntarily consents to a foster care or adoptive placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were

fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(2) Subject to the provisions in subsections (a)(4) and (7), at least twenty days before a voluntary proceeding for the consent to or validation of termination of parental rights, foster care or adoptive placement of, an Indian child may be heard in a State court, the party seeking the termination or consent to adoption or foster care placement shall notify, by registered mail, return receipt requested, the Indian child's tribe, parents, grandparents, aunts, uncles, brothers and sisters, of the pending proceedings and of their right to intervention, *Provided*, That, notice shall not be required in the case of any person specified above who is under the age of eighteen, nor shall notice be required where such persons cannot reasonably be identified or located after diligent inquiry by the party required to provide notice, *Provided further*, That, where a voluntary foster care placement is made in emergency circumstances, notice may be provided immediately subsequent to such placement. If the identity of the Indian child's tribe cannot be determined, notice shall be provided to the Secretary in like manner.

(3) The notice shall contain, if known or readily ascertainable

(A) the name, date and place of birth of the child;

(B) the names, maiden names, addresses and tribal enrollment numbers of the parents and grandparents of the child;

(C) the names and addresses of the child's extended family members;

(D) the reasons why the child is believed to be an Indian child;

(E) the name and address of the party seeking the foster care placement, consent to adoption or termination of parental rights;

(F) the name, address and tribal affiliation, if any, of the prospective adoptive parents;

(G) the name and address of any social services or adoption agency involved;

(H) in the case of notice to an Indian tribe, an inquiry as to whether the child or parent is a member of the tribe;

(I) a statement that the tribe or person notified has the right to intervene for the purpose of supporting or challenging the proposed placement of the child or asserting an interest in securing custody of the child.

(J) clear and specific notice that the right to intervention may be waived if the party receiving notice does not respond in the manner and within the time frames specified in subsection (a)(7); and

(K) a reply form which, if returned to the party who served the notice, would entitle the tribe or person to notice of all future voluntary child custody proceedings that will be scheduled in regard to the Indian child in question.

(L) reply form return envelopes addressed to the court and to any party.

(4) The notice required by subsections (a)(2) and (3) may be sent to the Indian child's tribe and the extended family members entitled to notice under subsection (2) prior to the commencement of a voluntary proceeding to terminate parental rights, or validate consent to a foster care or adoptive placement of, an Indian child, including prior to the Indian child's birth, if it is contemplated or expected that termination of parental rights, or foster care or adoptive placement of, an Indian child will be sought. Such notice shall include all of the information specified in subsection (a)(3) except that it need not include information about a specific pending proceeding if no proceeding is pending at the time of notice. Whenever notice is sent prior to the commencement of such a voluntary proceeding, an additional notice shall be sent, at the time of the filing of such a voluntary proceeding, to the Indian child's tribe and the extended family members notifying them, in accordance with subsections (a)(2) and (a)(3), of the pending proceedings and of their right to intervention.

(5) Copies of any notice served under this section, as well as return receipts and reply forms received by the party providing notice, shall be filed with the court. If no proceeding is pending at the time that such notice is made or reply forms received, copies shall be served upon the Secretary or his designee and included in the initial pleadings of any subsequently filed voluntary child custody proceeding.

(6) Except as limited by subsection (a)(7), the Indian child's tribe, grandparents, aunts, uncles, brothers and sisters (over the age of eighteen) shall have the right to intervene in any voluntary proceeding for termination of parental rights, or foster care or adoptive placement of, an Indian child.

(7) Any tribe, grandparent, aunt, uncle, brother or sister who receives notice that a termination of parental rights or foster

care or adoptive placement is contemplated, expected or pending and does not respond to the notice within 90 days of receipt of notice or 30 days following the commencement of a child custody proceeding, whichever is later, by either (A) requesting notice of all proceedings which are or will be scheduled, or (B) indicating an intent to intervene in the proceeding, shall be deemed to have waived the right to intervene in any voluntary proceeding involving that child, *Provided*, That, in the case of a consent to an adoptive placement with a specified family, the waiver shall apply only to a proceeding involving placement with such specified family and not to any proceeding involving placement with a different family from the one specified in the notice, and *Provided further*, That, the waiver of the right to intervene by any potential party specified in this section shall not deprive any other party from seeking implementation of any provision in this Act, even where such implementation would accrue to the benefit of the party who has waived the right of intervention.

(c)(1) Subject to subsection (d), where any parent voluntarily consents to termination of parental rights to, or adoptive placement of, an Indian child, either or both of such consents may be withdrawn for any reason at any time either (i) prior to the entry of a final decree of adoption, or (ii) within six months from the date of the consent to adoption, whichever period is sooner, and the child shall be returned to the parent, *Provided*, That the right to withdraw such consents shall not expire prior to 30 days following the commencement of a child custody proceeding.

(2) Whenever any parent of an Indian child has consented to an adoptive placement with a specified family or has voluntarily terminated parental rights in connection with adoptive placement with a specified family and such placement has ended at any time prior to the entry of a final decree of adoption, the child shall be returned to the parent whether or not a period of six months has elapsed from the date of the consent to adoption and any prior termination of parental rights shall be void *ab initio*.

(d) Unchanged

(e)(1) Any State law to the contrary notwithstanding, any adoption of an Indian child under State law may provide the parents, adoptive parents, extended family and Indian tribe of an Indian child with an enforceable right to visitation or continued contact with such child after the entry of a final decree of adoption. Failure to comply with the provisions of any court order regarding such continued visitation or contact shall not be grounds for setting aside a final decree of adoption.

(2) Any court order providing for continued visitation or contact with an Indian child by such child's parents, adoptive parents, extended family and Indian tribe after the entry of a final decree of adoption may be modified where (i) the modification

is agreed to by all parties to having a right to such continued visitation or contact, or (ii) exceptional circumstances, supported by testimony of qualified expert witnesses, justify such modification. *Provided*, That, prior to seeking such modification, the applicant for modification has participated or attempted to participate in good faith in seeking a mediated resolution of the circumstances giving rise to the request for modification, and *Provided further*, That, any order modifying such continued visitation or contact approves a modification that is the least detrimental to the visitation purposes of the original order.

(3) Any court order providing for continued visitation or contact with an Indian child by such child's parents, adoptive parents, extended family and Indian tribe after the entry of a final decree of adoption may be enforced in a civil action. *Provided*, That, prior to bringing such action, the applicant for enforcement has participated or attempted to participate in good faith in seeking a mediated resolution of the dispute giving rise to the enforcement action.

Sec. 105. (c) (25 U.S.C. §1915(c)) In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided*, That where a consenting parent evidences a desire for anonymity, the court shall give weight to such desire in applying the preferences. Nothing in this subsection shall affect the requirement for notice to the Indian child's tribe provided for in section 102 and 103.

Sec. 108. (a) (25 U.S.C. §1918(a)) Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by Title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume exclusive jurisdiction over voluntary child custody proceedings. Before any Indian tribe may reassume exclusive jurisdiction over voluntary Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

Sec. 108. (b) (25 U.S.C. §1918(b)) Repeal

Sec. 108. (c) (25 U.S.C. §1918(c)) Redesignate as (b)

Sec. 108. (d) (25 U.S.C. §1918(d)) Redesignate as (c)

Sec. 113. (25 U.S.C. §1923) Repeal



Sec. 113. (a) (25 U.S.C. §1923(a)) Congress finds that

(1) Indian tribes, like all sovereign governments have the right to determine their own membership.

(2) In connection with any voluntary proceeding for the consent to or validation of termination of parental rights, foster care or adoptive placement where the status of a child as an Indian child is or may be disputed, notice should be provided to the tribe in which the child is or may be a member to permit such tribe to apply and interpret its membership requirements.

(3) Indian tribes, like all sovereign governments, must follow their own laws and procedures in determining whether any person is entitled to citizenship.

(4) Publication in the Federal Register of the written laws and procedures of tribes pertaining to membership, where they exist, will facilitate the application of this Act to voluntary child custody proceedings.

(b) Within one hundred and eighty days after the enactment of this Act [the Indian Child Welfare Act Amendments of 1995], the Secretary shall publish in the Federal Register the membership requirements of each Indian tribe having membership requirements approved by the Secretary.

(c) Within one hundred and eighty days after the enactment of this Act [the Indian Child Welfare Act Amendments of 1995], the Secretary shall inquire of each Indian tribe not having written membership requirements approved by the Secretary as to whether such tribe has written membership requirements. Within ninety days following receipt of the membership requirements of any such Indian tribe, the Secretary shall publish in the Federal Register the membership requirements of such Indian tribe.

(d) Within ninety days following receipt of any amendments to the membership requirements of any Indian tribe, the Secretary shall publish such amended membership requirements in the Federal Register.

(e)(1) The applicability of this Act to a voluntary child custody proceeding shall not be affected where a parent of an Indian child has renounced his or her membership in an Indian tribe, *Provided*, That, under the laws of said tribe, the child involved in such proceeding is or was a member of or eligible for membership in said tribe prior to such renunciation of membership.

(2) Where a parent eligible for membership in an Indian tribe has never been a member of an Indian tribe prior to the commencement of a voluntary child custody proceeding, no party shall be entitled to invoke the provisions of section 4(4)(b) for

purposes of applying this Act to such proceeding where the parent objects.

(f)(1) For purposes of applying this Act to any voluntary child custody proceeding under State law, the United States district courts shall have original and exclusive jurisdiction over all civil actions to declare whether a determination by an Indian tribe that a child is or is not an Indian child or that a biological parent or grandparent of a child is or is not a member of such Indian tribe is contrary to the membership requirements of such tribe. *Provided*, That the district courts shall exercise such jurisdiction only after the party seeking to invoke the jurisdiction of the district court has exhausted the procedures of such Indian tribe, if any, for the review of such tribe's determination. The plaintiff in any such civil action shall have the burden of proving, by a preponderance of the evidence, that there is no objective basis for the tribal determination under the membership requirements of such tribe. In the absence of a finding that there is no objective basis for the tribe's determination, the district court shall defer to the tribe's determination. In reviewing a tribal membership decision, the district court shall apply the membership requirements of an Indian tribe as published in the Federal Register. Where an Indian tribe's membership determination was based on membership requirements different from those published in the Federal Register due either to the inaccuracy of such published requirements or the fact that such published requirements are not current, the district court shall apply the membership requirements used by the tribe in making its membership determination. Any tribe whose membership requirements are the subject of a civil action brought pursuant to this section shall be notified of such action and shall be given an opportunity to participate either as a party or as *amicus curiae* in such action.

(2) The court shall have no jurisdiction to determine a cause of action brought under this subsection where a plaintiff, who knew or had reason to know that a child may be of Indian ancestry, did not notify, in strict compliance with section 103(a)(2)-(4), the Indian tribe prior to filing such action.

(g) In any voluntary child custody proceeding under State law, the court, in determining the applicability of this Act to such proceeding, shall give full faith and credit to a judgment in an action brought pursuant to subsection (f) of this section.

Sec. 114. (25 U.S.C. §1924) Subject to subsections (e), (f) and (g) of section 113, a membership determination by an Indian tribe shall be conclusive for the purposes of any child custody proceeding under State law.

Sec. 115. (25 U.S.C. §1925) In connection with any proceeding or potential proceeding involving a child who may qualify as an

Indian child for purposes of this Act, whoever

(1) encourages or facilitates fraudulent representations or omissions regarding whether a child or parent is Indian, or

(2) conspires to encourage or facilitate such representations or omissions, or

(3) aids or abets such representations or omissions

having reason to know that such representations or omissions are being made and may have a material impact on the application of this Act, shall be fined not more than \$100,000, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined not more than \$250,000, or imprisoned not more than 5 years, or both.