file
Child welfare -
native americans

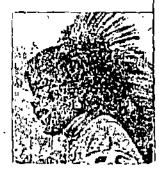
Terry L. Cross, ACSW

Executive Director

NATIONAL
INDIAN
CHILD
WELFARE
ASSOCIATION

3611 SW Hood St.
Suite 201
Portland, OR 97201

Phone 503.222.4044, ext. 12
Fax 503.222.4007
E-Mail tlcross@nicwa.org
Website www.nicwa.org



MEMORANDUM

To: Nicole Rabner
From: Joy Warren
Date: 6-3-99
Re: Foster Care Funding for Indian Children

Proposed Change: In 1997, the National Indian Child Welfare Association (NICWA) lobbied for an amendment to adoption bills S. 1195 and H.R. 867 that would, among other things, change the language of IV-E so that tribes could receive direct funding for foster care maintenance and program administration. The amendment reportedly failed because the legislation did not have an adequate off set to pay for the costs of extending the entitlement to tribes. The CBO preliminary cost projection estimated the change would cost $235 million over a 4-year period. '97 estimate

The amendment proposed:

1) Extending IV-E entitlement for Foster Care (FC) maintenance payments to tribes.
2) Direct HHS funding for program administration.
3) Exemption of tribes from Section 671(a)(10) of IV-E, which requires certain standards for states to abide by in licensing foster homes. Would instead provide for the approval of foster homes "consistent with tribal standards."
4) Authorization for the Secretary to modify the requirements of IV-E for tribes if those requirements are not "in the best interests of Indian children and if the tribal plans include alternative provisions that would achieve the purpose of the requirement that is altered or waived."
5) Continued allowance of tribal-state IV-E agreements.

Analysis: NICWA presents a clear request for greater equity in funding for Indian children placed in foster care through tribal courts. While states rely on entitlement funding to care for abused and neglected children, NICWA reports that most tribes must piece together a child welfare system by seeking funding from fragmented sources.

It is difficult to assess the extent of the problem by solely relying on NICWA's report. However, without evidence to the contrary, *NICWA's assertions lead to the conclusion that safety and permanency for Indian children would best be achieved through a change in law that would directly allocate IV-E to tribes and guarantee them a consistent source of funding.* It would be wise to seek out opinions from others with a stake in this issue: including states and other children's advocates.

We should be aware that tribes are likely to advocate for minimal oversight and broad, vague standards for their child welfare programs. This inclination is evidenced in item #3 of the proposed NICWA amendment that exempts tribes from federal standards for licensing foster homes (See above). While tribal autonomy is a politically sensitive issue, deference to such autonomy should not warrant compromise of any basic standards for children's safety. Tribes may use rhetoric of cultural imposition in arguing for exemption from any federal or state involvement in their child welfare systems. However, it would be important to counter this rhetoric by framing arguments in a child-centered way and arguing for those standards that best serve children.

Background
Title IV-E authorizes foster care maintenance, training, and administrative funding *only* for eligible children placed by state courts or public agencies. The legislation does not authorize payments for children placed by tribal courts. Citing legislative history, the National Indian Child Welfare Association (NICWA) asserts that the exclusionary language of Title IV-E was a drafting oversight.

NICWA reports that 50 of 550 federally recognized tribes have negotiated tribal-state agreements to secure IV-E funding. According to NICWA, it is difficult for other tribes to make such agreements because states are reluctant to incur the responsibility to monitor tribes for compliance with federal law. If the tribes are out of compliance, states face the prospect of losing an unspecified amount of incentive funding. Also, some states attempt to use negotiations for these agreements to resolve unrelated conflicts with the tribes.

Tribes do have access to some funds through various funding streams, including the Indian Child Welfare Act, the Bureau of Indian Affairs, Title IV-B, and Title XX; however, NICWA details a number of problems with these sources. NICWA asserts that these sources are inadequate and that the fragmented nature of the funding streams makes securing monies particularly burdensome for tribes. While states are ensured of an entitlement for FC maintenance under IV-E, tribes must expend a great deal of energy putting together funding from different sources.

Support for NICWA Amendment: Senators Campbell and Inouye and Rep. Don Young wrote letters of support and Senators Daschle, McCain, and Dorgan spoke out in support on the Senate floor. Also, NICWA cites a HHS Office of the Inspector General report, which stated, "The surest way to guarantee that Indian people receive the benefits from these Social Security Act programs is to...provide direct allocations to tribes."

Opposition: None known.

US Code as of: 01/26/98

Sec. 671. State plan for foster care and adoption assistance

- (a) Requisite features of State plan
  In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which -
  - (1) provides for foster care maintenance payments in accordance with section 672 of this title and for adoption assistance in accordance with section 673 of this title;
  - (2) provides that the State agency responsible for administering the program authorized by subpart 1 of part B of this subchapter shall administer, or supervise the administration of, the program authorized by this part;
  - (3) provides that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;
  - (4) provides that the State shall assure that the programs at the local level assisted under this part will be coordinated with the programs at the State or local level assisted under parts A and B of this subchapter, under subchapter XX of this chapter, and under any other appropriate provision of Federal law;
  - (5) provides that the State will, in the administration of its programs under this part, use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the programs, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods;
  - (6) provides that the State agency referred to in paragraph (2) (hereinafter in this part referred to as the "State agency") will make such reports, in such form and containing such information as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;
  - (7) provides that the State agency will monitor and conduct periodic evaluations of activities carried out under this part;
  - (8) provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, or D of this subchapter (including activities under part F [1] of this subchapter) or under subchapter I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX of this chapter, or the supplemental security income program established by subchapter XVI of this chapter, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program,
    - (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity, and (E) reporting and providing information pursuant to

paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

[1] See References in Text note below.

- (9) provides that the State agency will -
  - (A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under part B of this subchapter or this part under circumstances which indicate that the child's health or welfare is threatened thereby; and
  - (B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;
- (10) provides for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, and provides that the standards so established shall be applied by the State to any foster family home or child care institution receiving funds under this part or part B of this subchapter;
- (11) provides for periodic review of the standards referred to in the preceding paragraph and amounts paid as foster care maintenance payments and adoption assistance to assure their continuing appropriateness;
- (12) provides for granting an opportunity for a fair hearing before the State agency to any individual whose claim for benefits available pursuant to this part is denied or is not acted upon with reasonable promptness;
- (13) provides that the State shall arrange for a periodic and independently conducted audit of the programs assisted under this part and part B of this subchapter, which shall be conducted no less frequently than once every three years;
- (14) provides (A) specific goals (which shall be established by State law on or before October 1, 1982) for each fiscal year (commencing with the fiscal year which begins on October 1, 1983) as to the maximum number of children (in absolute numbers or as a percentage of all children in foster care with respect to whom assistance under the plan is provided during such year) who, at any time during such year, will remain in foster care after having been in such care for a period in excess of twenty-four months, and (B) a description of the steps which will be taken by the State to achieve such goals;
- (15) provides that -
  - (A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the

paramount concern;
- (B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families -
  - (i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and
  - (ii) to make it possible for a child to safely return to the child's home;
- (C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child;
- (D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that -
  - (i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);
  - (ii) the parent has -
- (I) committed murder (which would have been an offense under section 1111(a) of title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;
- (II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;
- (III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or
- (IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or
  - (iii) the parental rights of the parent to a sibling have been terminated involuntarily;
- (E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D) -
  - (i) a permanency hearing (as described in section 675(5)(C) of this title) shall be held for the child within 30 days after the determination; and
  - (ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and
- (F) reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts of the type described in subparagraph (B);

(16) provides for the development of a case plan (as defined in

section 675(1) of this title) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section 675(5)(B) of this title with respect to each such child;

- (17) provides that, where appropriate, all steps will be taken, including cooperative efforts with the State agencies administering the program funded under part A of this subchapter and plan approved under part D of this subchapter, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part;
- (18) not later than January 1, 1997, provides that neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may -
  - (A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved; or
  - (B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved;
- (19) provides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards;
- (20)
  - (A) unless an election provided for in subparagraph (B) is made with respect to the State, provides procedures for criminal records checks for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child on whose behalf foster care maintenance payments or adoption assistance payments are to be made under the State plan under this part, including procedures requiring that -
    - (i) in any case in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and
    - (ii) in any case in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and
  - (B) subparagraph (A) shall not apply to a State plan if the Governor of the State has notified the Secretary in writing that the State has elected to make subparagraph (A) inapplicable to the State, or if the State legislature, by law, has elected to make subparagraph (A) inapplicable to the State;
- (21) provides for health insurance coverage (including, at State option, through the program under the State plan approved under subchapter XIX of this chapter) for any child who has been determined to be a child with special needs, for whom there is in

effect an adoption assistance agreement (other than an agreement under this part) between the State and an adoptive parent or parents, and who the State has determined cannot be placed with an adoptive parent or parents without medical assistance because such child has special needs for medical, mental health, or rehabilitative care, and that with respect to the provision of such health insurance coverage -

- (A) such coverage may be provided through 1 or more State medical assistance programs;
- (B) the State, in providing such coverage, shall ensure that the medical benefits, including mental health benefits, provided are of the same type and kind as those that would be provided for children by the State under subchapter XIX of this chapter;
- (C) in the event that the State provides such coverage through a State medical assistance program other than the program under subchapter XIX of this chapter, and the State exceeds its funding for services under such other program, any such child shall be deemed to be receiving aid or assistance under the State plan under this part for purposes of section 1396a(a)(10)(A)(i)(I) of this title; and
- (D) in determining cost-sharing requirements, the State shall take into consideration the circumstances of the adopting parent or parents and the needs of the child being adopted consistent, to the extent coverage is provided through a State medical assistance program, with the rules under such program; and

- (22) provides that, not later than January 1, 1999, the State shall develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children.

- (b) Approval of plan by Secretary
  The Secretary shall approve any plan which complies with the provisions of subsection (a) of this section.

KAREN J. FUNK
LEGISLATIVE AFFAIRS

1819 H STREET, N.W.
WASHINGTON, D.C. 20006
(202) 783-5100
HOBBS, STRAUS, DEAN & WALKER
FAX (202) 296-8834

Title IV-E
Foster Care and Adoption Assistance Act
Funding for Indian Children

Tab #

••

TRIBAL CHILD WELFARE CAPACITY AND FUNDING

Clinton Presidential Records
Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

Divider Title: **1**

Title IV-E
Foster Care and Adoption Assistance Act
Funding for Indian Children

The proposed amendment to Title IV-E of the Social Security Statute (Foster Care and Adoption Assistance) would end the disparate treatment of eligible Indian children under IV-E programs by providing them with the same services as are currently provided to all other eligible children in the United States.

Current Law

Title IV-E Foster Care and Adoption Assistance Act funding is provided under current law for foster care and adoption assistance for income-eligible children who are placed by state courts or public agencies with which the state has an agreement. Children placed by tribal courts generally do not enjoy the services of this program.

Title IV-E, which is an open-ended federal entitlement, is expected to provide $4.7 billion in assistance in FY 1997.

However, Title IV-E benefits generally are not available to tribal governments or to children placed by tribal courts. While regulations allow tribal-state agreements, they have been extremely difficult to negotiate, largely because of state concerns involving liability. In fact, only one-tenth of all federally-recognized tribes currently have cooperative agreements with states -- and multi-year efforts to negotiate agreements in Arizona, New Mexico and Alaska have failed. In addition, the 50 tribal-state cooperative agreements in existence are flawed because they generally provide foster care maintenance payments only for children placed by tribal courts, but do not include pass-through funding to tribal governments for training, data systems and program administration. On the other hand, state governments receive significant funding under IV-E for these activities.

In its August 1994 report, "*Opportunities for Administration for Children and Families to Improve Child Welfare Services and Protections for Native American Children,*" the HHS Office of the Inspector General (OIG) documented that tribes receive little benefit or funding from federal Social Security Act programs, including Title IV-E Foster Care and Adoption Assistance. The OIG report stated that:

> The surest way to guarantee that Indian people receive benefits from these Social Security Act programs is to . . . provide direct allocations to tribes.

Proposed Change

During the welfare reform debate in 1996, a bipartisan group of Members urged Congress to include a provision to provide direct funding to tribes under the IV-E program. However, this provision was not included in the enacted legislation.

The issue of the status of tribes and Indian children under the IV-E program was discussed during debate on adoption legislation in 1997. Representatives Hayworth and McDermott urged the Ways and Means Committee, during its consideration of H.R. 867, to provide direct funding to tribes for IV-E and to extend eligibility to children who are placed by tribal courts into foster care and adoptive homes. Attached is a copy of this proposed amendment.

This amendment faced no opposition from Committee members. However, because the bill's sponsors were adamant that H.R. 867 remain revenue neutral, it was withdrawn. In the Senate, the effort to attach a tribal IV-E amendment to their adoption bill (S. 511) failed due to lack of an offset. On November 13, 1997 several Senators entered into a colloquy (attached) with Senators Chafee and Rockefeller regarding the need to address the disparate treatment of Indian children under this entitlement program.

The proposed attached amendment, estimated by CBO to cost $235 million over a five-year period, would:

• extend the Title IV-E entitlement programs to tribal placements in foster and adoptive homes

• authorize tribal governments to receive direct funding from HHS for administration of the IV-E programs (tribes must have programs approved by HHS)

• recognize tribal standards for foster home licensing

• allow the Secretary flexibility to modify the requirements of the IV-E law for tribes if those requirements are not in the best interests of Indian children and if the tribal plans include alternative provisions that would achieve the purpose of the requirement that is altered or waived

• continue to allow tribal-state IV-E agreements

Clinton Presidential Records
Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

Divider Title: **2**

106TH CONGRESS
1ST SESSION

S. ______

IN THE SENATE OF THE UNITED STATES

Mr. DASCHLE introduced the following bill; which was read twice and referred to the Committee on ______________

A BILL

To amend part E of title IV of the Social Security Act to provide equitable access for foster care and adoption services for Indian children in tribal areas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORITY OF INDIAN TRIBES TO RECEIVE FEDERAL FUNDS FOR FOSTER CARE AND ADOPTION ASSISTANCE.

(a) CHILDREN PLACED BY TRIBAL COURTS ELIGIBLE FOR FOSTER CARE FUNDING.—Section 472(a)(2) of the Social Security Act (42 U.S.C. 672(a)(2)) is amended—

(1) by striking "or (B)" and inserting "(B)"; and

(2) by inserting before the semicolon the following: ", or (C) an Indian tribe as defined in section 479B(b)(5), in the case of an Indian child (as defined in section 4(4) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(4))) if the tribe (i) is operating a program pursuant to section 479B, (ii) has an agreement with a State pursuant to section 479B(b)(3), or (iii) submits to the Secretary a description of the arrangements, jointly developed or in consultation with the State, made for the payment of funds and the provision of the child welfare services and protections required by this title".

(b) PROGRAMS OPERATED BY INDIAN TRIBAL ORGANIZATIONS.—Part E of title IV of the Social Security Act (42 U.S.C. 670 et seq.) is amended by adding at the end the following:

"PROGRAMS OPERATED BY INDIAN TRIBAL ORGANIZATIONS

"SEC. 479B. (a) Except as provided in subsection (b), this part shall apply to an Indian Tribe that chooses to operate a program under this part in the same manner as this part applies to a State.

"(b)(1) In the case of an Indian tribe submitting a plan under section 471, the plan shall—

"(A) in lieu of the requirement of section 471(a)(3), identify the service area or areas and population to be served by the Indian tribe; and

"(B) in lieu of the requirement of section 471(a)(10), provide for the approval of foster homes consistent with tribal standards and in a manner that ensures the safety of, and accountability for, children placed in foster care.

determine

"(2)(A)(i) For purposes of deterring the Federal medical assistance percentage applicable to an Indian tribe under paragraphs (1) and (2) of section 474(a), the calculation of an Indian tribe's per capita income shall be based upon the service population of the Indian tribe as defined in its plan.

"(ii) An Indian tribe may submit to the Secretary such information as [the tribe] considers may be relevant to making the calculation of the per capita income of the tribe, and the Secretary shall consider such information before making the calculation.

"(B) The Secretary shall, by regulation, determine the proportions to be paid to Indian tribes pursuant to section 474(a)(3), except that in no case shall an Indian tribe receive a lesser portion than specified for States in that section.

"(C) An Indian tribe may use Federal or State funds to match payments for which the Indian tribe is eligible under section 474.

"(3) An Indian tribe and a State may enter into a cooperative agreement for the administration or payment of funds pursuant to this part. Any such agreement that is in effect as of the date of the enactment of this section shall remain in full force and effect subject to the right of either party to revoke or modify the agreement pursuant to its terms.

"(4) The Secretary may prescribe regulations that alter or waive a term or condition under this part with respect to an Indian tribe or tribes if the Secretary, after consulting with the tribe or tribes—

"(A) determines that the strict enforcement of the term or condition would not advance the best interests and the safety of children served by the Indian tribe or tribes; and

"(B) provides in the regulations that tribal plans include alternative provisions that would achieve the purposes of any term or condition that is to be altered or waived.

"(5) For purposes of this section, the term 'Indian tribe' means any Indian tribe, band, nation, or organized group or community of Indians, including any Alaska Native village, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"(6) Nothing in this section shall preclude the development and submission of a single plan under section 471 that meets the requirements of this section by the participating Indian tribes of an intertribal consortium.".

[*review*](c) EFFECTIVE DATE.—The amendments made by this Act take effect on [October 1, 1999].

Clinton Presidential Records
Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

Divider Title: **3**

Cost estimate of H.R. 261 (as proposed to be amended)
Preliminary, based on language received February 27, 1997.
For Cassie Bevan, House Ways and Means
Justin Latus, Congressional Budget Office
Numbers represent increase in federal spending relative to March 1997 baseline
By fiscal year, in millions of dollars

	1998	1999	2000	2001	2002	'98-'02
Foster care, adoption assistance, and Independent Living						
BA	40	45	45	50	55	235
OT	30	40	45	50	55	225

Note: This proposal would allow Tribes to receive IV-E payments directly from the federal government. Of the $40 million in increased BA for 1998, roughly $30 million represents increased foster care spending, $5 million increased adoption assistance spending, and $5 million the costs of the Secretary's setting a higher match for administration and training (as would be permitted under this proposal).

Outlays in fiscal year 1998 are lower than budget authority because a portion of the new obligations made in fiscal year 1998 would not be outlayed until fiscal year 1999.

CBO COST ESTIMATE

Clinton Presidential Records
Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

Divider Title: 4

NATIONAL
INDIAN
CHILD
WELFARE
ASSOCIATION

3611 SW Hood St.
Suite 201
Portland, OR 97201
Phone
503.222.4044
Fax
03.222.4007

STATEMENT OF THE
NATIONAL INDIAN CHILD WELFARE ASSOCIATION

SUBMITTED TO THE SENATE FINANCE SUBCOMMITTEE

ON SOCIAL SECURITY AND FAMILY POLICY

Regarding

THE TITLE IV-E FOSTER CARE AND ADOPTION ASSISTANCE ACT

and

S. 1195
PROMOTION OF ADOPTION, SAFETY, AND SUPPORT
FOR ABUSED AND NEGLECTED CHILDREN (PASS) ACT

OCTOBER 8, 1997

Terry Cross
Executive Director

The National Indian Child Welfare Association submits this statement on S. 1195, the Promotion of Adoption, Safety, and Support for Abused and Neglected Children (PASS) Act. Attached is a brief description of the work of our organization.

****

SUMMARY OF RECOMMENDATIONS

OUR PRIMARY RECOMMENDATION.

Indian Access to the IV-E Programs. Our primary recommendation is that S. 1195 be modified to include an additional amendment to Title IV-E of the Social Security Act, Foster Care and Adoption Assistance, to make otherwise-eligible Indian children placed by tribal courts eligible for the federal entitlement services of that Act and to allow tribal governments to administer these programs. It was an oversight when the statute was written in 1980 that tribal governments and children placed by tribal courts were ignored. The statute has left out a class of children - Indian children living in tribal areas - for eligibility for this open-ended federal entitlement program, and Congress must correct this situation.

We have provided Committee staff with a draft amendment which would accomplish this goal, and urge you to adopt it as part of S. 1195. The bulk of our testimony is on the issue Title IV-E services for Indian children.

OTHER RECOMMENDATIONS.

Kinship Care Advisory Panel with Tribal Representation. S. 1195 would utilize the Advisory Board on Child Abuse and Neglect (as authorized under CAPTA) to conduct a kinship care study. If this Board does not exist upon enactment of S. 1195, then the bill would require the Secretary to create a new Kinship Care Advisory Panel -- this panel, in both the House and Senate bills, would include tribal representation. We prefer the House provision which creates a Kinship Care Advisory Panel, as it would guarantee tribal representation -- something not available to tribes on the Advisory Board on Child Abuse and Neglect.. Kinship care is widely used in Indian country. We believe the presence of tribal representatives on a Kinship Care Advisory Panel will bring important knowledge and perspectives to the work of the advisory panel, and urge its retention in a final adoption bill.

Petitions to Terminate Parental Rights. Both S. 1196 and H.R. 867 have strict provisions regarding circumstances and time lines under which state must initiate a petition (or join any existing petition) to terminate parental rights, and both bills provide exceptions to these requirements. While both bills would allow exceptions when, at the option of the state, the ;child is being cared for by a relative or where the state court or agency had documented a compelling reason for not requiring the filling of the termination of parental rights petition. The House bill -- but not the Senate bill -- would also allow an exception when the state has not provided the family with services deemed appropriate by the state even though it has been determined that reasonable efforts should be made to reunite the family. We believe that the House provision requiring provision of services is reasonable and should be retained in the final bill. Tribal people are often not served well by state agencies, and we are very sensitive to the possibility of initiation of proceedings to terminate parental rights even though supposedly required services have not been provided to the family.

We also recommend that the bill make provision for an exception to the requirement to initiate a petition for termination of parental rights when the parent(s) are making substantial progress . Examples would be that the parent is making good progress toward recovery from substance abuse or that the parent is at the point where she/he is able to have visitation rights to have the children on weekends, Under S. 1195 the petition to terminate parental rights could begin within 1 year of a child entering foster care. We recommend that the bill include in the exceptions substantial progress which if continued, would likely result in family reunification.

Substance Abuse Treatment. We support the emphasis in S. 1195 on substance abuse treatment including foster care payments for children whose parent(s) is in a residential treatment center and priority for treatment services for caretaker parents. While progress is being made in Indian country regarding lessening substance abuse (the alcoholism age-adjusted death rates for Natives have decreased from 59/100,000 in 1980 to 38.4/100,000 in 1992), the size of the problem is still staggering[1].

Family Reunification. We prefer the provision in the earlier Senate bill, S. 511 which would provide funding for family reunification services over the provision in S. 1195 which would specify time-limited family reunification services as an eligible use of Title IV-B funding

Training. We support the emphasis in S. 511 on training and want tribes to have equitable access to such training. We are sorry that S. 1195 does not contain training provisions.

Voluntary Reunions. We support the provision in S. 1195 which would allow use of HHS facilities to facilitate voluntary, mutually-requested reunions between adult adopted children and their biological parents. So many Indian children have been removed from their homes and tribal areas. A study in ___ documented that 25% of all Indian children had been removed from their homes for reasons primarily related to poverty and to actions of culturally ignorant agencies. While this practice has certainly abated, there are thousands of adult Indian people who would appreciate assistance in finding their biological parents and relatives.

****

This statement focuses on Indian children and their limited opportunities to benefit from the Title IV-E Foster Care and Adoption Assistance program (herein referred to as Title IV-E) and what we believe to be an effective solution to this inequity. Our testimony will show that otherwise-eligible Indian and Alaska Native children have not enjoyed the same guarantees for foster or adoptive care services that other children have in this country. Native children are the only class of children without entitlement to foster care and adoptive services in this country. In our view, this issue, as much as any other issue, has impacted the ability of Indian children to secure a sense of permanency after being removed from their homes.

The Title IV-E Foster Care and Adoption Assistance Programs - Services Not Guaranteed to Indian Children

As you know, the IV-E program was enacted in 1980 as a part of major legislative changes to the child welfare system in this country. Enactment of Title IV-E and changes to the Title IV-B Child Welfare Services program under the Social Security Act established new federal protections for children who were removed from their homes and resources to help them gain permanency in their lives. Title IV-E provides states with a permanently authorized entitlement program that provides matching funds to support placements of AFDC-eligible children in foster care homes, private non-profit child care facilities, or public child care institutions. These foster care maintenance payments are intended to support the costs of food, shelter, clothing, daily supervision, school supplies, general incidentals, liability insurance for the child, and reasonable travel to the child's home for visits. Matching funds are also available for administrative activities that support the child's placement and training for professionals and parents involved in these placements. The foster care program had been mandatory for all states that participated in the former Aid to Families with Dependent Children (AFDC) program, and under the new welfare reform law it is mandatory for states that operate a Temporary Assistance for Needy Families (TANF) block grant.

Title IV-E also provides entitlement funds to support adoption assistance activities, and like the foster care program, is mandatory for all states that operated the former AFDC program or the new TANF block grant. Activities which qualify for matching funds include: maintenance payments for eligible children who are adopted, administrative payments for expenses associated with placing children in adoption, and training of professional staff and parents involved in adoption. To be eligible for these matching funds states must develop agreements with parents who adopt eligible children with special needs. Special needs children must be AFDC- or SSI- eligible. However, states may also claim non-reoccurring adoption expenses for children with special needs who are not AFDC- or SSI-eligible. While Title IV-E broadly defines special needs children as those who have characteristics that make them difficult to place, Title IV-E gives states discretion as to the specific categories of special needs children that they will recognize (e.g. older children, minority children, and children with physical, emotional, or behavioral problems).

Another area of support under Title IV-E is the Independent Living Program. Title IV-E was amended in 1986 to include a program that would assist youth who would eventually be emancipated from the foster care system. The funding under this program was intended to support services for AFDC-eligible youth who were age 16 or over make a successful transition from the foster care system to independent living when they become ineligible for foster care maintenance payments at age 18. The program was expanded in 1988 to include all youth in foster care, regardless of AFDC-eligibility. Two years later amendments to Title IV-E gave states the option of providing services to youth up to the age of 21. Some examples of services provided under this program include: basic skills training, educational services (e.g. GED preparation), and employment preparedness.

We have given the above overview of the services provided under the Title IV-E entitlement program to emphasize that these are services not guaranteed to otherwise eligible Indian children.

Indian Children and Title IV-E

While Congress intended for the Title IV-E program to serve all eligible children in the United States, Indian children who are under the jurisdiction of their tribal court do not have an entitlement to this important program afforded other children. The statute provides services only for income-eligible children placed by states and public agencies with whom states have agreements.

We believe it is a drafting oversight that the Foster Care and Adoption Assistance Act of 1980 made no provision for funding for children placed by tribal courts nor for tribal governments to administer Title IV-E funds and seek reimbursement for foster care and adoption services provided Indian children under their jurisdiction. We see nothing in the legislative history to suggest otherwise, and conversations with the office of Representative George Miller, the primary author of the 1980 Act, suggests it was not intentional. During last year's consideration of welfare reform legislation a number of Members including Representative Don Young, Senator John McCain, and Representatives Bill Richardson and George Miller wrote this Subcommittee asking that the bill be amended to provide direct funding to tribes under the Title IV-E statute. Mr. Richardson introduced legislation, H.R. 261, on January 7, 1997 to provide direct funding to tribes under Title IV-E. Unfortunately, the Title IV-E statute is not the only social services related program which has given little thought to services for people living on Indian reservations.[2] We urge Congress to always keep in mind that tribal governments are not subsets of state governments. They are legally distinct and separate from state governments. Federal statutes authorizing services need to make specific provision for tribal delivery systems.

<u>*Title IV-E Tribal-State Agreements/Office of Inspector General Report*</u>. Only 50 of the 550 federally recognized tribes have been able to enter into agreements with states to provide access to at least some IV-E funds.[3] These agreements primarily provide foster care maintenance moneys only -- not administrative, training, and data system funding. In only 15 of the 50 agreements do states provide tribes with IV-E administration funds and to our knowledge only 2 of the agreements provide any IV-E training funds to tribes. None of the agreements provide funding for information systems development for tribes which are available to states under Title IV-E. Even when agreements are reached, tribes and states realize that a more efficient system would be to fund tribes directly.

A picture of the situation for tribal access to Title IV-E and other federal social service and child welfare funds was provided in a report by the HHS Office of Inspector General (OIG), "*Opportunities for Administration for Children and Families to Improve Child Welfare Services and Protections for Native American Children*", August 1994. The report documented that tribes receive little benefit or funding from federal Social Security Act programs, specifically Title IV-E Foster Care and Adoption Assistance, the Title XX Social Services Block Grant, and the Title IV-

B Child Welfare Services and Family Preservation and Support Services moneys[4]. While tribes receive a small amount of direct funding under both of the IV-B programs (about $7.4 million combined in FY1997), there is no direct funding available to tribes under the much larger Title IV-E and Title XX programs[5].

In order for tribes to receive funding under these programs they have had to rely on states to share a portion of their allocation. This option has been available in only a handful of states and in amounts that are extremely small. Not surprisingly, the above-mentioned Office of Inspector General study -- in listing options for improving service to tribes -- *stated that the surest way to guarantee that Indian people receive benefits from these Social Security Act programs is to amend the authorizing statutes to provide direct allocations to tribes.*

With regard to funding passed through from the state to tribes, the OIG report states:

> In 15 of the 24 States with the largest Native American populations, eligible Tribes received neither Title IV-E nor Title XX funds from 1989 to 1993. In 1993 alone, these 15 states received $1.7 billion in Title IV-E funds and $1.3 billion in Title XX funds.
>
> Nine of the 24 States reported that some Tribes in their States received Title IV-E and/or Title XX funds in 1993.
>
> Eight States reported that 46 Tribes received $1.9 million -- .2 percent--of the States' $82 million Title IV-E funds, while 4 States reported that 32 Tribes received $2.8 million -- .3 percent -- of the States' $98 million Title XX funds.

The OIG report discusses the barriers to tribal-state agreements regarding Title IV-E (and Title XX):

• *No explicit authority.* The Congress provided no authority for ACF to award Title IV-E and Title XX funds directly to Tribes; and the law neither requires nor encourages States to share funds with Tribes;

• *State Responsibility for Tribal Compliance with Requirements of P.L. 96-272 for Title IV-E funds is Problematic for States.* Some states are reluctant to enter into Title IV-E agreements with tribes because, under the law, the state would be held accountable for tribal compliance with Title IV-E. States could, if tribal records were out of compliance, lose their Title IV-E and Section 427 incentive funds. We know that this is an issue with a number of states, including Alaska, Arizona, and New Mexico.

• *Disputes between Tribes and States about Issues Unrelated to Child Welfare.* Both state and tribal officials reported that points of contention between state and tribal governments unrelated to child welfare have made agreements impossible to reach. Issues concerning land rights and jurisdiction have thwarted these agreements. At least one state made receipt of foster care money contingent upon the tribe adopting the complete set of state child welfare policies and procedures.

• *Matching Share Issue.* Most tribes will have difficulty providing the match required for Title IV-E funds, and most states do not want to provide it. In some cases where there are tribal-state IV-E agreements, the state has provided the match for foster care maintenance funds.

• *Tribal Lands which Extend into Multiple States.* In cases where tribal lands extend across state borders (e.g., Navajo is in Arizona, New Mexico and Utah) the prospects of concluding multiple IV-E agreements have proved infeasible. Eight federally recognized tribes have lands that extend into multiple states.

The OIG report also notes that state officials with whom they talked favored direct IV-E funding to tribes:

> With respect to IV-E funding, most State officials with whom we talked favored ACF (Administration on Children and Families) dealing directly with Tribes. This direct approach for Title IV-E would eliminate the need for Tribal-State agreements, and because Title IV-E is an uncapped Federal entitlement, would not affect the moneys available to the States. (p. 13).

Tribal Efforts to Provide Foster Care/Adoption Services for Their Children Absent Title IV-E Agreements

While tribes cannot receive Title IV-E funds directly from the Department of Health and Human Services, and have had little success in obtaining IV-E funds through their states, a limited number have been able to put together some stop gap measures to partially fund these services. These attempts to provide foster care and adoption services are not a substitute -- or should not be -- for the reliable funding for services provided to states and children outside of Indian country under the Title IV-E statute. Indeed, because of the limited nature of these alternate resources, tribes may have no choice but to place IV-E eligible children in unsubsidized homes.

Child Welfare Assistance Funds Provided by the Bureau of Indian Affairs (BIA). The BIA has provided a limited amount of discretionary funds -- about $21 million annually -- to a relatively small number of tribes for use as a "resource of last resort". The program provides only foster care maintenance payments and institutionalized care but has no administration, training or information systems funds connected to them. These funds are also in competition with other programs under the BIA Tribal Priority Allocation category. This means that if there is an urgent need to increase funding for other programs such as road repairs, employment and training services, or emergency burial assistance services, Child Welfare Assistance funds may be subject to reduction. The BIA has no funds specified for use in promoting permanency planning as are available in the Title IV-E Adoption Assistance program.

The BIA funds clearly fall short of need. The total number of substitute care placements subsidized under this program for FY 1996 was 3,400 with approximately 60% to 70% of those children estimated to be Title IV-E eligible.[6] Distribution patterns of these funds reveals that approximately 90% of the funds go to Navajo Nation and tribes in just six other states (Arizona, New Mexico, Utah, Nevada, North Dakota and South Dakota).[7] Tribes in California which number 100 (and who do not have IV-E agreements with their state) have not been able to access these limited BIA funds.

Even though the Navajo Nation receives a major portion of the BIA Child Welfare Assistance funds, they still report placing 301 children last year children a year in unsubsidized homes.[8] This illustrates the inadequacy of the BIA funds.

Unsubsidized Homes. Not wanting to leave children in harmful situations, tribes have had to resort to alternative vehicles for protecting children who must be removed from their homes. A common method is the placement of Indian children in unsubsidized homes. This often requires the good will of a family in the community who will commit their personal resources, time and home to a foster care, legal guardianship, or pre-adoptive placement for a needy child. Even though the commitment is made with love, the vast majority of these families find this event to be stressful and sometimes unworkable after a period of time, especially when considering the numbers of Indian families on tribal lands who live in or close to poverty.[9]

Most tribes will still license the unsubsidized family foster home and provide assistance on foster parenting, even though it often involves shifting scarce child protection funds from one account to another in order to meet emergency and other pressing needs. However, additional services that support the child and foster family which are reimbursable under Title IV-E state programs are not always available, causing additional stress on the foster or pre-adoptive family and putting the placement at risk for disruption.

The lack of Title IV-E funding is also felt at the front end of developing permanency for Indian children. Tribal child welfare programs which are responsible for recruiting potential foster care and adoptive families have difficulties recruiting and maintaining families because they cannot guarantee basic maintenance payments and few support services for the placement. While strong community values and individual generosity often prevail in helping provide temporary homes for needy Indian children, the numbers of homes actually needed often does not meet the need because of limitations on support that can be offered to these families.

Elements of a Tribal Title IV-E Amendment

We recommend an amendment to Title IV-E of the Social Security Act which contains the following elements:

- extend the Title IV-E entitlement to tribal placements in foster and adoptive homes which meet eligibility requirements

- authorize tribal governments to receive direct funding from HHS for administration of the IV-E program

- recognize tribal standards for foster home licensing.

- allow the Secretary flexibility to modify the requirements of the IV-E law for tribes if those requirements are not in the best interests of Indian children

• allow the Secretary to modify IV-E matching requirements in recognition that tribes, unlike states, have not previously received funding to build the type of service delivery systems available to the states, and permit other federal and state funds to be used for any required tribal match

• continue to allow tribal-state IV-E agreements

• develop HHS regulations in partnership with tribes and others with expertise in the child welfare field.

Tribal Administration of Foster Care/Adoption Assistance Program Would be Consistent with Welfare Reform Law and Proposed Adoption Legislation

Our recommendation that the Foster Care and Adoption Assistance Act be amended to provide direct funding to eligible children on Indian reservations and to tribal governments for the administration of the program serves the purposes of the newly enacted welfare reform law and Congressional and Administration interest in adoption legislation.

Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, a state cannot receive Temporary Assistance for Needy Families (TANF) funding unless it operates a foster care/adoption assistance and child support enforcement programs under Titles IV-E and D of the Social Security Act. Congress explicitly recognized the interrelationship between the effort to end dependence on public assistance with the need for a strong child support enforcement program and an effective system for helping our most vulnerable children -- those living in poverty who require temporary or permanent placements outside their homes. Sadly, the federal entitlement statutes concerning foster care and adoption and child support enforcement have been of very little benefit to Indian children living on reservations.

While tribes are eligible to apply to administer TANF under the new welfare reform law, it does not require them to operate foster care/adoption assistance and child support enforcement programs. It would have been disingenuous to have made these requirements, since tribal governments -- unlike state governments -- have never received annual federal funding from the IV-D and IV-E programs. The welfare reform law includes a new provision which we hope will assist tribes in establishing Title IV-D programs, but we know that development of child support enforcement programs will take time.

Providing direct Title IV-E services to children in Indian country also serves the interest as we understand it of Congress and the Clinton Administration in promoting quicker permanent placement of children. While a few tribes have access to IV-E foster care maintenance payments, even fewer have access to funding to any IV-E infrastructure (training, information systems, recruitment of families) needed to operate the complete range of services for intervention and making permanent placements of children. The HHS <u>Adoption 2002</u> report states that slightly over half of the children in foster care awaiting adoption who are designated as having "special needs" are minority children. These children are considered harder to adopt. If tribal communities were provided their rightful institutional role under the Title IV-E law, they could be of tremendous assistance in placing Indian and Alaska Native children.

Tribal governments and tribal communities are in the best position to place their children in permanent homes, but they have been thwarted by a federal statute which ignores them. When Indian children have been under the care of tribal programs, as compared to public, private or Bureau of Indian Affairs programs, these children have a shorter length of time in substitute care and are more likely to secure family-based permanency.[10] This last consideration may be the most important in terms of why we should keep Indian children under the care of their tribal communities.

We should now use the opportunity of what apparently will be federal adoption legislation to provide Title IV-E services for Indian children and tribal governments comparable to that provided to other eligible children and to state governments.

---

[1] The alcoholism mortality rates of Native people is 6.3 times the U.S. White rate and 5.6 times the U.S. national rate. Fetal Alcohol Syndrome (FAS) for Native people in Alaska is five times the national rate; for Indian people in the Aberdeen (Great Plains) area, it is 4 1/2 times the national average; Indian Health Service residential alcohol treatment centers report incidence of child sexual abuse for females that range from 70-90 percent and for males of up to 50 percent. Source: Department of Health and Human Services FY 1998 budget justification for the Indian Health Service.

[2] In 1981, when several federal block grants were created from existing federal programs, little attention was given to funding for tribes in those block grants. President Reagan, recognizing the disservice done to tribes under the 1981 block grants, proposed in his January 24, 1983 Indian Policy statement, that the laws be amended to provide for direct funding for tribes under federal block grants.

Subsequently, a February 1984 study commissioned by the Department of Health and Human Services, "*Block Grants and the State-Tribal Relationship*", documented the inequitable treatment given to tribes in the development of several federal block grants created in 1981. The report stated:

> Congress failed to perceive two things: first, in many cases direct funding to tribes would be nominal, and second that states would be placed in the awkward position of being expected to respond to tribal needs through tribal governments, which do not comprise part of the usual state constituency and states cannot require or enforce accountability. (p. 38)

In addition, the report stated:

> While it seems clear that Indians as state citizens are constitutionally entitled to a fair share of state services, this general principle does not address the issue of the delivery system; that is, the degree to which services on the reservation should be delivered by tribal rather than state and municipal governments. This vacuum in federal law and policy is the source of unnecessary complications in the state-tribal relationship when, as here, federal legislation adjusts the delivery system for federally funded services without clearly addressing its impact on the delivery system relationships at the reservation level. (p. 38)

One of the 1981 block grants, the Title XX Social Services Block Grant, provided no funding for tribes, and some other block grants were available to tribes only if a tribe had received funding the previous year from one of the categorical programs included in the block grant. This excluded most tribes.

[3] Fiscal year 1997 data on state-tribe Title IV-E agreements compiled by the Children's Bureau under the Department of Health and Human Services, February 24, 1997.

[4] Since this OIG report, HHS has amended its regulations regarding tribal access to the IV-B programs, and the result has been an increase in tribal IV-B funds.

[5] In a very small number of situations, Indian children have received IV-E payments without a tribal-state agreement where a tribe has declined to exercise its jurisdiction and the child has been placed through the state system.

[6] Data for FY 1996 provided by the Bureau of Indian Affairs, Division of Social Services in Washington, D.C., February, 1997.

[7] Ibid.

[8] Interview with Ms. Delores Greyeyes, Director of the Navajo Nation Indian Child Welfare Program, February, 1997.

[9] Indian poverty in reservation areas is 3.9 times the U.S. average (50.7% vs. 13.1%) (1990 Census). The poverty rate for Indian children in reservation areas is 60.3%, or three times the national average (1990 Census).

[10] See note 7, above.

Clinton Presidential Records
Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

Divider Title: **5**

United States Senate

COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

October 21, 1997

The Honorable John H. Chafee, Chairman
Subcommittee on Social Security and Family Policy
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Chairman Chafee:

We write regarding the upcoming consideration of S. 1195, the Promotion of Adoption, Safety, and Support for Abused and Neglected Children Act, to urge the Subcommittee to consider adding a provision that would furnish Indian tribes with direct funding under Title IV-E (Foster Care and Adoption Assistance) of the Social Security Act. Title IV-E operates as an open-ended entitlement program that is available only to state governments that have plans approved by the Department of Health and Human Services.

The IV-E program provides state governments with funds for foster care maintenance payments for food, shelter, clothing, school supplies, and liability insurance for children (AFDC) placed in foster homes by *state courts*, and for related administrative and training costs. Tribal governments, who are legally responsible for Indian children in foster care, are not entitled to federal reimbursement for children placed in foster care by a *tribal court*, unless the tribe, as a "public agency," enters into a cooperative agreement with the state.

Current law provides no incentives for states to enter into these cooperative agreements, and in fact discourages them. A state that enters into an agreement with a tribe will be held accountable at the federal level for tribal compliance with Title IV-E requirements. Likewise, when a tribe cannot fulfill the matching requirement, the state must assume the costs on behalf of the tribe in order to maintain federal funds. Other barriers arise from the nature of tribal-state relations. Longstanding disputes between some states and tribes, over issues unrelated to child welfare, hinder many agreements. Providing direct funding to tribal governments, *while holding the tribes themselves accountable for such funds*, will resolve these problems.

Title IV-E was originally drafted without taking into consideration the fact that tribal courts, not state courts, retain exclusive jurisdiction over the domestic affairs of tribal members. As a result, Indian children in need of foster care and child support are not accorded the same level of services as other children nationwide. Correcting this oversight will make the benefits of the Title IV-E entitlement program available to *all* children as intended.

S.1195 proposes to make major amendments to Title IV-E, and it is the appropriate vehicle to correct this legislative oversight. Thank you for your consideration of this important matter. If you have any questions, please contact the Indian Affairs Committee staff at 224-2251.

Sincerely,

Ben Nighthorse Campbell
Chairman

Daniel K. Inouye
Vice-Chairman

Clinton Presidential Records
Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

Divider Title: **6**

TRIBAL FOSTER CARE AND ADOPTION

Mr. DASCHLE. Mr. President, I would like to bring to the attention of the Senate an issue which, I believe, needs to be addressed. Title IV–E of the Social Security Act, Federal payments for foster care and adoption assistance, does not provide equitable foster care and adoption services for Indian children living in tribal areas. I had hoped we might be able to amend this bill, which is designed to better serve children in need of permanent, loving homes, to include children living in tribal areas. However, it appears that we will be unable to do that at this time. Nonetheless, it is clear that the funding that provides services to Indian children is sufficient to address the compelling needs of children not equivalent to that provided for services to children not living on reservations, and for that reason, I would like to engage in a discussion about how we might address this issue.

Mr. ROCKEFELLER. Mr. President, I am happy to engage in a colloquy with the Democratic leader. Can the leader tell me what constitutes the primary impediment to Indian children and tribal government access to the Federal foster care program and Federal adoption assistance program?

Mr. DASCHLE. Mr. President, the flaw in the statute is that it provides IV–E assistance only to children placed by State courts or agencies with whom States have agreements. In doing so, the law has left out Indian children living in tribal areas who are placed in foster care and adoptive homes by tribal courts. A relatively small number of tribes—50, or 10 percent of the total number of federally recognized tribes—has been able to work out tribal/State agreements whereby foster care payments are made for children placed by tribal courts. These agreements do not provide the full services of the title IV–E program, as they by and large do not include training and administrative funding for tribal governments. A major impediment to reaching even these less-than-ideal tribal/State agreements is that State governments retain liability under the agreements, something that States are reluctant to do.

The result is that Indian children—often the poorest of the poor in our Nation—are sometimes placed in unsubsidized homes without necessary foster care services. This should not be the case. Other children in this Nation who meet the eligibility requirements are eligible for the services of the open-ended Foster Care and Adoption Assistance Entitlement Program. State governments have benefited from large amounts of Federal administrative and training funds for their foster care/adoption assistance programs. Tribal governments and Indian children have not.

The legislation being considered today is designed to improve services and encourage permanent placements for children. Indian children living in tribal areas, however, have not benefited to the same extent as other children under the current program, and we should ensure that that discrepancy is eliminated.

The IV–E program provides help to fund the basics, such as food, shelter, clothing, and school supplies for the children, but this program does not include Indian children. We need to get our priorities in order, and help all children, especially those with special needs, including Indian children. I understand the primary reason for not including an amendment to make Indian children in tribal areas and tribal government eligible for the IV–E program is that no offset was provided for the cost.

Mr. ROCKEFELLER. Mr. President, the Senator is correct. Unfortunately, there are many provisions and new investments that Members wanted to include. But we are running out of time in this session, and securing new funding and appropriate revenue offsets is an overwhelming challenge. I appreciate the concerns the Senator has raised and would like to work with him in the future. As my colleagues know, Indian children are covered under a special law, known as the Indian Child Welfare Act. We should work together to ensure that this law and other Federal programs for abused and neglected children are better coordinated.

Let me assure my colleagues, though, that this package will help Indian children. Within the Promotion of Adoption, Safety, and Support for Abused and Neglected Children, the PASS Act, is a provision to extend the 1993 law to provide funding for family preservation and family support for 3 additional years. This program is designed to support community-based programs to help innovative projects invest in prevention and programs to strengthen families. Within the existing law is a 1-percent set aside for the tribes. This will be extended 3 more years, and I hope this funding will enable the tribes to continue ongoing efforts to help Indian children.

Mr. INOUYE. Mr. President, I, too, want to express my strong interest in amending the title IV–E statute so that Indian children placed by tribal courts have access to this program on the same basis as other children and that tribal governments with approved programs be made eligible for IV–E administrative and training funds on the same basis as States. Senator CAMPBELL and I jointly wrote the Finance Committee on this matter.

I would point out that the Senate Committee on Indian Affairs, in April 1995, held a hearing on welfare reform proposals. At that hearing, a representative of the Department of Health and Human Services, Office of the Inspector General, testified with regard to its August 1994 report: "Opportunities for Administration on Children and Families to Improve Child Welfare Services and Protections for Native American Children," which documented that tribes receive little benefit or funding from the title IV–E Foster Care and Adoption Assistance Program—and other Social Security Act programs. The OIG report states: "The surest way to guarantee that Indian people receive benefits from these Social Security Act programs is to * * * provide direct allocations to tribes." The OIG report also noted that the State officials with whom they talked preferred direct IV–E funding to tribes:

With respect to IV–E funding, most State officials with whom we talked favored ACF (Administration on Children and Families) dealing directly with Tribes. This direct approach for title IV–E would eliminate the need for Tribal-State agreement, and because title IV–E is an uncapped Federal entitlement, would not affect the moneys available to the States. (p. 13)

Mr. MCCAIN. Mr. President, I share the concerns expressed by my colleagues about basic fairness. Last year during consideration of welfare reform, I advocated that we use that bill as a vehicle to fix the title IV–E law with regard to tribes and Indian children in tribal areas. Under the current law, states cannot even administer a Temporary Assistance for Needy Families [TANF] program unless they have in place a foster care/adoption assistance program. I appreciate the efforts of Representatives HAYWORTH and MCDERMOTT in trying to fix this problem during the Ways and Means Committee consideration of its adoption bill, H.R. 867, and also of former Representative Bill Richardson who early this year introduced a freestanding bill on this issue. It seems that we keep running into the issue of funding. This is, however, a clear-cut case of fairness, and we must work together to provide equitable assistance to Indian children.

Mr. CHAFEE. Mr. President, I certainly appreciate the perspective my colleagues bring to this issue. Clearly, we need to take into account the status of tribes and tribal court system and the children under their jurisdiction in determining IV–E payments. I will work with them to correct this inequity.

Mr. DORGAN. I would like to add my voice to those of my colleagues who share my belief that it is fundamentally unfair for Indian children placed by tribal courts to be ineligible for IV–E assistance even though these children otherwise meet the eligibility requirements. In my judgment, we have a responsibility, both because of the Federal Government's trust relationship with Indian tribes and because of the desperate need that exists in Indian country for this funding, to correct this oversight as quickly as possible.

Mr. DASCHLE. Mr. President, I thank all of my colleagues for joining me in this discussion and for their acknowledgment that this is an injustice that must be corrected. I look forward to working with them to make sure we provide the same resources for Indian children as we do for other children in this country.

Clinton Presidential Records
Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

Divider Title: **7**

4-14-97 ;10:20AM ;

U.S. House of Representatives
Committee on Resources
Washington, DC 20515

April 8, 1997

The Honorable E. Clay Shaw
Chairman, Subcommittee on Human Resources
Committee on Ways and Means
B-317 Rayburn HOB
Washington, D.C. 20515

Re: Eligibility of Alaska Natives and Indian Children for IV-E Services

Dear Chairman Shaw:

I am writing to urge you to use the opportunity of your Subcommittee's markup of H.R. 867, the Adoption Promotion Act of 1997, to finally allow Native children living in tribal areas to have the same access to the services of the Title IV-E Foster Care and Adoption Assistance Act that other children enjoy. The IV-E statute is geared toward children placed by state judicial systems. The statute also provides funds to state governments to administer the IV-E program, but does not provide such funding to tribal governments.

I represent the largest number of Native children of any Member of Congress, and my Native constituents do not receive IV-E services. Representative Hayworth, a member of your Subcommittee, represents the next largest number of Native children, and likewise, they do not receive IV-E services.

You may recall that Senator McCain and I each urged last year that the Title IV-E law be amended as part of welfare reform to extend eligibility to children placed in foster and adoptive homes by tribal courts and to provide direct funding to tribes and tribal organizations to administer the IV-E programs. My understanding is that our proposal was not seriously considered as an amendment to welfare reform because that legislation only amended IV-E in a minor way. But H.R. 867 would make major amendments to the IV-E statute, and it is appropriate that we use this vehicle to end the discriminatory treatment against otherwise eligible Alaska Native and Indian children who are placed in foster care and adoptive homes.

I realize that we now face the issue of an offset for this proposal, but it would be a disgrace to not right this wrong. If the law had been properly drafted in the first place we would not be in this position. But this is not the first time, and probably not the last time, that we will need to amend a law to take in to consideration the fact that tribal governments and tribal courts are distinct from state systems.

Thank you.

Sincerely,

Don Young

DON YOUNG
Chairman

DY:caa

cc: Representative Hayworth

Clinton Presidential Records
Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

Divider Title: **8**

TABLE 12–1.—FUNDING ENVIRONMENT OF THE FEDERAL PROGRAMS WHICH SUPPORT FOSTER CARE, CHILD WELFARE, AND ADOPTION SERVICES

Program	Budgetary classification	Federal support of total
Title IV–E Foster Care Program:		
Foster care assistance payments.	Authorized entitlement ..	Open-ended Federal match at Medicaid rate.
Placement services and administrative costs.	Authorized entitlement ..	Open-ended Federal match of 50 percent.[1]
Training expenses	Authorized entitlement ..	Open-ended Federal match of 75 percent.
Title IV–E Adoption Assistance Program:		
Adoption assistance payments.	Authorized entitlement ..	Open-ended Federal match at Medicaid rate.
Nonrecurring adoption expenses.	Authorized entitlement ..	Open-ended Federal match of 50 percent.[2]
Placement services and administrative costs.	Authorized entitlement ..	Open-ended Federal match of 50 percent.
Training expenses	Authorized entitlement ..	Open-ended Federal match of 75 percent.
Title IV–E Independent Living Program.	Authorized entitlement ..	100 percent Federal funding, with a funding ceiling.[3]
Title IV–B Child Welfare Services Program:		
Child welfare services (subpart 1).	Nonentitlement authorization.	Federal match of 75 percent, total capped at State allotment.
Family preservation and family support (subpart 2).	Authorized entitlement ..	Federal match of 75 percent, with a funding ceiling.[4]
Title XX Social Services Block Grant Program.	Authorized entitlement ..	100 percent Federal funding, with a funding ceiling.

[1] Seventy-five percent matching is available from fiscal year 1994 through fiscal year 1996 for certain costs related to data collection.

[2] The Federal Government reimburses 50 percent of up to $2,000 of expenditures for any one placement.

[3] Beginning for fiscal year 1991, States are required to provide 50 percent matching for any Federal funding claimed that exceeds $45 million.

[4] Program authorized through fiscal year 1998.

Source: Compiled by House Committee on Ways and Means staff.

Table 12–3 provides data on participation under the Title IV–B and IV–E Programs. Table 12–4 shows the Congressional Budget Office projections for Federal foster care and adoption assistance for 1996 through 2001 under current law. Between 1996 and 2001, the federally funded foster care caseload is projected to increase from 278,000 to 350,000 (26 percent). Total IV–E foster care costs are expected to increase 49 percent, from $3,213,000 in 1996 to $4,794,000 in 2001. Over the same time period, the adoption assistance caseload is projected to increase from 121,000 to 191,000 (58 percent), while total adoption assistance costs are estimated to increase from $479 million to $901 million (88 percent).

Divider Title: 9

TABLE 12-2.—FEDERAL FUNDING FOR CHILD WELFARE, FOSTER CARE, AND ADOPTION ACTIVITIES UNDER TITLES IV-B AND IV-E OF THE SOCIAL SECURITY ACT, 1985-2001

[In millions of dollars]

Fiscal year	Title IV-B-1 child welfare services	Title IV-B-2 family preservation and support	Title IV-E foster care State claims: Total [1]	Title IV-E foster care State claims: Maintenance payments	Title IV-E foster care State claims: Administration/training [2]	Title IV-E independent living program	Title IV-E adoption assistance State claims: Total [3]	Title IV-E adoption assistance State claims: Assistance payments	Title IV-E adoption assistance State claims: Administration/training	Total
1985	200.0	....	546.2	355.3	190.9	....	41.8	31.6	10.2	788.0
1986	198.1	....	605.4	391.6	213.8	....	55.0	40.6	14.4	858.5
1987	222.5	....	792.6	479.7	312.9	45.0	73.7	53.9	19.8	1,133.8
1988	239.4	....	891.1	548.3	342.8	45.0	97.1	74.1	23.0	1,272.6
1989	246.7	....	1,153.1	646.0	507.1	45.0	110.5	86.2	24.3	1,555.3
1990	252.6	....	1,473.2	835.0	638.2	50.0	135.7	104.9	30.8	1,911.5
1991	273.9	....	1,819.2	1,030.4	788.8	60.0	175.3	130.3	45.0	2,328.4
1992	273.9	....	2,232.8	1,203.8	1,029.0	70.0	219.6	161.4	58.2	2,796.3
1993	294.6	....	2,547.0	1,365.0	1,182.0	70.0	272.4	197.3	75.1	3,184.0
1994	294.6	60.0	2,606.5	1,412.0	1,190.5	70.0	325.0	235.0	90.0	3,356.1
1995	292.0	150.0	3,050.2	1,594.5	1,455.7	70.0	411.4	306.3	105.1	3,973.6
1996 (estimate)	277.4	225.0	3,332.8	1,706.9	1,625.9	70.0	482.5	359.5	123.0	4,387.7
1997 (estimate)	292.0	240.0	3,603.7	1,914.9	1,688.8	70.0	554.8	413.2	141.6	4,760.5
1998 (estimate)	292.0	255.0	3,926.0	2,093.6	1,832.4	70.0	624.6	465.3	159.3	5,167.6
1999 (estimate)	292.0	NA	4,273.3	2,287.3	1,986.0	70.0	701.5	522.5	179.0	5,336.8
2000 (estimate)	292.0	NA	4,652.1	2,498.2	2,153.9	70.0	787.5	586.5	201.0	5,801.6
2001 (estimate)	292.0	NA	5,074.2	2,728.7	2,345.5	70.0	876.6	652.9	223.7	6,312.8

[1] Total includes administration and training expenditures, as well as maintenance payments, but does not include transfers to the Title IV-B Child Welfare Services Program. Differences in total due to rounding. [2] Includes regular administration, State automated child welfare information system (SACWIS) costs, and training. [3] Total includes administration and training expenditures, maintenance payments, and nonrecurring payments.

NA—Not available.

Source: U.S. Department of Health and Human Services.

Clinton Presidential Records
Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

Divider Title: **10**

TRIBAL CHILD WELFARE FUNDING

IN THE NORTHWEST

Prepared by:

National Indian Child Welfare Association
3611 Southwest Hood Street, Suite 201
Portland, Oregon 97201
Phone: (503) 222-4044

Terry L. Cross, Executive Director

August, 1996

Introduction

Long before any tribal discussions took place regarding appropriations or public policy, tribes used the natural resources available to them to care for their children. Family, community, and cultural traditions, none of which required an exchange of currency, provided the "child welfare services" of that time. The responsibility for protecting children was understood to be a community-wide responsibility with every citizen playing an important role. Today, however, things are much different. The influx of Euro-centric culture and approaches to problem-solving, dramatic increases in the rate and complexity of social problems within tribal communities, and substantial erosion of the natural helping systems that traditionally protected children, have changed how tribes approach the protection of their children. The result of these changes has been an environment in which tribes need to seek out and compete for funding that can support services to protect their children. Today, concepts such as foster care, child protection services, purchase of service contracts and case management, which were almost unheard of little over a century ago, have now become familiar terms in almost every tribal child welfare program.

Now that these changes have occurred, how have tribes in the Northwest states of this project faired in securing child welfare funding? The overall answer is generally not well, but significant improvements have been made and will likely continue in the future. The federal government, which has taken the lead in the development of these resources, has historically given little attention to the needs of Indian children, the special service delivery system they interact with, and their unique political status. Major sources of child welfare funding, such as Title IV-E Foster Care and Adoption Assistance and Title XX Social Services Block Grant, have been available only to states to administer directly. Tribal participation in these programs and others has been limited. Consequently, direct benefits to Indian children are often difficult to calculate and many times limited in their availability.

State funding of tribal child welfare services has also been historically low. This has been, in part, due to states feeling that the federal government has the primary responsibility to fund tribal governments and a lack of acceptance of tribes as separate governmental entities. However, several states and tribes in the Northwest have been working hard to reduce these barriers and develop a common understanding of the needs of Indian children and improved strategies for funding and delivering child welfare services.

How do tribes respond to this hodge podge of expectations and opportunities for funding? Those that have been successful have had to utilize creative methods of funding child welfare services. Not unlike successful private enterprises, tribal child welfare programs need to diversify their revenue sources and strategies for resource allocation. In the Northwest states of this project we have collected a number of examples of how tribes, both small and large, have built a child welfare delivery system. The funding sources included in these tribal child welfare funding schemes utilize federal, state, and tribal dollars.

Capacity of Tribes to Provide Child Welfare Services

While states and the Bureau of Indian Affairs (BIA) generally have more length of time operating formal child welfare services, tribal programs have demonstrated that they are generally more effective with Indian children and families. A study commissioned by the Department of Interior in 1978 (Department of Interior, 1988) examined the status of the Indian Child Welfare Act and the role that tribes, states, and the BIA played in promoting compliance. The study found that despite the increased resources of the BIA and states, Indian children in the care of these programs were more often placed outside of their homes, in more restrictive placements, and stayed in substitute care longer than Caucasian children. The study also indicated that tribal Indian child welfare programs, despite their minimal and sporadic funding, were viewed as doing a credible job.

Another factor that has increased tribal capacity to operate child welfare services has been the continuing movement of tribes towards self-governance, coupled with stimulated economic development on many reservations. Prior to the passage of the Indian Child Welfare Act, tribal child welfare programs were almost non-existent. The primary providers of child welfare services for Indian children at that time were the state and federal Bureau of Indian Affairs. This service delivery system provided little opportunity for tribes to develop their own expertise in child welfare or control the means by which services were designed and implemented. State and, to a large extent, BIA child welfare services were modeled after European concepts of child and family. These approaches utilized services that were not well suited to what tribes knew were effective and many times did not utilize Indian people as primary providers of the service. Tribes who have been able to increase their economic base and provide unrestricted funds to their child welfare program have been some of the most successful in attracting new state, federal, and private child welfare funds.

Today, however, we see tribal child welfare programs operating in almost every one of the 557 federally-recognized tribes, several with a compliment of services almost as comprehensive as that of nearby states. In the Northwest project states, every tribe has some level of child welfare program in operation. While similar in name to those utilized in state programs, tribal child welfare services are often hybrids which have unique characteristics that set them apart from like-named state services. The professionals designing these services are increasingly better educated and trained in Indian child welfare skills, combining the best of new technology, research, and time honored approaches to protecting Indian children. The Indian child welfare worker of today needs not only skills in working with Indian children and families, but also inter-governmental relations and program development.

Another key factor has been the increased activity of tribes to develop service and funding agreements with states, local governments, and private agencies outside the reservation. The average Indian child welfare program cannot afford to rely on only one or two sources of funding to support their program. Many of the services that tribes have accessed have been realized through negotiating creative service and funding agreements. Models of these agreements are witnessed in foster care, residential care, child protection, permanency planning and home-based services to name a few. In some cases, tribes have brokered agreements and marketed their services with nearby non-Indian communities and then reinvested the resulting revenue into more services for tribal clients. Another strategy has been to structure programs so that they may be more attractive to private foundations. All of these ideas have come as a result of a desire to bring more resources to the tribal community, while keeping intact the philosophy and practice that produces healthy outcomes.

A Brief History of Federal and State Child Welfare Funding for Tribes

A lack of stable and adequate funding for tribal child welfare programs has proven to be one of the most serious barriers to tribes' ability to protect their children. Before the passage of the Indian Child Welfare Act (ICWA) in 1978, few of the tribes in the United States had resources necessary to operate any kind of child welfare services. Federal and State child welfare funding sources were virtually unavailable to tribes. With the passage of the Indian Child Welfare Act, a new grant program under Title II of this Act became available to eligible tribes for the development and operation of child welfare services. However, while BIA and Congressional estimates stated that approximately $25-35 million annually would be needed to adequately fund these programs, Congress appropriated only between $8-9 million for this program up until 1991. With only about 25% of the funding needed to support basic tribal child welfare programs this grant program was run competitively until 1993. In most years this meant that almost 60% of the tribes in the United States would not receive any ICWA Title II grant funds. This, combined with the lack of access to other key federal child welfare funds, made it impossible for the majority of tribes in the United States to establish child welfare services.

Beginning in fiscal year 1991, Congress began to raise the appropriation level for the ICWA grant program. In fiscal year 1994 the appropriation level for this program reached a high point of $23 million with funding being allocated on a non-competitive basis. While this was a great improvement, funding levels have since dropped, with the fiscal year 1996 appropriations being reduced to $17.1 million. While funding has increased almost two-fold since the passage of the ICWA in 1978, the number of approved tribal applicants has increased three to four times.

While the ICWA, Title II funding increases and move to a non-competitive process have helped greatly, recent outlooks for federal appropriations under this program remain bleak. However, the funding available from this grant program has never been intended to serve as a single source of child welfare funding. Instead, Title II of the ICWA speaks to this reality by encouraging the supplementing of ICWA funds with other federal child welfare funding, in addition to authorizing the Department of Interior and Department of Health and Human Services (DHHS) to enter into agreements that would promote further sharing of resources. The federal programs specifically mentioned in the law include two Social Security Act programs, the Title XX Social Services Block Grant and Title IV-B. Unfortunately, these types of agreements have not yet been developed and would require changes in statute in the case of Title XX for tribes to receive direct funding.

Another source of child welfare funds from the federal government, BIA Social Services, is administered by the BIA under the Department of Interior. This source of funding was authorized by the Snyder Act [ch. 115, 42 Stat. 208 (1921)] with contract authority for tribes to provide eligible services being established under the Indian Self-Determination Act (P.L. 93-638). This program was historically a BIA-operated program at the community level with tribes only being able to contract for the administration of this program since the passage of the Indian Self-Determination Act. This source of funds has provided support for a range of social services, although only a small portion of this funding has been devoted to child welfare services under what is called the Child Welfare Assistance program. These child welfare funds were made available to support foster care maintenance payments and related services in situations when no other source of funding is present. This helped tribes provide foster care placements for Indian children that did not qualify for state or federal programs. Unfortunately, the availability of this programs services and funding has been inconsistent over the years, based on BIA administrative and contracting practices, declining appropriations and changes in the design and allocation of funds for this program.

State governments historically have provided little assistance to tribes in the way of child welfare funding. While a few states have attempted to share small portions of either their federal or state child welfare funds, there continues to be problems connected with the receipt of these funds for tribes and states. The Department of Health and Human Services, Office of Inspector General's report entitled, *"Opportunities for ACF to Improve Child Welfare Services and Protections for Native American Children"* (August 1994, 0EI-01-93-00110) describes a number of these barriers involved in states sharing federal funds with tribes. Among those problems discussed are the small amount of funds available to tribes compared to the administrative efforts required, difficulty in securing match for federal programs for both tribes and states, and state concerns regarding their liability for passing through federal funds. While many tribes continue to work with states to promote the sharing of resources, there remain many serious roadblocks that inhibit this process and ultimately, the sharing of funding with tribes.

Tribes have now begun looking to other federal agencies that provide funding for child welfare services. The majority of the most stable, ongoing child welfare funding is administered by the Administration for Children and Families under the Department of Health and Human Services. Here the federal government's largest and most comprehensive sources of child welfare funding are located. They are as follows:

Social Security Act Programs

Title IV-B (Subpart 1) Child Welfare Services
Title IV-B (Subpart 2) Family Preservation and Support Services
Title IV-E Foster Care and Adoption Assistance
Title XX Social Services Block Grant

While these programs were designed to promote the well-being of all children in the United States, most of these programs were designed with little consideration given to issues of tribal culture, tribal service delivery systems or the unique governmental relationship that tribes have with the federal government. Consequently, tribes have direct access to funding for only two of these programs, while the two remaining have significant barriers to access based on legislative authority or regulatory guidelines. An in-depth study of these programs and their available benefits to Indian children and tribes is outlined in a report from the Department of Health and Human Services, Office of Inspector General's entitled, *"Opportunities for ACF to Improve Child Welfare Services and Protections for Native American Children"* (August 1994, OEI-01-93-00110). These programs are also discussed in this document under the section entitled "Federal Child Welfare Funding for Tribes."

Key Barriers to Tribal Access of Child Welfare Funding

While tribes have increasingly assumed responsibility for child welfare services over the last eighteen years since the passage of the Indian Child Welfare Act, the ability to continue this positive development has been difficult. Below are listed a number of the primary obstacles to securing and administering state and federal child welfare funding for tribes.

- Restrictive program guidelines that use "one size fits all" approaches.
- Jurisdictional issues that cloud the timely investigation and prosecution of child abuse cases.
- Geographic locations of tribes to other service providers and the expense of accessing services outside the tribal community.
- Funding sources that only offer a small amount of funding but have demanding application processes and resource-intensive administrative procedures.
- The unfamiliarity with or resistance to maintaining compliance with the Indian Child Welfare Act by many state and private child placing agencies.
- Limited knowledge, experience, and skills of various private, state, and federal agencies in working effectively with Native American families.
- Ineffective consultation processes used by policymakers to consult with tribal governments regarding child and family policy.
- Lack of information available to tribes regarding training, funding, and other resources which might contribute to successful child welfare services.

- States that have program authority and funding spread out over a number of agencies, counties, or regions. This type of system makes it difficult for tribes to develop agreements and access funding because there is no one central governmental entity to deal with.

- Insufficient funding levels for developing and maintaining tribal child welfare services.

- Inadequate funding levels for tribal court systems. Many tribes are unable to fund a tribal court system or do not have the funding to be able to develop appropriate codes and hire court personnel to handle child proceedings.

Core Principles for Funding Tribal Child Welfare Services

Below are listed important principles for child welfare funding source or service that is going to effectively serve tribal communities. These principles are:

Direct tribal access and administration of funds. This is the surest route to ensuring that tribes can access and utilize the funding effectively. This can be accomplished through legislatively prescribed tribal set-asides funding as has been done in a number of programs, such as the Child Care and Developmental Block grant. Another important component of this principle is the ability for tribes to directly administer and operate the program within their communities.

Funding distribution formulas that are based on not only population, but need. Again, the Child Care and Developmental Block grant is a good example of this type of approach. This block grant program provides a 3% set-aside for tribes and utilizes a funding formula which provides a base amount so that tribes of all sizes can operate at least a minimal program according to the goals of the program.

Regulations that provide tribes the ability to develop and operate programs that reflect their community's values and unique circumstances. Too often federal programs have failed to transfer the original intent of their programs to tribal communities. This has primarily been because of regulations that required activities or services that did not work well within the context of tribal communities. Where regulations have strived to give the community control and flexibility over the types of services that can be offered, tribal responses to child abuse and neglect have shown to be just as effective, and many times more effective than their state or federal counterparts.

Application and administrative procedures that are administratively feasible. Lengthy applications that are required for each funding source, especially when a number of sources have similar purposes and provide small amounts of funding, create a drain on limited administrative resources and sometimes preclude tribes from accessing the funding. Tribal programs have considerable experience in operating a variety of human service programs, but are careful not to take on program operations that are based on large bureaucratic systems. Gaining an understanding of what is administratively feasible for tribes and incorporating this knowledge into application and administrative procedures is the key principle here.

Availability of technical assistance for tribes. This technical assistance must be provided by individuals or organizations that have a working knowledge of Indian child welfare issues and skills in working with Indian communities. Also very important is the ability to instruct tribes of the formal goals and requirements of funding sources and how they can be adapted for success in tribal communities.

Federal Child Welfare Funding for Tribes

Title IV-B (Subpart 1) Child Welfare Services

This is the oldest federal child welfare program and provided tribes with some of their first non-Bureau of Indian Affairs child welfare funding starting in 1980. The program was designed to provide support for basic child welfare services with few restrictions other than a prohibition on providing foster care maintenance payments. Since enactment, states and in some cases tribes have used this funding to provide for the core services necessary to operate a child welfare program.

Tribal access was based on a provision in the authorizing legislation that gave the Secretary of the Department of Health and Human Services (DHHS) discretion as to which tribes would be eligible and how much funding would be distributed. While all federally recognized tribes were initially eligible, the DHHS interpretation of the tribal funding provision resulted in very small grants for individual tribes--many less than $2,000. The small allocations, combined with a regulatory requirement that a tribe had to first be contracting Bureau of Indian Affairs Social Services to become eligible, prohibited many tribes from receiving the Title IV-B funding. Until fiscal year 1994, the total allocations to tribes in any year under Title IV-B Child Welfare Services never exceeded $800,000. As an example, only 59 tribes received these funds in fiscal year 1993 with total allocations of $762,000 being provided.

In December 1995, the Department of Health and Human Services published a final rule which eliminated the BIA Social Services contract requirement and increased the individual tribal allocation amounts by almost two-fold. These two improvements greatly increased the number of eligible tribes and approved allocations under Title IV-B Child Welfare Services (107 tribal grantees serving 300 tribes and $2.5 million in allocations to tribes as of FY 1996).

Title IV-B also provided higher grant awards for tribal and state programs that certified that they were providing additional protections to children in foster care. These protections consisted of things like timely case reviews and dispositional hearings to determine the appropriateness of continuing a foster care placement. These protections and the higher grant awards were part of what was formerly known as Section 427 Incentive funds. Applying for the higher grant award was optional and historically less than 40% of tribes funded through Title IV-B (41 in FY 1996) have certified for the higher funding amount.

However, on October 1, 1996 based on amendments to Title IV-B (see section 202 of P.L.103-432) grantees will no longer have the option of qualifying for only the lower grant awards. Instead, all grantees will have to provide the foster care protections, but will also be eligible for the higher grant award as a result. To assist tribes, the Administration for Children and Families, which administers Title IV-B under DHHS, has begun a process to help clarify and revise the guidelines that apply to tribes interested in receiving these funds, while also looking at methods of increasing access for tribes.

The Administration for Children and Families has also helped streamline the application process for tribes under this program. A simplified application form has been provided and those tribes that are eligible for both Title IV-B Child Welfare Services and Title IV-B Family Preservation and Support can submit just one application to qualify for both programs.

The total appropriation for fiscal year 1996 under the Title IV-B Child Welfare Services program was $277 million with $2.5 million being distributed to 107 tribal grantees serving 300 tribes (some grantees serve more than one tribe).

Program Strengths:

- Provides flexible funding that can support many types of basic child welfare services.
- Funding is provided directly to tribes from the federal government.
- Application process and administration of funds are relatively easy.
- Targeted changes planned for the program by the Administration for Children and Families will continue to improve tribal access.
- Tribal consortium can apply for funding (total grant will be based on individual allotments).

Potential Barriers To Access

- Funds must be expended within current grant year, no carryover allowances.
- 25% non-federal match required (however, tribes are allowed to use federal 638 funds from the Bureau of Indian Affairs as match)
- Relative size of grants are still small, although increasing again in FY 1997 based on all approved tribes receiving higher grant awards for providing foster care protections.
- New requirements for certifying foster care protections could provide difficult challenges, especially for resource poor tribes and those who do not have tribal courts.

Contact Agency for more information:

Your regional Administration for Children and Families office

Region V in Chicago, Illinois (312) 353-4237 tribes in the states of Minnesota, Illinois, Michigan, Wisconsin, Indiana, and Ohio

Region VIII in Denver, Colorado (303) 844-3100
tribes in the states of Montana, North Dakota, South Dakota, Colorado, Utah, and Wyoming

Region X in Seattle, Washington (206) 615-2547
tribes in the states of Washington, Oregon, Idaho, and Alaska

Title IV-B (Subpart 2) Family Preservation and Support Services

The enactment of this program in 1994 marked a shift in federal child welfare policy by placing greater resources and emphasis on keeping children in their homes and strengthening families. Previous federal policy focused their greatest emphasis and resources on removing the child from the home when families experienced difficulties. Services that are eligible under this program include family preservation services which assist children and families in crisis. These services are designed to help reunify children and families when a child was removed from the home because of abuse or neglect. Examples include family therapy and intensive home-based services. Family support services help increase the ability of families to successfully nurture their children in their own home before a removal is necessary, through things such as parenting classes, respite care, and assistance in obtaining services. In addition, this program is focused on systems change as a necessary component of reforming the way child welfare is done at the local level and the leveraging of additional resources that support child and family well-being.

The authorizing legislation provides a 1% set aside of the total funds for distribution to eligible tribes. During the first year 100% of program funds may be used for planning purposes to develop the required five year plan for services. However, another provision in the law only allows funding to be distributed to tribes that would receive at least a $10,000 allocation under the population-based formula contained in the law. The combination of a small set-aside, limited total appropriation, and restriction on funding only tribes who would receive allocations of $10,000 or more has provided the benefits of this program to only a small segment of federally-recognized tribes.

The total appropriation for fiscal year 1996 under the Title IV-B Family Preservation and Support Services program was $225 million with $2.25 million being distributed to 53 tribal grantees. The total program appropriation is scheduled to increase to $240 million in FY 1997 and $255 million in FY 1998 increasing the number of tribes eligible for funding and the size of grants.

Program Strengths:

- Provides flexible funding that can support many types of child welfare services.
- Funding is provided directly to tribes from the federal government.

- Application process and administration of funds are relatively easy after submission of 5-year plan (usually developed at the end of first years funding).
- Targeted changes planned for the program by the Administration for Children and Families will continue to improve tribal access.
- Funds can be carried over one fiscal year.
- No match required from tribes in the first year if funding is used strictly for planning purposes.

Potential Barriers To Access

- Development of the five year plan requires a great deal of planning and coordination for a small amount of funds, especially for smaller tribes.
- Requirement that a tribe must be eligible for at least $10,000 under the formula to receive any funds.
- 25% non-federal match required (however, tribes are allowed to use federal 638 funds from the Bureau of Indian Affairs as match).
- Size of grants are relatively small, although authorizations and consequently tribal allocations will continue to increase until FY 1998 when the program is up for reauthorization.
- Tribal consortia are not eligible for funding. A number of tribal consortia in the lower 48 states are comprised of enough small tribes that their aggregate numbers could make them eligible for funding under the formula, however, because of the prohibition on funding consortiums by DHHS they remain ineligible to receive these funds.

Contact Agency for more information:

Your regional Administration for Children and Families office

Region V in Chicago, Illinois (312) 353-4237
tribes in the states of Minnesota, Illinois, Michigan, Wisconsin, Indiana, and Ohio

Region VIII in Denver, Colorado (303) 844-3100
tribes in the states of Montana, North Dakota, South Dakota, Colorado, Utah, and Wyoming

Region X in Seattle, Washington (206) 615-2547
tribes in the states of Washington, Oregon, Idaho, and Alaska

Title IV-E Foster Care and Adoption Assistance

This program was designed to help provide for the actual maintenance payments needed to support foster care placements and services that support the foster care placement. Eligible support services include, case management services related to foster care and adoption assistance, food and clothing for the foster child, shelter, and transportation to visit birth parents to name a few. Adoption assistance services eligible for reimbursement include those services that help facilitate adoption for children that have special needs such as physical, mental, or emotional handicaps. Additional training and administrative funds are also available under Title IV-E. The program requires a match rate for foster care maintenance payments based on a variety of socio-demographic and service utilization characteristics of the state. The match rate for administrative funds is 50% and 75% for training funds.

Children who are eligible for Aid to Families with Dependent Children (AFDC), a program with income-based eligibility requirements, are automatically eligible for IV-E services. (Note: With the recent passage of the new welfare reform law and the dismantling of the AFDC program, eligibility for IV-E services will continue to be measured by AFDC eligibility under the prior rules, but plans to change the standards for IV-E eligibility are in progress.)

States were legislated to be the primary administrators of this entitlement program, with an allowance that other public agencies, such as tribes, may also administer the program under an agreement with the state. Tribes, however, were given no direct authority to administer the program and consequently, the law does not allow children placed by a tribal system in a tribal foster home to receive IV-E payments unless the tribe enters into an agreement with the state. This has led to the development of IV-E intergovernmental agreements between some tribes and states that provide an opportunity for tribes to administer portions of this program. As of October 1995, a total of 13 tribes had IV-E agreements with the Northwest states of Oregon, Montana, North Dakota and South Dakota.

Another method of capturing IV-E funds for tribes has been to qualify as a child placing agency under state law. This option currently exists in Washington and in some counties in Minnesota. More detailed descriptions of these options can be found in the "State Child Welfare Funding for Tribes" section of this document.

One of the only alternatives available to tribes that cannot administer a IV-E program is to give state courts custody of their tribal children in order to access needed foster care resources. This choice is a difficult one to make given that states do not always comply with the purpose and placement preferences defined in the Indian Child Welfare Act, putting Indian children at risk of being placed in inappropriate foster care settings. In addition, tribal governments are increasingly moving towards self-governance and want to develop the capacity to administer all of the programs that are needed in their community.

Since this program is an uncapped entitlement program, appropriations match the need and expenditure for eligible services. The total appropriation for fiscal year 1996 under the Title IV-E Foster Care and Adoption Assistance program was $4.3 billion nationwide.

Program Strengths:

- Provides entitlement based funding for foster care placements of children that are IV-E eligible.
- Provides support for administrative and training activities related to foster care and adoption assistance.

- Qualifies tribal foster care standards and licensing as equivalent to those used by the state or county in the placement of Indian children (the basis for this is contained in the Indian Child Welfare Act section 1931 (b) and IV-E regulations under the definition of "foster family home").

Potential Barriers To Access

- State liability for providing IV-E funds to tribes. Under current law a state providing these funds is accountable for tribal compliance with IV-E guidelines. The state faces the possibility of losing IV-E funds if a tribe is out of compliance.
- Unresolved political conflicts between states and tribes. In some situations, issues which may be unrelated to child welfare which have resulted in conflict between tribes and states may provide a roadblock to the formation of additional agreements, such as IV-E.
- The great deal of work and resources needed to operate the IV-E program. Start up costs can include the development/revision of tribal codes, program policies and procedures manuals, information collection systems, and the hiring and training of additional child welfare and juvenile court personnel.
- Lack of control that tribes have over the IV-E agreement process. Tribes trying to develop Title IV-E agreements with states have experienced a variety of responses. In many cases states are reluctant or opposed to forming agreements. In other cases states have placed a cap on how many IV-E eligible Indian children tribes could place and receive reimbursement for them. Finally, some states are only willing to allow tribes access to the foster care maintenance payments and not the administrative or training funds. These barriers have often resulted in tribes not pursuing IV-E agreements, leaving Indian children without benefits from this program.

Contact Agency for more information:

Your regional Administration for Children and Families office

Region V in Chicago, Illinois (312) 353-4237
tribes in the states of Minnesota, Illinois, Michigan, Wisconsin, Indiana, and Ohio

Region VIII in Denver, Colorado (303) 844-3100
tribes in the states of Montana, North Dakota, South Dakota, Colorado, Utah, and Wyoming

Region X in Seattle, Washington (206) 615-2547
tribes in the states of Washington, Oregon, Idaho, and Alaska

Title XX Social Services Block Grant

This block grant is one of the most flexible sources of federal social service funding available. States often use it for a variety of services, some of which are child welfare related. Some typical services provided with these funds includes child abuse and neglect prevention, protective services for children and adults, special services for children or adults who have disabilities and services to promote economic self-sufficiency.

The direct distribution of Title XX funds only goes to states and territorial governments. When the block grant was authorized in 1981 little thought was given to the needs of tribes and how they might receive benefits from this program. Fifteen years later only the Northwest states of Oregon and South Dakota report any sharing of Title XX funding with tribes. Of those states that do share Title XX funds with tribes, most only share a very small amount which many times is disproportionate compared to the tribal population in that state.

Fiscal year 1996 appropriations for Title XX Social Services Block Grant were $2.3 billion with all nine Oregon tribes and two South Dakota tribes receiving some form of Title XX funding from the state (see description under "State Child Welfare Funding for Tribes" section).

Program Strengths

- Flexible funding that can support a variety of child welfare services.
- Application process and administration of funds are relatively easy.
- Funds can be carried over to next fiscal year.

Potential Barriers to Access

- Declining state budgets for child welfare and social service programming. State legislatures and administrative officials may be less likely to share funding with tribes while state resources continue to shrink, especially when federal funding is not an opened-ended entitlement.
- State liability for providing Title XX funds to tribes. Under current law a state providing these funds is accountable for tribal compliance with Title XX güidelines. The state faces the possibility of losing Title XX funds if a tribe is out of compliance.
- Unresolved political conflicts between states and tribes. In some situations, issues which may be unrelated to child welfare which have resulted in conflict between tribes and states may provide a roadblock to the formation of additional agreements, such as Title XX.

Contact Agency for more information:

Your regional Administration for Children and Families office

Region V in Chicago, Illinois (312) 353-4237
tribes in the states of Minnesota, Illinois, Michigan, Wisconsin, Indiana, and Ohio

Region VIII in Denver, Colorado (303) 844-3100
tribes in the states of Montana, North Dakota, South Dakota, Colorado, Utah, and Wyoming

Region X in Seattle, Washington (206) 615-2547
tribes in the states of Washington, Oregon, Idaho, and Alaska

Indian Child Welfare Act, Title II Grants for Tribes

This is one of the most well-known and oldest sources of child welfare funding for tribes. The Bureau of Indian Affairs under the Department of Interior has administered this program since its inception in 1978. The funding, designed to support a wide variety of child welfare services, has few restrictions and is available to all federally-recognized tribes and some off-reservation Indian child welfare programs. Since this funding is flexible and one of the first sources of support for tribal child welfare services, tribes have often used this funding to help support core services or program expenses. The funds have been distributed on a population based formula since the program instituted a non-competitive process in 1993.

These funds are now part of the Tribal Priority Allocations category of Bureau funding. Funds in this category are subject to federal appropriations overall, but can also be reprogrammed by tribes once they have received them. This provides an extra incentive for tribal child welfare staff, planners, and elected leadership to plan together for the most effective use of these funds.

The total appropriation for fiscal year 1996 under the Indian Child Welfare Act, Title II grant program was $17.1 million with all 72 tribes within the project area receiving grants. The individual grant sizes vary from $28,000 to $750,000 across the nation.

Program Strengths

- Flexible funding that can support a variety of child welfare services.
- Application process and administration of funds are relatively easy.
- Funds can be carried over to next fiscal year.

Potential Barriers to Access

- Allocation of funds has occurred late in the fiscal year historically causing gaps in funding and service for many tribal programs.

Contact Agency for more information:

Your regional Bureau of Indian Affairs office:

Aberdeen Area Office Bureau of Indian Affairs, Division of Social Services (605) 226-7351 fortribes in North Dakota and South Dakota

Billings Area Office Bureau of Indian Affairs, Division of Social Services (406) 247-7943 for tribes in Montana (except Confederated Tribes of Salish and Kootenai - see Portland Area)

Minneapolis Area Office Bureau of Indian Affairs, Division of Social Services (612) 373-1183 for tribes in Minnesota

Portland Area Office Bureau of Indian Affairs, Division of Social Services (503) 231-6785 for tribes in Oregon, Idaho, Washington, and Confederated Tribes of Salish and Kootenai in Montana

Bureau of Indian Affairs Social Services

This group of social service programs was authorized under the Snyder Act and contains some of the first Bureau of Indian Affairs social service funding available to tribes. The individual programs include General Assistance, Child Welfare Assistance and Miscellaneous Assistance. The program most associated with child welfare services is Child Welfare Assistance. This program provides payments for foster care for Indian children who are placed in foster care and do not qualify for other state foster care resources. This funding is equivalent in many ways to the Title IV-E foster care maintenance payments described earlier except that as of fiscal year 1996 Child Welfare Assistance is no longer operated as an entitlement program. Payment rates for foster care are set at the state level in which the Indian child and/or tribe resides. The funding is considered a "resource of last resort" when no other foster care funding is available for an Indian child. Historically, the program has only been available to a limited number of tribes.

Program Strengths

- When available, provides foster care payments when tribe is unable to access Title IV-E funds.
- Application process and administration of funds are relatively easy.
- Funds can be carried over to next fiscal year.

Potential Barriers to Access

- Funding is available only "as a last resort" when no other foster care resources are available.
- Funding is not available in every area.
- Funding is capped and allocations do not reflect the actual need for services.

- Program does not provide additional funds for training as Title IV-E does.

Contact Agency for more information:

Your regional Bureau of Indian Affairs office:

Aberdeen Area Office Bureau of Indian Affairs, Division of Social Services (605) 226-7351 fortribes in North Dakota and South Dakota

Billings Area Office Bureau of Indian Affairs, Division of Social Services (406) 247-7943 for tribes in Montana (except Confederated Tribes of Salish and Kootenai - see Portland Area)

Minneapolis Area Office Bureau of Indian Affairs, Division of Social Services (612) 373-1183 for tribes in Minnesota

Portland Area Office Bureau of Indian Affairs, Division of Social Services (503) 231-6785 for tribes in Oregon, Idaho, Washington, and Confederated Tribes of Salish and Kootenai in Montana

Federal Discretionary Grant Funding

Every year the Administration for Children and Families prioritizes activities and distributes grant funds that support those activities. In the past, this planning process has resulted in the targeting of funds for child welfare projects that benefit tribes such as child abuse and neglect prevention and the development of intergovernmental agreements between tribes and states on child welfare matters. These projects have contributed a great wealth of knowledge and support to the protection of Indian children. While these projects have advanced some important issues, further investment from the Administration for Children and Families is needed. The first area identified below was funded once in 1992 but has not seen widespread implementation because of funding shortages that can support this type of work. The second area has not yet been supported by Administration for Children and Families discretionary grant funding but is equally important to tribes being able to improve their ability to operate successful child welfare programs. Each is described in more detail below.

Tribal/State Child Welfare Agreements. These agreements have proven valuable in clarifying the roles and responsibilities of tribal and state governments regarding the provision of child welfare services to Native American children and families. In many situations these intergovernmental agreements provide a framework in which to improve compliance with the Indian Child Welfare Act and initiate additional improvements for tribal and State services. The Administration for Children and Families has previous experience in funding these types of grant projects and should continue to prioritize the funding of these projects. The benefits from these agreements will be felt far into the future and will help both states and tribes work towards improved relationships and coordination of services for Indian children and families.

ining and Technical Assistance. Tribes have only had funding for formal child welfare ;rvices available to them during the last 18 years via the Indian Child Welfare Act, Title II grant program. Because the first 13 of those years utilized a competitive grants process, many tribes have only had child welfare programs for a few years. Funding from federal or state government sources has trickled down to the tribal level very slowly and, in most cases, has needed to be used to sustain basic program operations. Tribal child welfare programs, for the most part, have had little opportunity to either receive technical assistance or develop their own resources.

While Administration for Children and Families has provided funding to states to support training activities in child welfare, this training has been of limited use for tribal social workers. Often times mainstream trainings are located in urban areas far away from the reservation, limiting access by tribal program staff. The Bureau of Indian Affairs, Indian Health Service, state universities, and mainstream technical assistance providers have provided little in the way of effective training or technical assistance. As a result, tribes are placed in a vulnerable position as they attempt to build their capacity to operate child welfare programs utilizing multiple funding sources, many provided by the Administration for Children and Families. Providing ongoing resources in these areas for tribes by utilizing experienced professionals in Indian child welfare will ultimately benefit both tribes and the federal government.

file -
Child welfare -
native
Americans

TOM DASCHLE
U.S. Senator for South Dakota

320 North Main, Suite B
Sioux Falls, SD 57104
605-334-9596

320 S. First Street, Suite 101
Aberdeen, SD 57401
605-225-8823

816 6th Street
Rapid City, SD 57701
605-348-7551

Washington, DC 20510
202-224-2321
1-800-424-9094

FAX COVER SHEET

Date: June 21, 1999

TO: Nicole Ravner

Fax Number: 456-2878

FROM: Joan Huffer
Senator Tom Daschle
S-221 United States Capitol
Washington, DC 20510
Telephone: (202) 224-5556

Number of Pages (Including Cover Sheet):

MESSAGE: Per our discussion last week, attached is a letter from Senator Daschle to the First Lady about the Indian child welfare bill he intends to introduce shortly. Please call if you have questions. We particularly need help from the Administration in coming up with an offset.

THOMAS DASCHLE
SOUTH DAKOTA

COMMITTEE
AGRICULTURE
(202) 224-2321
TOLL FREE 1-800-424-9094
Email: Tom_Daschle@daschle.senate.gov
Internet: http://www.senate.gov/~daschle

United States Senate

WASHINGTON, DC 20510-4103

320 South First Street, Suite 101
P.O. Box 1536
Aberdeen, SD 57402-1536
(605) 225-8823

816 6th Street
P.O. Box 8168
Rapid City, SD 57709
(605) 348-7551

320 North Main Avenue, Suite B
P.O. Box 1274
Sioux Falls, SD 57101-1274
(605) 334-9596
TDD (605) 334-4632

June 17, 1999

The First Lady
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mrs. Clinton:

Knowing of your strong advocacy on behalf of children, I would like to bring to your attention an inequity in the foster care and adoption system that adversely affects many Native American children.

As you know, the Foster Care and Adoption Assistance Act provides an entitlement to assistance, through Title IV-E of the Social Security Act, for income-eligible children placed into foster care or adoptive homes by state courts or by public agencies with which the state has an agreement. These funds include foster care maintenance payments to support the cost of food, shelter, clothing, daily supervision, school supplies, or liability insurance for a child. However, due to an oversight, otherwise eligible Native children placed into foster care by tribal courts do not receive this same entitlement.

This inequity also extends to children who are adopted through tribal placements. Currently, the IV-E program offers sporadic assistance for expenses associated with adoption and no assistance for training professional staff or parents involved in the adoption, absent a tribal-state agreement.

While some tribes and states have entered into Title IV-E agreements, this tends to be the exception and not the rule. Some tribes receive discretionary funds to provide benefits for some children, but these benefits are not paid to all children. No discretionary funds are available to the tribes for training and administration.

I plan, along with several of my colleagues, to introduce legislation to remedy this situation. My bill would do the following:

- Authorize the extension of Title IV-E entitlement programs to tribal placements in foster and adoptive homes;
- Authorize tribal governments to receive direct funding from HHS for administration of IV-E programs (tribes must have HHS-approved programs);
- Allow the Secretary flexibility to modify the requirements of the IV-E law for tribes if those requirements are not in the best interest of Native children, and if the tribal plans include alternative provisions that would achieve the purpose of the requirement that is altered or waived; and
- Allow continuation of tribal-state IV-E agreements.

The HHS Office of the Inspector General issued a report in 1994 entitled, "Opportunities For Administration for Native American Children and Families to Improve Child Welfare Services and Protections for Native American Children," which documented that tribes receive very little benefit from the Title IV-E program. That report concluded that the best way to ensure that Native people are served under this program is to provide direct funding to tribes.

I strongly believe Congress should address this oversight and provide equitable benefits to income-eligible Native American children under the jurisdiction of tribal governments. I hope you and the President will join me in support of this legislation to correct what I believe is an unjust situation.

Thank you for your consideration. I look forward to working with you to help these children.

With best regards, I am

Sincerely,

Tom

Tom Daschle
United States Senate

TAD/jh

Hillary - I would be happy to talk to you about this when your schedule permits.

THOMAS DASCHLE
SOUTH DAKOTA

COMMITTEE
AGRICULTURE
(202) 224-2321
TOLL FREE 1-800-424-9094
Email: Tom_Daschle@daschle.senate.gov
Internet: http://www.senate.gov/~daschle

United States Senate

WASHINGTON, DC 20510-4103

320 SOUTH FIRST STREET, SUITE 101
P.O. BOX 1536
ABERDEEN, SD 57402-1536
(605) 225-8823

816 6TH STREET
P.O. BOX 8168
RAPID CITY, SD 57709
(605) 348-7551

320 NORTH MAIN AVENUE, SUITE B
P.O. BOX 1274
SIOUX FALLS, SD 57101-1274
(605) 334-9596
TDD (605) 334-4632

June 17, 1999

The First Lady
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mrs. Clinton:

Knowing of your strong advocacy on behalf of children, I would like to bring to your attention an inequity in the foster care and adoption system that adversely affects many Native American children.

As you know, the Foster Care and Adoption Assistance Act provides an entitlement to assistance, through Title IV-E of the Social Security Act, for income-eligible children placed into foster care or adoptive homes by state courts or by public agencies with which the state has an agreement. These funds include foster care maintenance payments to support the cost of food, shelter, clothing, daily supervision, school supplies, or liability insurance for a child. However, due to an oversight, otherwise eligible Native children placed into foster care by tribal courts do not receive this same entitlement.

This inequity also extends to children who are adopted through tribal placements. Currently, the IV-E program offers sporadic assistance for expenses associated with adoption and no assistance for training professional staff or parents involved in the adoption, absent a tribal-state agreement.

While some tribes and states have entered into Title IV-E agreements, this tends to be the exception and not the rule. Some tribes receive discretionary funds to provide benefits for some children, but these benefits are not paid to all children. No discretionary funds are available to the tribes for training and administration.

I plan, along with several of my colleagues, to introduce legislation to remedy this situation. My bill would do the following:

- Authorize the extension of Title IV-E entitlement programs to tribal placements in foster and adoptive homes;
- Authorize tribal governments to receive direct funding from HHS for administration of IV-E programs (tribes must have HHS-approved programs);
- Allow the Secretary flexibility to modify the requirements of the IV-E law for tribes if those requirements are not in the best interest of Native children, and if the tribal plans include alternative provisions that would achieve the purpose of the requirement that is altered or waived; and
- Allow continuation of tribal-state IV-E agreements.

The First Lady
June 17, 1999
Page 2

The HHS Office of the Inspector General issued a report in 1994 entitled, "Opportunities For Administration for Native American Children and Families to Improve Child Welfare Services and Protections for Native American Children," which documented that tribes receive very little benefit from the Title IV-E program. That report concluded that the best way to ensure that Native people are served under this program is to provide direct funding to tribes.

I strongly believe Congress should address this oversight and provide equitable benefits to income-eligible Native American children under the jurisdiction of tribal governments. I hope you and the President will join me in support of this legislation to correct what I believe is an unjust situation.

Thank you for your consideration. I look forward to working with you to help these children.

With best regards, I am

Sincerely,

Tom

Tom Daschle
United States Senate

TAD/jh

Hillary - I would be happy to talk to you about this when your schedule permits.

Bill —

child welfare —

native Americans

United States Senate

Office of the Democratic Leader

Washington, DC 20510-7020

OFFICIAL BUSINESS

Tom Daschle

U.S.S.

The First Lady
The White House
1600 Pennsylvania Ave. NW
WAshington, DC 20500

20500-0002