

Union Calendar No. 443

104<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session

**H. R. 3828**

[Report No. 104-808]

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**A BILL**

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

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SEPTEMBER 19, 1996

Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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## IN THE HOUSE OF REPRESENTATIVES

JULY 16, 1996

Mr. YOUNG of Alaska (for himself, Mr. MILLER of California, and Mr. RICHARDSON) introduced the following bill; which was referred to the Committee on Resources

September 19, 1996

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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## A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 “(A) the terms”;

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

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

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

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

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

5 “(2) The court shall also certify”;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(A) known after inquiry of—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21                           “(B) a parent is an Indian; or

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

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

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

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

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

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

○