

Calendar No. 295

105TH CONGRESS  
1ST Session

**S. 569**

[Report No. 105-156]

**A BILL**

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

NOVEMBER 13, 1997

Reported with an amendment

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1ST SESSION**S. 569****[Report No. 105–156]**

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

## IN THE SENATE OF THE UNITED STATES

APRIL 14, 1997

Mr. MCCAIN (for himself, Mr. CAMPBELL, Mr. DOMENICI, Mr. DORGAN, and Mr. WELLSTONE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

NOVEMBER 13, 1997

Reported by Mr. CAMPBELL, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]**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 1997”.~~

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

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

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

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

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

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

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

12 “(A) the terms”;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23           “(e)(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 (c) 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 (c) 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 (c) 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       “(c)(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 (e) and (d).~~

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

18                 ~~“(1) a court may approve, if in the best inter-~~  
 19                 ~~ests of an Indian child, as part of an adoption de-~~  
 20                 ~~creed of that Indian child, an agreement that states~~  
 21                 ~~that a birth parent, an extended family member, or~~  
 22                 ~~the Indian child’s tribe shall have an enforceable~~  
 23                 ~~right of visitation or continued contact with the In-~~  
 24                 ~~dian child after the entry of a final decree of adop-~~  
 25                 ~~tion; 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 knowingly and  
 16   willfully—

17                  “(1) falsifies, conceals, or covers up by any  
 18   trick, scheme, or device, a material fact concerning  
 19   whether, for purposes of this 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.”.~~

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

14       (a) *SHORT TITLE.*—*This Act may be cited as the “In-*  
15       *dian Child Welfare Act Amendments of 1997”.*

16       (b) *REFERENCES.*—*Whenever in this Act an amend-*  
17       *ment or repeal is expressed in terms of an amendment to*  
18       *or repeal of a section or other provision, the reference shall*  
19       *be considered to be made to a section or other provision*  
20       *of the Indian Child Welfare Act of 1978 (25 U.S.C. 1901*  
21       *et seq.).*

22   **SEC. 2. EXCLUSIVE JURISDICTION.**

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

24               (1) *by inserting “(1)” after “(a)”;* and



1           (2) *by striking the last sentence and inserting*  
 2           *the following:*

3           “(2) *An Indian tribe shall retain exclusive jurisdiction*  
 4           *over any child custody proceeding that involves an Indian*  
 5           *child, notwithstanding any subsequent change in the resi-*  
 6           *dence or domicile of the Indian child, in any case in which*  
 7           *the Indian child—*

8                     “(A) *resides or is domiciled within the reserva-*  
 9                     *tion of the Indian tribe and is made a ward of a trib-*  
 10                    *al court of that Indian tribe; or*

11                   “(B) *after a transfer of jurisdiction is carried*  
 12                   *out under subsection (b), becomes a ward of a tribal*  
 13                   *court of that Indian tribe.”.*

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

15           Section 101(c) (25 U.S.C. 1911(c)) *is amended by*  
 16           *striking “In any State court proceeding” and inserting*  
 17           *“Except as provided in section 103(e), in any State court*  
 18           *proceeding”.*

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

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

21                   (1) *by inserting “(1)” before “Where”;*

22                   (2) *by striking “foster care placement” and in-*  
 23                   *serting “foster care or preadoptive or adoptive place-*  
 24                   *ment”;*

1           (3) by striking “judge’s certificate that the  
2           terms” and inserting the following: “judge’s certificate  
3           that—

4           “(A) the terms”;

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

7           (5) by inserting after subparagraph (A), as des-  
8           ignated by paragraph (3), the following new subpara-  
9           graph:

10           “(B) any attorney or public or private agency  
11           that facilitates the voluntary termination of parental  
12           rights or preadoptive or adoptive placement has in-  
13           formed the natural parents of the placement options  
14           with respect to the child involved, has informed those  
15           parents of the applicable provisions of this Act, and  
16           has certified that the natural parents will be notified  
17           within 10 days of any change in the adoptive place-  
18           ment.”;

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

21           “(2) The court shall also certify”;

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

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

1           (8) *by adding at the end the following new para-*  
 2       *graph:*

3       “(4) *An Indian custodian who has the legal authority*  
 4       *to consent to an adoptive placement shall be treated as a*  
 5       *parent for the purposes of the notice and consent to adop-*  
 6       *tion provisions of this Act.”.*

7       **SEC. 5. WITHDRAWAL OF CONSENT.**

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

9           (1) *by inserting “(1)” before “Any”; and*

10          (2) *by adding at the end the following new para-*  
 11       *graphs:*

12       “(2) *Except as provided in paragraph (4), a consent*  
 13       *to adoption of an Indian child or voluntary termination*  
 14       *of parental rights to an Indian child may be revoked, only*  
 15       *if—*

16           “(A) *no final decree of adoption has been en-*  
 17       *tered; and*

18           “(B)(i) *the adoptive placement specified by the*  
 19       *parent terminates; or*

20           “(ii) *the revocation occurs before the later of the*  
 21       *end of—*

22           “(I) *the 180-day period beginning on the*  
 23       *date on which the Indian child’s tribe receives*  
 24       *written notice of the adoptive placement pro-*

1            *vided in accordance with the requirements of*  
 2            *subsections (c) and (d); or*

3            *“(II) the 30-day period beginning on the*  
 4            *date on which the parent who revokes consent re-*  
 5            *ceives notice of the commencement of the adop-*  
 6            *tion proceeding that includes an explanation of*  
 7            *the revocation period specified in this subclause.*

8            *“(3) The Indian child with respect to whom a revoca-*  
 9            *tion under paragraph (2) is made shall be returned to the*  
 10           *parent who revokes consent immediately upon an effective*  
 11           *revocation under that paragraph.*

12           *“(4) Subject to paragraph (6), if, by the end of the*  
 13           *applicable period determined under subclause (I) or (II) of*  
 14           *paragraph (2)(B)(ii), a consent to adoption or voluntary*  
 15           *termination of parental rights has not been revoked, begin-*  
 16           *ning after that date, a parent may revoke such a consent*  
 17           *only—*

18           *“(A) pursuant to applicable State law; or*

19           *“(B) if the parent of the Indian child involved*  
 20           *petitions a court of competent jurisdiction, and the*  
 21           *court finds that the consent to adoption or voluntary*  
 22           *termination of parental rights was obtained through*  
 23           *fraud or duress.*

24           *“(5) Subject to paragraph (6), if a consent to adoption*  
 25           *or voluntary termination of parental rights is revoked*

1 *under paragraph (4)(B), with respect to the Indian child*  
 2 *involved—*

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

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

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

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

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

15 *“(c)(1) A party that seeks the voluntary placement of*  
 16 *an Indian child or the voluntary termination of the paren-*  
 17 *tal rights of a parent of an Indian child shall provide writ-*  
 18 *ten notice of the placement or proceeding to the Indian*  
 19 *child’s tribe. A notice under this subsection shall be sent*  
 20 *by registered mail (return receipt requested) to the Indian*  
 21 *child’s tribe, not later than the applicable date specified in*  
 22 *paragraph (2) or (3).*

23 *“(2)(A) Except as provided in paragraph (3), notice*  
 24 *shall be provided under paragraph (1) in each of the follow-*  
 25 *ing cases:*

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

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

5           “(iii) Not later than 10 days after the com-  
6       mencement of any proceeding for a termination of pa-  
7       rental rights to an Indian child.

8           “(iv) Not later than 10 days after the commence-  
9       ment of any adoption proceeding concerning an In-  
10      dian child.

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

15          “(3) If, after the expiration of the applicable period  
16      specified in paragraph (2), a party referred to in para-  
17      graph (1) discovers that the child involved may be an In-  
18      dian child—

19               “(A) the party shall provide notice under para-  
20      graph (1) not later than 10 days after the discovery;  
21      and

22               “(B) any applicable time limit specified in sub-  
23      section (e) shall apply to the notice provided under  
24      subparagraph (A) only if the party referred to in  
25      paragraph (1) has, on or before commencement of the

1       *placement, made reasonable inquiry concerning*  
 2       *whether the child involved may be an Indian child.”.*

3   **SEC. 7. CONTENT OF NOTICE.**

4       *Section 103(d) (25 U.S.C. 1913(d)) is amended to read*  
 5   *as follows:*

6       “(d) *Each written notice provided under subsection (c)*  
 7   *shall be based on a good faith investigation and shall con-*  
 8   *tain the following:*

9               “(1) *The name of the Indian child involved, and*  
 10       *the actual or anticipated date and place of birth of*  
 11       *the Indian child.*

12              “(2) *A list containing the name, address, date of*  
 13       *birth, and (if applicable) the maiden name of each*  
 14       *Indian parent and grandparent of the Indian child,*  
 15       *if—*

16                   “(A) *known after inquiry of—*

17                           “(i) *the birth parent placing the child*  
 18                           *or relinquishing parental rights; and*

19                           “(ii) *the other birth parent (if avail-*  
 20                           *able); or*

21                   “(B) *otherwise ascertainable through other*  
 22       *reasonable inquiry.*

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

1           “(4) *A statement of the reasons why the child in-*  
 2           *volved may be an Indian child.*

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

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

8           “(B) *the date and time of any related court pro-*  
 9           *ceeding that is scheduled as of the date on which the*  
 10          *notice is provided under this subsection.*

11          “(7) *If any, the tribal affiliation of the prospec-*  
 12          *tive adoptive parents.*

13          “(8) *The name and address of any public or pri-*  
 14          *vate social service agency or adoption agency in-*  
 15          *volved.*

16          “(9) *An identification of any Indian tribe with*  
 17          *respect to which the Indian child or parent may be*  
 18          *a member.*

19          “(10) *A statement that each Indian tribe identi-*  
 20          *fied under paragraph (9) may have the right to inter-*  
 21          *vene in the proceeding referred to in paragraph (5).*

22          “(11) *An inquiry concerning whether the Indian*  
 23          *tribe that receives notice under subsection (c) intends*  
 24          *to intervene under subsection (e) or waive any such*  
 25          *right to intervention.*



1           “(12) A statement that, if the Indian tribe that  
 2       receives notice under subsection (c) fails to respond in  
 3       accordance with subsection (e) by the applicable date  
 4       specified in that subsection, the right of that Indian  
 5       tribe to intervene in the proceeding involved shall be  
 6       considered to have been waived by that Indian tribe.”.

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

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

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

13           “(A) in the case of a voluntary proceeding to ter-  
 14       minate parental rights, the Indian tribe sent a notice  
 15       of intent to intervene or a written objection to the  
 16       adoptive placement to the court or to the party that  
 17       is seeking the voluntary placement of the Indian  
 18       child, not later than 30 days after receiving notice  
 19       that was provided in accordance with the require-  
 20       ments of subsections (c) and (d); or

21           “(B) in the case of a voluntary adoption pro-  
 22       ceeding, the Indian tribe sent a notice of intent to in-  
 23       tervene or a written objection to the adoptive place-  
 24       ment to the court or to the party that is seeking the

1       *voluntary placement of the Indian child, not later*  
2       *than the later of—*

3               “(i) 90 days after receiving notice of the  
4               *adoptive placement that was provided in accord-*  
5               *ance with the requirements of subsections (c) and*  
6               *(d); or*

7               “(ii) 30 days after receiving a notice of the  
8               *voluntary adoption proceeding that was provided*  
9               *in accordance with the requirements of sub-*  
10              *sections (c) and (d).*

11       “(2)(A) *Except as provided in subparagraph (B), the*  
12       *Indian child’s tribe shall have the right to intervene at any*  
13       *time in a voluntary child custody proceeding in a State*  
14       *court in any case in which the Indian tribe did not receive*  
15       *written notice provided in accordance with the require-*  
16       *ments of subsections (c) and (d).*

17       “(B) *An Indian tribe may not intervene in any vol-*  
18       *untary child custody proceeding in a State court if the In-*  
19       *dian tribe gives written notice to the State court or any*  
20       *party involved of—*

21               “(i) *the intent of the Indian tribe not to inter-*  
22               *vene in the proceeding; or*

23               “(ii) *the determination by the Indian tribe*  
24               *that—*

1                   “(I) the child involved is not a member of,  
 2                   or is not eligible for membership in, the Indian  
 3                   tribe; or

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

6           “(3) If an Indian tribe files a motion for intervention  
 7 in a State court under this subsection, the Indian tribe shall  
 8 submit to the court, at the same time as the Indian tribe  
 9 files that motion, a tribal certification that includes a state-  
 10 ment that documents, with respect to the Indian child in-  
 11 volved, the membership or eligibility for membership of that  
 12 Indian child in the Indian tribe under applicable tribal  
 13 law.

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

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

18                   “(2) preclude the Indian tribe of the Indian  
 19 child that is the subject of an action taken by the In-  
 20 dian tribe under subsection (e) from intervening in a  
 21 proceeding concerning that Indian child if a proposed  
 22 adoptive placement of that Indian child is changed  
 23 after that action is taken; or

24                   “(3) except as specifically provided in subsection  
 25 (e), affect the applicability of this Act.

1       “(g) Notwithstanding any other provision of law, no  
 2       proceeding for a voluntary termination of parental rights  
 3       or adoption of an Indian child may be conducted under  
 4       applicable State law before the date that is 30 days after  
 5       the Indian child’s tribe receives notice of that proceeding  
 6       that was provided in accordance with the requirements of  
 7       subsections (c) and (d).

8       “(h) Notwithstanding any other provision of law (in-  
 9       cluding any State law)—

10               “(1) a court may approve, if in the best interests  
 11       of an Indian child, as part of an adoption decree of  
 12       that Indian child, an agreement that states that a  
 13       birth parent, an extended family member, or the In-  
 14       dian child’s tribe shall have an enforceable right of  
 15       visitation or continued contact with the Indian child  
 16       after the entry of a final decree of adoption; and

17               “(2) the failure to comply with any provision of  
 18       a court order concerning the continued visitation or  
 19       contact referred to in paragraph (1) shall not be con-  
 20       sidered to be grounds for setting aside a final decree  
 21       of adoption.”.

22   **SEC. 9. PLACEMENT OF INDIAN CHILDREN.**

23       Section 105(c) (25 U.S.C. 1915(c)) is amended—

24               (1) in the second sentence—

1                   (A) by striking “Indian child or parent”  
 2                   and inserting “parent or Indian child”; and

3                   (B) by striking the colon after “considered”  
 4                   and inserting a period;

5                   (2) by striking “Provided, That where” and in-  
 6                   serting: “In any case in which”; and

7                   (3) by inserting after the second sentence the fol-  
 8                   lowing: “In any case in which a court determines  
 9                   that it is appropriate to consider the preference of a  
 10                  parent or Indian child, for purposes of subsection (a),  
 11                  that preference may be considered to constitute good  
 12                  cause.”.

13 **SEC. 10. FRAUDULENT REPRESENTATION.**

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

16 **“SEC. 114. FRAUDULENT REPRESENTATION.**

17           “(a) *IN GENERAL.*—With respect to any proceeding  
 18 subject to this Act involving an Indian child or a child who  
 19 may be considered to be an Indian child for purposes of  
 20 this Act, a person, other than a birth parent of the child,  
 21 shall, upon conviction, be subject to a criminal sanction  
 22 under subsection (b) if that person knowingly and will-  
 23 fully—

1           “(1) falsifies, conceals, or covers up by any trick,  
2           scheme, or device, a material fact concerning whether,  
3           for purposes of this Act—

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

5                       “(B) a parent is an Indian;

6           “(2)(A) makes any false, fictitious, or fraudulent  
7           statement, omission, or representation; or

8                       “(B) falsifies a written document knowing that  
9           the document contains a false, fictitious, or fraudulent  
10          statement or entry relating to a material fact de-  
11          scribed in paragraph (1); or

12                      “(3) assists any person in physically removing a  
13          child from the United States in order to obstruct the  
14          application of this Act.

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

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

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