

106TH CONGRESS
1ST SESSION

S. 1213

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

IN THE SENATE OF THE UNITED STATES

JUNE 10, 1999

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

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.**

4 This Act may be cited as the “Indian Child Welfare
5 Act Amendments of 1999”.

6 **SEC. 2. EXCLUSIVE JURISDICTION.**

7 Section 101(a) of the Indian Child Welfare Act of
8 1978 (25 U.S.C. 1911(a)) is amended—

9 (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 that Indian tribe and is made a ward of a
10 tribal 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) of the Indian Child Welfare Act of
16 1978 (25 U.S.C. 1911(c)) is amended by striking “In any
17 State court proceeding” and inserting “Except as provided
18 in section 103(e), in any State court proceeding”.

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

20 Section 103(a) of the Indian Child Welfare Act of
21 1978 (25 U.S.C. 1913(a)) is amended—

22 (1) by striking the first sentence and inserting
23 the following:

24 “(a)(1) Where any parent or Indian custodian volun-
25 tarily consents to foster care or preadoptive or adoptive

1 placement or to termination of parental rights, such con-
 2 sent shall not be valid unless—

3 “(A) executed in writing;

4 “(B) recorded before a judge of a court of com-
 5 petent jurisdiction; and

6 “(C) accompanied by the presiding judge’s cer-
 7 tificate that—

8 “(i) the terms and consequences of the
 9 consent were fully explained in detail and were
 10 fully understood by the parent or Indian custo-
 11 dian; and

12 “(ii) any attorney or public or private
 13 agency that facilitates the voluntary termi-
 14 nation of parental rights or preadoptive or
 15 adoptive placement has—

16 “(I) informed the natural parents of
 17 the placement options with respect to the
 18 child involved;

19 “(II) informed those parents of the
 20 applicable provisions of this Act; and

21 “(III) certified that the natural par-
 22 ents will be notified within 10 days after
 23 any change in the adoptive placement.”;

24 (2) by striking “The court shall also certify”
 25 and inserting the following:

1 “(2) The court shall also certify”;

2 (3) by striking “Any consent given prior to,”

3 and inserting the following:

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

5 (4) by adding at the end the following:

6 “(4) An Indian custodian who has the legal authority

7 to consent to an adoptive placement shall be treated as

8 a parent for the purposes of the notice and consent to

9 adoption provisions of this Act.”.

10 **SEC. 5. WITHDRAWAL OF CONSENT.**

11 Section 103(b) of the Indian Child Welfare Act of

12 1978 (25 U.S.C. 1913(b)) is amended—

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

14 (2) by adding at the end the following:

15 “(2) Except as provided in paragraph (4), a consent

16 to adoption of an Indian child or voluntary termination

17 of parental rights to an Indian child may be revoked, only

18 if—

19 “(A) no final decree of adoption has been en-

20 tered; and

21 “(B)(i) the adoptive placement specified by the

22 parent terminates; or

23 “(ii) the revocation occurs before the later of

24 the end of—

1 “(I) the 180-day period beginning on the
2 date on which the tribe of the Indian child re-
3 ceives written notice of the adoptive placement
4 provided in accordance with the requirements of
5 subsections (c) and (d); or

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

12 “(3) Immediately upon an effective revocation under
13 paragraph (2), the Indian child who is the subject of that
14 revocation shall be returned to the parent who revokes
15 consent.

16 “(4) Subject to paragraph (6), if, by the end of the
17 applicable period determined under subclause (I) or (II)
18 of paragraph (2)(B)(ii), a consent to adoption or voluntary
19 termination of parental rights has not been revoked, a par-
20 ent may revoke such consent after that date only—

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

22 “(B) if the parent of the Indian child involved
23 petitions a court of competent jurisdiction, and the
24 court finds that the consent to adoption or voluntary

1 termination of parental rights was obtained through
2 fraud or duress.

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

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

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

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

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

17 Section 103(c) of the Indian Child Welfare Act of
18 1978 (25 U.S.C. 1913(c)) is amended to read as follows:

19 “(c)(1) A party that seeks the voluntary placement
20 of an Indian child or the voluntary termination of the pa-
21 rental rights of a parent of an Indian child shall provide
22 written notice of the placement or proceeding to the tribe
23 of that Indian child. A notice under this subsection shall
24 be sent by registered mail (return receipt requested) to

1 the tribe of the Indian child, not later than the applicable
 2 date specified in paragraph (2) or (3).

3 “(2)(A) Except as provided in paragraph (3), notice
 4 shall be provided under paragraph (1) by the applicable
 5 date specified in each of the following cases:

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

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

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

14 “(iv) Not later than 10 days after the com-
 15 mencement of any adoptive proceeding concerning
 16 an Indian child.

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

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

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

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

10 **SEC. 7. CONTENT OF NOTICE.**

11 Section 103(d) of the Indian Child Welfare Act of
 12 1978 (25 U.S.C. 1913(d)) is amended to read as follows:

13 “(d) Each written notice provided under subsection
 14 (c) shall be based on a good faith investigation and contain
 15 the following:

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

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

23 “(A) known after inquiry of—

24 “(i) the birth parent placing the child
 25 or relinquishing parental rights; and

1 “(ii) the other birth parent (if avail-
2 able); or

3 “(B) otherwise ascertainable through other
4 reasonable inquiry.

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

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

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

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

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

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

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

23 “(9) An identification of any Indian tribe with
24 respect to which the Indian child or parent may be
25 a member.

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

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

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

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

17 Section 103 of the Indian Child Welfare Act of 1978
 18 (25 U.S.C. 1913) is amended by adding at the end the
 19 following:

20 “(e)(1) The tribe of the Indian child involved shall
 21 have the right to intervene at any time in a voluntary child
 22 custody proceeding in a State court only if—

23 “(A) in the case of a voluntary proceeding to
 24 terminate parental rights, the Indian tribe sent a no-
 25 tice of intent to intervene or a written objection to

1 the adoptive placement to the court or to the party
2 that is seeking the voluntary placement of the In-
3 dian child, not later than 30 days after receiving no-
4 tice that was provided in accordance with the re-
5 quirements of subsections (c) and (d); or

6 “(B) in the case of a voluntary adoption pro-
7 ceeding, the Indian tribe sent a notice of intent to
8 intervene or a written objection to the adoptive
9 placement to the court or to the party that is seek-
10 ing the voluntary placement of the Indian child, not
11 later than the later of—

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

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

20 “(2)(A) Except as provided in subparagraph (B), the
21 tribe of the Indian child involved shall have the right to
22 intervene at any time in a voluntary child custody pro-
23 ceeding in a State court in any case in which the Indian
24 tribe did not receive written notice provided in accordance
25 with the requirements 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 tribal certification that includes
18 a statement that documents, with respect to the Indian
19 child involved, the membership or eligibility for member-
20 ship of that Indian child in the Indian tribe under applica-
21 ble tribal 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 tribe of the Indian child receives notice of that pro-
14 ceeding that was provided in accordance with the require-
15 ments of subsections (c) 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 cree of that Indian child, an agreement that states
21 that a birth parent, an extended family member, or
22 the tribe of the Indian child shall have an enforce-
23 able right of visitation or continued contact with the
24 Indian child after the entry of a final decree of
25 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. PLACEMENT OF INDIAN CHILDREN.**

7 Section 105(c) of the Indian Child Welfare Act of
8 1978 (25 U.S.C. 1915(c)) is amended—

9 (1) in the second sentence—

10 (A) by striking “Indian child or parent”
11 and inserting “parent or Indian child”; and

12 (B) by striking the colon after “consid-
13 ered” and inserting a period;

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

16 (3) by inserting after the second sentence the
17 following: “In any case in which a court determines
18 that it is appropriate to consider the preference of
19 a parent or Indian child, for purposes of subsection
20 (a), that preference may be considered to constitute
21 good cause.”.

22 **SEC. 10. FRAUDULENT REPRESENTATION.**

23 Title I of the Indian Child Welfare Act of 1978 (25
24 U.S.C. 1911 et seq.) is amended by adding at the end
25 the following:

1 **“SEC. 114. FRAUDULENT REPRESENTATION.**

2 “(a) IN GENERAL.—With respect to any proceeding
3 subject to this Act involving an Indian child or a child
4 who may be considered to be an Indian child for purposes
5 of this Act, a person, other than a birth parent of the
6 child, shall, upon conviction, be subject to a criminal sanc-
7 tion under subsection (b) if that person knowingly and
8 willfully—

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

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

13 “(B) a parent is an Indian;

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

16 “(B) falsifies a written document knowing that
17 the document contains a false, fictitious, or fraudu-
18 lent statement or entry relating to a material fact
19 described in paragraph (1); or

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

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

25 “(1) for an initial violation, a person shall be
26 fined in accordance with section 3571 of title 18,

1 United States Code, or imprisoned not more than 1
2 year, or both.

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

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