

CREEK NATION REPORT  
ON  
INDIAN CHILD WELFARE ACT

## CREEK NATION REPORT ON INDIAN CHILD WELFARE ACT

I.	Analysis of Indian Child Welfare Act	1
A.	Intent of the Act	1
B.	Effect of the Act within Creek Nation	14
C.	Effect of defeat of the Act within Creek Nation	14
D.	Creek Nation: Proposed Utilization of Act	15
II.	State of Child Welfare in the Creek Nation	16
A.	Historical Introduction	16
B.	Current Effects Upon the Creek People	18
III.	Creek Institutions Prepared for Child Welfare Jurisdiction	20
A.	Office of the Principal Chief	20
B.	Executive and Administrative Offices	20
C.	Organized Creek Communities	21
D.	Independent Agencies	21
IV.	Creek Institutions Being Prepared for Child Welfare Jurisdiction	23
A.	The National Council	23
B.	District and Supreme Courts	23
C.	Council on Domestic Affairs: Office of the Principal Chief	24
V.	Declaration of Creek Nation support for Indian Child Welfare Act	25
VI.	Appendices	26
1.	Judicial Procedure (Proposed)	26
2.	Organization Chart-The Government of the Creek Nation	57
3.	Functions and Responsibilities of the Creek Government	58



Part I. Creek Nation Analysis of the Indian Child Welfare Act of 1977.

A. The Intent of the Indian Child Welfare Act, a sectional analysis.

Findings, Policy and Definitions.

The findings recognize the special relationship between the sovereign Indian nations and the United States, and the resulting trust responsibility of the United States for the Indian people. Congress finds that there is an alarmingly high percentage of placement proceedings which separate the Indian child from his family and tribe, that the reasons for these separations can be overcome by this act, and that the effect of these separations is "socially and culturally undesirable."

Policy is declared by the Congress to establish placement standards, discourage unnecessary placements for singularly social reasons, assist Indian governments in the operation of family development programs, and promote "the security and stability of Indian families."

Definitions are established which include the Creek Nation within the definitions of (c) Indian tribe and (g) Reservation.

Title I. Child Placement Jurisdiction and Standards.

Section 101 voids the placement of Indian children in the future if such placements are not made within the conditions of this Act, sets procedural and conditional standards concerning the welfare of the Indian child and the Indian family (natural parents), and establishes procedural standards for non-tribal courts in such instances.

Section 102 establishes standards similar to Section 101 where tribal courts are involved.

Section 103 concerns non-adoptive proceedings, maintenance of records, and continuance of tribal court jurisdiction until age 18.

Section 104 establishes standards for the placed child to investigate facts in the record which pertain to tribal rights and relationships.

Section 105 guarantees full faith and credit in any tribal law enacted pursuant to this act, such full faith and credit binding upon the United States, all states and territories, and all other Indian tribes.

## Title II. Indian Family Development.

Section 201 establishes Secretarial contract authority for the purpose of tribal family development programs and in the preparation of child welfare codes. Necessary program features are established. Tribal licensing of foster or adoptive homes is established, and tribal family development centers are authorized.

Section 202 authorizes similar programs within Indian organizations.

Section 203 authorizes the Department of Health, Education and Welfare to participate in agreements and cooperative arrangements under this act.

Section 203 also authorizes appropriations of \$26,000,000 in FY 79, and subsequent sums thereafter.

## Title III. Recordkeeping, Information Availability, and Timetables.

Section 301 establishes a central records facility of all Indian child placements subsequent to this act, excludes these records from the provisions of the Freedom of Information Act as amended, and calls for records to be delivered within particular time frames.

Section 302 authorizes rules and regulations, in consultation with Indian tribes and organizations, submission of proposed rules to the Congress and the public within certain time frames, and amendment procedures.

## Title IV. Placement Prevention Study.

Section 401 authorizes a study to develop a plan for the provision of local schools (with a priority for elementary schools) in Indian communities.



## INDIAN CHILD WELFARE ACT OF 1977

The Senate proceeded to consider the bill (S. 1214) to establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes, which had been reported from the Select Committee on Indian Affairs with an amendment to strike all after the enacting clause and insert the following:

That this Act may be cited as the "Indian Child Welfare Act of 1977".

### FINDINGS

SEC. 2. Recognizing the special relations of the United States with the Indian and Indian tribes and the Federal responsibility for the care of the Indian people, the Congress finds that:

(a) An alarmingly high percentage of Indian children living within both urban communities and Indian reservations, are separated from their natural parents through the actions of nontribal government agencies or private individuals or private agencies and are placed in institutions (including boarding schools), or in foster or adoptive homes, usually with non-Indian families.

(b) The separation of Indian children from their families frequently occurs in situations where one or more of the following circumstances exist: (1) the natural parent does not understand the nature of the documents or proceedings involved; (2) neither the child nor the natural parents are represented by counsel or otherwise advised of their rights; (3) the agency officials involved are unfamiliar with, and often disdainful of Indian culture and society; (4) the conditions which led to the separation are not demonstrably harmful or are remediable or transitory in character; and (5) responsible tribal authorities are not consulted about or even informed of the nontribal government actions.

(c) The separation of Indian children from their natural parents, especially their placement in institutions or homes which do not meet their special needs, is socially and culturally undesirable. For the child, such separation can cause a loss of identity and self-esteem, and contributes directly to the unreasonably high rates among Indian children for dropouts, alcoholism and drug abuse, suicides, and crime. For the parents, such separation can cause a similar loss of self-esteem, aggravates the conditions which initially gave rise to the family breakup, and leads to a continuing cycle of poverty and despair. For Indians generally, the child placement activities of nontribal public and private agencies undercut the continued existence of tribes as self-governing communities and, in particular, subvert tribal jurisdiction in the sensitive field of domestic and family relations.

### DECLARATION OF POLICY

SEC. 3. The Congress hereby declares that it is the policy of this Nation, in fulfillment of its special responsibilities and legal obligations to the American Indian people, to establish standards for the placement of Indian children in foster or adoptive homes which will reflect the unique values of Indian culture, discourage unnecessary placement of Indian children in boarding schools for social rather than educational reasons, assist Indian tribes in the operation of tribal family development programs and generally promote the stability and security of Indian families.



## DEFINITIONS

### SEC. 4. For purposes of the Act:

(a) "Secretary", unless otherwise designated, means the Secretary of the Interior.

(b) "Indian" means any person who is a member of or who is eligible for membership in a federally recognized Indian tribe.

(c) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided by the Bureau of Indian Affairs to Indians because of their status as Indians, including any Alaska Native villages, as listed in section 11(b) (1) of the Alaska Native Claims Settlement Act (85 Stat. 688, 697).

(d) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

(e) "Tribal court" means any Court of Indian Offenses, any court established, operated, and maintained by an Indian tribe, and any other administrative tribunal of a tribe which exercises jurisdiction over child welfare matters in the name of a tribe.

(f) "Nontribal public or private agency" means any Federal, State, or local government department, bureau, agency, or other office, including any court other than a tribal court, and any private agency licensed by a State or local government, which has jurisdiction or which performs functions and exercises responsibilities in the fields of social services, welfare, and domestic relations, including child placement.

(g) "Reservation" means Indian country as defined in section 1151 of title 18, United States Code and as used in this Act, shall include lands within former reservations where the tribes still maintain a tribal government, and lands held by Alaska Native villages under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688). In a case where it has been judicially determined that a reservation has been diminished, the term "reservation" shall include lands within the last recognized boundaries of such diminished reservation prior to enactment of the allotment or pending statute which caused such diminishment.

(h) "Child placement" means any proceedings, judicial, quasi-judicial, or administrative, voluntary or involuntary, and public or private action(s) under which an Indian child is removed by a nontribal public or private agency from (1) the legal custody of his parent or parents, (2) the custody of any extended family member in whose care he has been left by his parent or parents, or (3) the custody of any extended family member who otherwise has custody in accordance with Indian law or custom, or (4) under which the parental or custodial rights of any of the above mentioned persons are impaired.

(i) "Parent" means the natural parent of an Indian child or any person who has adopted an Indian child in accordance with State, Federal, or tribal law or custom.

(j) "Extended family member" means any grandparent, aunt, or uncle (whether by blood or marriage), brother or sister, brother or sister-in-law, niece or nephew, first or second cousin, or stepparent whether by blood, or adoption, over the age of eighteen or otherwise emancipated, or as defined by tribal law or custom.

## TITLE I—CHILD PLACEMENT JURISDICTION AND STANDARDS

SEC. 101. (a) No placement of an Indian child, except as provided in this Act shall be valid or given any legal force and effect, except temporary placement under circumstances where the physical or emotional wellbeing of the child is immediately and seriously threatened, unless (1) his parent or parents and the extended family



member in whose care the child may have been left by his parent or parents or who otherwise has custody according to tribal law or custom, has been accorded not less than thirty days prior written notice of the placement proceeding, which shall include an explanation of the child placement proceedings, a statement of the facts upon which placement is sought, and a right: (A) to intervene in the proceedings as an interested party; (B) to submit evidence and present witnesses on his or her own behalf; and (C) to examine all reports or other documents and files upon which any decision with respect to child placement may be based; and (2) the party seeking to effect the child placement affirmatively shows that available remedial services and rehabilitative programs designed to prevent the breakup of the Indian family have been made available and proved unsuccessful.

(b) Where the natural parent or parents of an Indian child who falls within the provisions of this Act, or the extended family member in whose care the child may have been left by his parent or parents or who otherwise has custody in accordance with tribal law or custom, opposes the loss of custody, no child placement shall be valid or given any legal force and effect in the absence of a determination, supported by clear and convincing evidence, including testimony by qualified expert witnesses, that the continued custody of the child by his parent or parents, or the extended family member in whose care the child has been left, or otherwise has custody in accordance with tribal law or custom, will result in serious emotional or physical damage. In making such determination, poverty, crowded or inadequate housing, alcohol abuse or other nonconforming social behaviors on the part of either parent or extended family member in whose care the child may have been left by his parent or parents or who otherwise has custody in accordance with tribal law or custom, shall not be deemed prima facie evidence that serious physical or emotional damage to the child has occurred or will occur. The standards to be applied in any proceeding covered by this Act shall be the prevailing social and cultural standards of the Indian community in which the parent or parents or extended family member resides or with which the parent or parents or extended family member maintains social and cultural ties.

(c) In the event that the parent or parents of an Indian child consent to a child placement, whether temporary or permanent, such placement shall not be valid or given any legal force and effect, unless such consent is voluntary, in writing, executed before a judge of a court having jurisdiction over child placements, and accompanied by the witnessing judge's certificate that the consent was explained in detail, was translated into the parent's native language, and was fully understood by him or her. If the consent is to a nonadoptive child placement, the parent or parents may withdraw the consent at any time for any reason, and the consent shall be deemed for all purposes as having never been given. If the consent is to an adoptive child placement, the parent or parents may withdraw the consent for any reason at any time before the final decree of adoption: *Provided*, That no final decree of adoption may be entered within ninety days after the birth of such child or within ninety days after the parent or parents have given written consent to the adoption, whichever is later. Consent by the parent or parents of an Indian child given during pregnancy or within ten days after the birth of the child shall be conclusively presumed to be involuntary. A final decree of adoption may be set aside upon a showing that the child is again being placed for adoption, that the adoption did not comply with the requirements of this Act or was otherwise unlawful, or that the consent to the

adoption was not voluntary. In the case of such a failed adoption, the parent or parents or the extended family member from whom custody was taken shall be afforded an opportunity to reopen the proceedings and petition for return of custody. Such prior parent or custodian shall be given thirty days notice of any proceedings to set aside or vacate a previous decree unless the prior parent or custodian waives in writing any right to such notice.

(d) No placement of an Indian child, except as otherwise provided by this Act, shall be valid or given any legal force and effect, except temporary placements under circumstances where the physical or emotional well-being of the child is immediately threatened, unless his parent or parents, or the extended family member in whose care the child may have been left or who otherwise has custody in accordance with tribal law or custom, has been afforded the opportunity to be represented by counsel or lay advocate as required by the court having jurisdiction.

(e) Whenever an Indian child previously placed in foster care or temporary placement by any nontribal public or private agency is committed or placed, either voluntarily or involuntarily in any public or private institution, including but not limited to a correctional facility, institution for juvenile delinquents, mental hospital or halfway house, or is transferred from one foster home to another, notification shall forthwith be made to the tribe with which the child has significant contacts and his parent or parents or extended family member from whom the child was taken. Such notice shall include the exact location of the child's present placement and the reasons for changing his placement. Notice shall be made thirty days before the legal transfer of the child effected, if possible, and in any event within ten days thereafter.

SEC. 102. (a) In the case of any Indian child who resides within an Indian reservation which maintains a tribal court which exercises jurisdiction over child welfare matters, no child placement shall be valid or given any legal force and effect, unless made pursuant to an order of the tribal court. In the event that a duly constituted Federal or State agency or any representative thereof has good cause to believe that there exists an immediate threat to the emotional or physical well-being of an Indian child, such child may be temporarily removed from the circumstances giving rise to the danger provided that immediate notice shall be given to the tribal authorities, the parents, and the extended family member in whose care the child may have been left or who otherwise has custody according to tribal law or custom. Such notice shall include the child's exact whereabouts and the precise reasons for removal. Temporary removals beyond the boundaries of a reservation shall not affect the exclusive jurisdiction of the tribal court over the placement of an Indian child.

(b) In the case of an Indian child who resides within an Indian reservation which possesses but does not exercise jurisdiction over child welfare matters, no child placement, by any nontribal public or private agency shall be valid or given any legal force and effect, except temporary placements under circumstances where the physical or emotional well-being of the child is immediately and seriously threatened, unless such jurisdiction is transferred to the State pursuant to a mutual agreement entered into between the State and the Indian tribe pursuant to subsection (j) of this section. In the event that no such agreement is in effect, the Federal agency or agencies servicing said reservation shall continue to exercise responsibility over the welfare of such child.

(c) In the case of any Indian child who is not a



resident of an Indian reservation or who is otherwise under the jurisdiction of a State, if said Indian child has significant contacts with an Indian tribe, no child placement shall be valid or given any legal force and effect, except temporary placements under circumstances where the physical or emotional well-being of the child is immediately and seriously threatened, unless the Indian tribe with which such child has significant contacts has been accorded thirty days prior written notice of a right to intervene as an interested party in the child placement proceedings. In the event that the intervening tribe maintains a tribal court which has jurisdiction over child welfare matters, jurisdiction shall be transferred to such tribe upon its request unless good cause for refusal is affirmatively shown.

(d) In the event of a temporary placement or removal as provided in subsections (a), (b), and (c) above, immediate notice shall be given to the parent or parents, the custodian from whom the child was taken if other than the parent or parents, and the chief executive officer or such other person as such tribe or tribes may designate for receipt of notice. Such notice shall include the child's exact whereabouts, the precise reasons for his or her removal, the proposed placement plan, if any, and the time and place where hearings will be held if a temporary custody order is to be sought. In addition, where a tribally operated or licensed temporary child placement facility or program is available, such facilities shall be utilized. A temporary placement order must be sought at the next regular session of the court having jurisdiction and in no event shall any temporary or emergency placement exceed seventy-two hours without an order from the court of competent jurisdiction.

(e) For the purposes of this Act, an Indian child shall be deemed to be a resident of the reservation where his parent or parents, or the extended family member in whose care he may have been left by his parent or parents or who otherwise has custody in accordance with tribal law or custom, is resident.

(f) For the purposes of this Act, whether or not a nonreservation resident Indian child has significant contacts with an Indian tribe shall be an issue of fact to be determined by the court on the basis of such considerations as: Membership in a tribe, family ties within the tribe, prior residency on the reservation for appreciable periods of time, reservation domicile, the statements of the child demonstrating a strong sense of self-identity as an Indian, or any other elements which reflect a continuing tribal relationship. A finding that such Indian child does not have significant contacts with an Indian tribe sufficient to warrant a transfer of jurisdiction to a tribal court under subsection (c) of this section does not waive the preference standards for placement set forth in section 103 of this Act.

(g) It shall be the duty of the party seeking a change of the legal custody of an Indian child to notify the parent or parents, the extended family members from whom custody is to be taken, and the chief executive of any tribe or tribes with which such child has significant contacts by mailing prior written notice by registered mail to the parent or parents, or extended family member, and the chief executive officer of the tribe, or such other persons as such tribe or tribes may designate: *Provided*, That the judge or hearing officer at any child placement proceeding shall make a good faith determination of whether the child involved is Indian and, if so, whether the tribe or tribes with which the child has significant contacts were timely notified.

(h) Any program operated by a public or private agency which removes Indian children from a reservation area and places them in family homes as an incident to their attendance in



schools located in communities in off-reservation areas and which are not educational exemptions as defined in the Interstate Compact on the Placement of Children shall not be deemed child placements for the purposes of this Act. Such programs shall provide the chief executive officer of said tribe with the same information now provided to sending and receiving States which are members of the Interstate Compact on the Placement of Children. This notification shall be facilitated by mailing written notice by registered mail to the chief executive officer or other such person as the tribe may designate.

(i) Notwithstanding the Act of August 15, 1953 (67 Stat. 588), as amended, or any other Act under which a State has assumed jurisdiction over child welfare of any Indian tribe, upon sixty days written notice to the State in which it is located, any such Indian tribe may reassume the same jurisdiction over such child welfare matters as any other Indian tribe not affected by such Acts: *Provided*, That such Indian tribe shall first establish and provide mechanisms for implementation of such matters which shall be subject to the review and approval of the Secretary of the Interior. In the event the Secretary does not approve the mechanisms which the tribe proposed within sixty days, the Secretary shall provide such technical assistance and support as may be necessary to enable the tribe to correct any deficiencies which he has identified as a cause for disapproval. Following approval by the Secretary, such reassumption shall not take effect until sixty days after the Secretary provides notice to the State which is asserting such jurisdiction. Except as provided in section 102(c), such reassumption shall not affect any action or proceeding over which a court has already assumed jurisdiction and no such actions or proceeding shall abate by reason of such reassumption.

(j) The States and tribes are specifically authorized to enter into mutual agreements or compacts with each other, respecting the care, custody, and jurisdictional authority of each party over any matter within the scope of this Act, including agreements which provide for transfer of jurisdiction on a case-by-case basis, and agreements which provide for concurrent jurisdiction between the States and the tribes. The provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 78) shall not limit the powers of States and tribes to enter into such agreements or compacts. Any such agreements shall be subject to revocation by either party upon sixty days written notice to the other. Except as provided in section 102(c), such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction and no such action or proceeding shall abate by reason of such revocation: *And provided further*, That such agreements shall not waive the rights of any tribe to notice and intervention as provided in this Act nor shall they alter the order of preference in child placement provided in this title. The Secretary of the Interior shall have sixty days after notification to review any such mutual agreements or compacts or any revocation thereof and in the absence of a disapproval for good cause shown, such agreement, compact, or revocation thereof shall become effective.

(k) Nothing in this Act shall be construed to either enlarge or diminish the jurisdiction over child welfare matters which may be exercised by either State or tribal courts or agencies except as expressly provided in this Act.

SEC. 103. (a) In offering for adoption an Indian child, in the absence of good cause shown to the contrary, a preference shall be given in the following order: (1) to the child's extended



family; (2) to an Indian home on the reservation where the child resides or has significant contacts; (3) to an Indian home where the family head or heads are members of the tribe with which the child has significant contacts; and (4) to an Indian home approved by the tribe: *Provided, however,* That each Indian tribe may modify or amend the foregoing order of preference and may add or delete preference categories by resolution of its government.

(b) In any nonadoptive placement of an Indian child, every nontribal public or private agency, in the absence of good cause shown to the contrary, shall grant preferences in the following order: (1) to the child's extended family; (2) to a foster home, if any, licensed or otherwise designated by the Indian tribe occupying the reservation of which the child is a resident or with which the child has significant contacts; (3) to a foster home, if any, licensed by the Indian tribe of which the child is a member or is eligible for membership; (4) to any other foster home within an Indian reservation which is approved by the Indian tribe of which the child is a member or is eligible for membership in or with which the child has significant contacts; (5) to any foster home run by an Indian family; and (6) to a custodial institution for children operated by an Indian tribe, a tribal organization, or nonprofit Indian organization: *Provided, however,* That each Indian tribe may modify or amend the foregoing order of preferences, and may add or delete preference categories, by resolution of its government body.

(c) Every nontribal public or private agency shall maintain a record evidencing its efforts to comply with the order of preference provided under subsections (a) and (b) in each case of an Indian child placement. Such records shall be made available, at any time upon request of the appropriate tribal government authorities.

(d) Where an Indian child is placed in a foster or adoptive home, or in an institution, outside the reservation of which the child is a resident or with which he maintains significant contacts, pursuant to an order of a tribal court, the tribal court shall retain continuing jurisdiction over such child until the child attains the age of eighteen.

SEC. 104. In order to protect the unique rights associated with an individual's membership in an Indian tribe, after an Indian child who has been previously placed attains the age of eighteen, upon his or her application to the court which entered the final placement decree, and in the absence of good cause shown to the contrary, the child shall have the right to learn the tribal affiliation of his parent or parents and such other information as may be necessary to protect the child's rights flowing from the tribal relationship.

SEC. 105. In any child placement proceeding within the scope of this Act, the United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the laws of any Indian tribe applicable to a proceeding under the Act and to any tribal court orders relating to the custody of a child who is the subject of such a proceeding.

## TITLE II—INDIAN FAMILY DEVELOPMENT

SEC. 201. (a) The Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to carry out or make grants to Indian tribes and Indian organizations for the purpose of assisting such tribes or organizations in the establishment and operation of Indian family development programs on or near reservations, as described in this section, and in the preparation and implementation of child welfare codes. The objective of every Indian family development program shall be to prevent the breakup of Indian families and, in particular,

to insure that the permanent removal of an Indian child from the custody of his parent or parents, or the custody of any extended family member in whose care he has been left by his parent or parents, or one who otherwise has custody according to tribal law or custom, shall be effected only as a last resort. Such family development programs may include, but are not limited to, some or all of the following features:

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the construction, operation, and maintenance of family development centers, as defined in subsection (b) hereof;

(3) family assistance, including homemakers and home counselors, day care, after school care, and employment, recreational activities, and respite services;

(4) provision for counseling and treatment of Indian families and Indian children;

(5) home improvement programs;

(6) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(7) education and training of Indians, including tribal court judges and staff, in skills relating to child welfare and family assistance programs;

(8) a subsidy program under which Indian adoptive children are provided the same support as Indian foster children; and

(9) guidance, legal representation, and advice to Indian families involved in tribal or nontribal child placement proceedings.

(b) Any Indian foster or adoptive home licensed or designated by a tribe (1) may accept Indian child placements by a non-tribal public or private agency and State funds in support of Indian children; and (2) shall be granted preference in the placement of an Indian child in accordance with title I of this Act. For purposes of qualifying for assistance under any federally assisted program, licensing by a tribe shall be deemed equivalent to licensing by a State.

(c) Every Indian tribe is authorized to construct, operate, and maintain a family development center which may contain, but shall not be limited to—

(1) facilities for counseling Indian families which face disintegration and, where appropriate, for the treatment of individual family members;

(2) facilities for the temporary custody of Indian children whose natural parent or parents, or extended family member in whose care he has been left by his parent or parents or one who otherwise has custody according to tribal law or custom, are temporarily unable or unwilling to care for them or who otherwise are left temporarily without adequate adult supervision by an extended family member.

SEC. 202. (a) The Secretary is also authorized under such rules and regulations as he may prescribe to carry out, or to make grants to Indian organizations to carry out, off-reservation Indian family development programs, as described in this section.

(b) Off-reservation Indian family development programs operated through grants with local Indian organizations, may include, but shall not be limited to, the following features:

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children are provided the same support as Indian foster children;

(2) the construction, operation, and maintenance of family development centers providing the facilities and services set forth in section 201(d);

(3) family assistance, including homemakers and home counselors, day care, after school care,



and employment, recreational activities, and respite services;

(4) provision for counseling and treatment both of Indian families which face disintegration and, where appropriate, of Indian foster and adoptive children; and

(5) guidance, representation, and advice to Indian families involved in child placement proceedings before nontribal public and private agencies.

SEC. 203. (a) In the establishment, operation, and funding of Indian family development programs, both on or off reservation, the Secretary may enter into agreements or other cooperative arrangements with the Secretary of Health, Education, and Welfare, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare.

(b) There are authorized to be appropriated \$26,000,000 during fiscal year 1979 and such sums thereafter as may be necessary during each subsequent fiscal year in order to carry out the purposes of this title.

### TITLE III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

SEC. 301. (a) The Secretary of the Interior is authorized and directed under such rules and regulations as he may prescribe, to collect and maintain records in a single, central location of all Indian child placements which are effected after the date of this Act which records shall show as to each such placement the name and tribal affiliation of the child, the names and addresses of his natural parents and the extended family member, if any, in whose care he may have been left, the names and addresses of his adoptive parents, the names and addresses of his natural siblings, and the names and locations of any tribal or nontribal public or private agency which possess files or information concerning his placement. Such records shall not be open for inspection or copying pursuant to the Freedom of Information Act (80 Stat. 381), as amended, but information concerning a particular child placement shall be made available in whole or in part, as necessary to an Indian child over the age of eighteen for the purpose of identifying the court which entered his final placement decree and furnishing such court with the information specified in section 104 or to the adoptive parent or foster parent of an Indian child or to an Indian tribe for the purpose of assisting in the enrollment of said Indian child in the tribe of which he is eligible for membership and for determining any rights or benefits associated with such membership. The records collected by the Secretary pursuant to this section shall be privileged and confidential and shall be used only for the specific purposes set forth in this Act.

(b) A copy of any order of any nontribal public or private agency which effects the placement of an Indian child within the coverage of this Act shall be filed with the Secretary of the Interior by mailing a certified copy of said order within ten days from the date such order is issued. In addition, such public or private agency shall file with the Secretary of the Interior any further information which the Secretary may require by regulations in order to fulfill his recordkeeping functions under this Act.

SEC. 302. (a) The Secretary is authorized to perform any and all acts and to make rules and regulations as may be necessary and proper for the purpose of carrying out the provisions of this Act.

(b) (1) Within six months from the date of this Act, the Secretary shall consult with Indian tribes, Indian organizations, and Indian interest agencies in the consideration and formation of



rules and regulations to implement the provisions of this Act.

(2) Within seven months from the date of enactment of this Act, the Secretary shall present the proposed rules and regulations to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives, respectively.

(3) Within eight months from the date of enactment of this Act, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this Act.

(c) The Secretary is authorized to revise and amend any rules and regulations promulgated pursuant to this section: *Provided*, That prior to any revision or amendment to such rules or regulations, the Secretary shall present the proposed revision or amendment to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives, respectively, and shall, to the extent practicable, consult with the tribes, organizations, and agencies specified in subsection (b) (1) of this section and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

#### TITLE IV—PLACEMENT PREVENTION STUDY

SEC. 401. (a) It is the sense of Congress that the absence of locally convenient day schools contributes to the breakup of Indian families and denies Indian children the equal protection of the law.

(b) The Secretary is authorized and directed to prepare and to submit to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs and Committee on Education and Labor of the United States House of Representatives, respectively, within one year from the date of enactment of this Act, a plan, including a cost analysis statement, for the provision to Indian children of schools located near the student's home. In developing this plan, the Secretary shall give priority to the need for educational facilities for children in the elementary grades.

Mr. HATFIELD. Mr. President, a question has been raised regarding the geographical area over which a tribe is authorized to exercise original jurisdiction over child placement matters under this bill. The definition of Indian reservation found at page 5, section 4(g) is the relevant provision here. The definition speaks of three categories of Indian reservations, those presently recognized under Federal law and defined at 18 United States Code, section 1151 (the definition of Indian country), former reservations which have been disestablished, and reservations whose boundaries have been judicially determined to be diminished or disestablished. It is my understanding, and I would like to ask Senator ABOUREZK, the bill sponsor and chairman of the Indian Committee, to confirm this understanding, that where there has not been a judicial determination of diminishment or disestablishment, the



boundaries of the reservation within which a tribe is authorized to exercise original jurisdiction are those boundaries presently recognized by the Federal Government pursuant to 18 United States Code, section 1151.

Mr. ABOUREZK. Yes; that is correct. The bill is quite specific on this point. The intent of this provision is not to expand the present federally recognized boundary of a tribe but simply to authorize those tribes whose reservations have already been diminished or disestablished by judicial determination, to exercise jurisdiction over the placement of Indian children within their former, or last recognized reservation boundary. That is, as recognized prior to such judicial determination.

Mr. HATFIELD. Therefore, in the case of the Umatilla Reservation in Oregon, for example, where there has not been such a judicial determination, the reservation boundaries shall continue to be those presently recognized by the Federal Government under 18 United States Code, section 1151.

Mr. ABOUREZK. Yes, that is correct. I would add, that the term former reservation would not apply to the Umatilla tribe either, since their reservation is not a former reservation as defined by this provision, but a presently existing one. Under the law, a reservation simply cannot fall into both categories at the same time and, therefore, there is no basis for concluding that any former boundaries associated with the Umatillas' former reservation would be recognized by this act. I might also add that this act authorizes tribal jurisdiction only over child placement matters involving Indian children.

Mr. HATFIELD. Thank you. Mr. President, I have one additional question. As you know, we very recently enacted legislation to restore the Siletz Indian tribe to recognized status for purposes of Federal service eligibility. It is my understanding that this bill would not affect the former reservation boundaries of formerly terminated tribes as distinguished from tribes who have not been terminated, but whose reservations have been disestablished. With respect to formerly terminated tribes such as the Siletz where the restoration statute did not reestablish a reservation, this bill does not authorize original tribal jurisdiction over their former reservation.

Mr. ABOUREZK. Yes, that is correct, the term former reservation clearly does not apply to terminated tribes whether or not they have been restored and, consequently, there can be no argument that the bill authorizes original tribal jurisdiction over their former reservation boundaries.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

B. The Effect of the Indian Child Welfare Act within the Creek Nation.

The passage of the Indian Child Welfare Act will have a positive benefit upon the individuals, communities and the entire tribe. The Creek Nation will be greatly served by the passage of the Act.

Individuals will benefit from at least two perspectives: (1) children placed for adoption or other proceedings will have a better chance of remaining within the Indian culture, and (2) families with children so placed will have a better chance of retaining the children within the family unit.

The communities will benefit by the ending of a pattern of continual loss of community children through such proceedings, from the community ability to retain such children through community institutions (family development centers, foster home licensing).

The Creek Nation will benefit by its ability to insure the cultural heritage of each Indian child placed through its institutions, administration of its own affairs, and self-respect from the determination of our collective future.

C. Effects of the defeat of the Act, to the Creek Nation.

The defeat of the Indian Child Welfare Act will continue an unholy policy of allowing the tribe to be deprived of its children, in effect, its citizenry and future. Such defeat will also endanger the capability of the Creek Nation to develop permanent family development programs.



D. Proposed Utilization of the Act by the Creek Nation.

The Creek Nation plans, upon enactment, to utilize the provisions of the Indian Child Welfare Act.

A Creek Nation Child Welfare Code will be developed, melding the provisions of the Indian Child Welfare Act with the needs of the Creek people, in open and public hearings. Within the Office of the Principal Chief, the Council on Domestic Affairs will be granted jurisdiction over policy, procedures, and appeals from the Child Welfare Court.

The entire Child Welfare Code will be presented to the Creek voters for a referendum vote concerning enactment. Upon tribal enactment, the Office of the Principal Chief shall enforce the Child Welfare Code.

Simultaneously with the development of the Child Welfare Code, the Office of the Administration shall begin the pre-planning necessary for the implementation of the code, and planning will progress through the referendum vote on enactment. The objectives of the planning process will include the development of a comprehensive child welfare program.

D. Proposed Utilization of the Act by the Creek Nation.

The Creek Nation plans, upon enactment, to utilize the provisions of the Indian Child Welfare Act.

A Creek Nation Child Welfare Code will be developed, molding the provisions of the Indian Child Welfare Act with the needs of the Creek people, in open and public hearings. Within the Office of the Principal Chief, the Council on Domestic Affairs will be granted jurisdiction over policy, procedures, and appeals from the Child Welfare Court.

The entire Child Welfare Code will be presented to the Creek voters for a referendum vote concerning enactment. Upon tribal enactment, the Office of the Principal Chief shall enforce the Child Welfare Code.

Simultaneously with the development of the Child Welfare Code, the Office of the Administration shall begin the pre-planning necessary for the implementation of the code, and planning will progress through the referendum vote on enactment. The objectives of the planning process will include the development of a comprehensive child welfare program.



## Part II. The State of Child Welfare within the Creek Nation

### HISTORICAL INTRODUCTION

A. Traditionally, the welfare of the children has been a role of the family with the Creek Nation. The extended family, which in the Creek sense includes almost all relatives, has traditionally had the responsibility for the welfare of children whose parents, for whatever reason, cannot provide for them.

In those cases where the extended family could not provide properly for the children, the town (Creek: *italua*; community, civil district) was communally responsible for its children. By the communal construction of dwellings, instruction, provision of food, and other necessary actions, the town provided for the welfare of its orphans and abandoned children.

After removal to the Indian territory on 1832, the Creek Nation established two orphan asylums (Agency Hill, Okmulgee) and eight boarding schools (Eufaula, Wealaka, Nuyaka, Wetumka, Euchee, Coweta, Talahasee and Pecan Creek).

The orphan asylums and boarding schools were operated through the Creek Board of Education. Sources of funding included 1) Creek Treaty funds stipulated for orphans and education, 2) Creek appropriations from general revenue, and 3) donations through various church mission boards only when the church was engaged by the Creek Board of Education to help administer the school.

These orphans asylums and schools, supported by tribal annuities, general revenue, and taxes, continued to function in full form until the Creek schools were illegally taken over by the Department of Interior in 1905 (an action which was only later permitted by Congress in 1906).

With the historical suppression of the legitimate tribal government of the Creek Nation, most successful from 1898 to its complete disruption of 1907, the schools and orphan asylums were closed, and their reservations sold (probably illegally) by the BIA.



B. CURRENT EFFECTS UPON THE CREEK PEOPLE

Today within the Creek Nation, the Oklahoma Department of Institutions, Social and Rehabilitative Services (DISRS) plays a primary role in the delivery of child welfare services. However, a significant number of Indian people view DISRS as a non-Indian agency. Traditionally, a large number of Indian people view their tribal government and the Bureau of Indian Affairs as the prime providers of social services. Overall, the result has been a case where State agencies have counted the entire Indian population for funding purposes, but have neglected to provide services to a maximum number of eligible Indian families.

As child welfare programs are developed, it is essential that tribal governments provide input with respect to Indian children. This will not only assure that Indian citizens will receive proportionate consideration for services, but will also assure that the unique needs of the Indian families are addressed. Ultimately, steps must be taken to shift the role of providing child welfare services to the jurisdiction of the tribal government.

Current child welfare systems outside of tribal government have created serious problems in the areas of adoption and foster home care for Indian children. When Indian children are adopted and are unable to certify the degree of Indian blood and roll numbers of their real parents and ancestors, a situation arises where a child may be unable to prove eligibility for programs and services administered by tribal governments, Bureau of Indian Affairs, Indian Health

Service, and other organizations. Whenever placement outside of the Indian family is warranted, the child, or children, must be placed within a tribal family in order to protect the child's right to his/her cultural heritage. With the establishment of organized Indian communities, the implementation of a tribal comprehensive plan, and the demonstrated ability of the Creek Nation to develop diverse service systems to meet the needs of its people, it is evident Indian children will benefit once child welfare becomes a function of their tribal government.



### Part III. Creek Institutions Prepared for Child Welfare Jurisdiction

#### A. The Office of the Principal Chief

Because of the illegal suppression of the Office of the Principal Chief, a suppression which lasted some sixty-five years, the development of the Office of the Principal Chief has been of a critical nature in the ongoing growth of the Creek government.

(Because of a similar repression of the tribal legislature and judiciary, the development of the proposed constitution of the Creek Nation provides for those branches. For background on the current constitutional situation of the Creek Nation, N.B.: Harjo vs. Kleppe, 420 F. Supp. 1110 et seq.)

The Office of the Principal Chief, revived by federal law in 1970, has been open to election in 1971 and 1975, with another election scheduled for 1979. Elections are based upon registered voters, and all descendants of the 1907 Dawes Roll of Creek Indians (an allotment roll) are eligible to register.

The current Principal Chief, Claude A. Cox, is serving his second elected term. He has a full time Secretary and a full time Assistant to the Principal Chief to aid in the administration of his functions and duties.

#### B. Executive and Administrative Offices

A central administration has been developed for the purposes of tribal management. Supported by the Office of the Treasury and the Office of Justice, the Office of the Administration has primary responsibilities for budgeting, policy, and planning. Contracts, personnel, data systems, records and archives, and public information are provided to tribal programs through the Office of the Administration.

The Office of the Treasury offers a full range of treasury services, including payroll, cash management, receipts and disbursements.

The Office of Justice, currently being established, will also provide a comprehensive range of services to tribal programs.

The operational components of the Office of the Administration are: (1) the Division of Tribal Affairs (governmental research and policy development, physical and natural resources development, lighthouse, economic research and policy development, and comprehensive planning); (2) the Division of Community Services (health and welfare, social services, environmental services, social research and demonstration projects); and (3) the Division of Human Development (evaluation research and development, higher, community, preschool and elementary, and secondary education).

#### C. Organized Creek Communities.

There are currently twenty-seven organized Creek communities within the Creek Nation. Each functions within specific boundaries, under a constitution and bylaws, and within tribal program requirements.

Each community has one Coordinator and several Community Technicians, provided through the tribal government, but subject only to the direction of the community.

Most communities now administer a portion of the Community Health Representative (CHR) program, and three communities have pilot development projects under their own management.

#### D. Independent Agencies

Although they will not play a direct role in child welfare jurisdiction, four Creek independent agencies currently exist. These are (1) the Housing



Authority of the Creek Nation, (2) the Election Board, (3) the Board of Health Affairs and (4) the Board of Economic Affairs. Within the law establishing each, the independent agency has complete responsibility for its functions.

It is anticipated that, within the near future, a Board of Regents for Education will also be established, and that the Election Board will be reshaped to provide for direct election of members by the voters. A Budget Commission may be established if current constitutional difficulties cannot be worked out.

#### Part IV. Creek Institutions being Prepared for Child Welfare Jurisdiction

##### A. The National Council

As soon as tribal constitutional problems are resolved through a court-established process (N.B.: Harjo vs Kelppe, 420 F. Supp. 1110), a National Council will be elected and convened.

In thorough forums and seminars, the Creek people are being prepared for this process. Traditionally and culturally, the Creeks are accustomed to and dependent upon their National Council as the center of the governmental affairs.

In addition to the process above, the planning necessary to assemble an independent staff for the National Council and its committees is ongoing, with the expectation that such a staff can begin assembling about one year prior to the convening of the National Council.

##### B. District and Supreme Courts

Since prior to the U.S. Civil War, the Creek Nation utilized an independent judiciary until the Congress, in an apparent disregard for the "full faith and credit" clause of the U.S. Constitution, closed the Creek courts in 1898.

Subsequent to the 1936 Oklahoma Indian Welfare Act, which extends the provisions of the Indian Reorganization Act to the Oklahoma tribes, the Creek Nation may reestablish its judiciary by the ratification of a new constitution.

Such a judiciary is proposed in the current proposal for a Creek Constitution, and the articles relating to the judiciary are not foreseen as demanding modification within the court-established referendum process.



C. Council on Domestic Affairs

Proposed within the Office of the Principal Chief, the Council on Domestic Affairs would establish policy and decide appeals within the Creek Nation Child Welfare Code.

Part V. Creek Nation Declaration of Support for the Indian Child Welfare Act.

THE CREEK NATION, IN THE 188th YEAR OF ITS PERPTUAL RELATION-  
SHIP WITH THE GOVERNMENT OF THE UNITED STATES OF AMERICA, HEREBY DECLARES  
IT UNEQUIVOCAL SUPPORT FOR THE INDIAN CHILD WELFARE ACT OF 1978, AS ENGROSSED  
WITHIN U.S. SENATE BILL 1214, NOW BEFORE THE U.S. HOUSE OF REPREENATIVES.



Claude A. Cox

Principal Chief

CREEK NATION

March 9, 1978



CREEK NATION REPORT ON INDIAN CHILD WELFARE ACT

Appendix One:

Judicial Procedure

(Proposed)

TITLE I

TRIBAL COURT PROCEDURE



## SECTION 1.1

### Information

(a) All criminal prosecutions for violation of the tribal law and order code shall be initiated by information. An Information is a written statement sworn to by the complaining witness and charging that a named individual(s) has committed a particular criminal offense.

(b) Informations shall contain:

(1) The signature of the complaining witness sworn to before a tribal judge or other officer of the court; and

(2) A written statement by the complaining witness describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained; and

(3) The name or description of the person alleged to have committed the offense; and

(4) The section of the tribal code allegedly violated.

(c) During normal business hours the clerk of the court shall be available to assist individuals in drawing up and filing criminal informations. At all other times a duty officer designated by the tribal police shall be responsible for rendering such assistance. Informations

shall then be submitted without unnecessary delay to the tribal judge to determine whether a warrant or summons should be issued.

(d) If the information, or the information together with other sworn statements, is sufficient to establish probable cause to believe that a crime has been committed by the person charged, the court shall issue a warrant instructing the tribal police to arrest the named suspect(s) or, in lieu thereof, the court shall issue a summons commanding the suspect(s) to appear before the court at a specified time and place to answer to the charge.

(e) When an individual has been arrested without a warrant, an information shall be filed forthwith with the court for review as to whether probable cause existed for the arrest, and in no instance shall an information be filed later than at the time of arraignment.



## SECTION 2.1

### Arrest

(a) Arrest is the taking of a person into police custody in order that he may be held to answer for a criminal offense.

(b) No tribal law enforcement officer shall arrest any person for a criminal offense set out in the tribal law and order code except when:

- (1) The officer shall have a warrant signed by a tribal judge commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued; or
- (2) The offense shall occur in the presence of the arresting officer; or
- (3) The officer shall have probably cause to believe that the person arrested has committed an offense.

## SECTION 2.2

### Arrest Warrants

(a) Every judge of the tribal court shall have authority to issue warrants to arrest and such warrants shall be issued only upon showing of probable cause in the information. The tribal judge shall deny the issuance of a warrant if he finds that there is not probable cause to believe that the offense charged has been committed by the named suspect.

(b) The arrest warrant shall contain the following information:

- (1) Name or description and address, if known, of the person to be arrested.
- (2) Date of issuance of the warrant.
- (3) Description of the offense charged.
- (4) Signature of the issuing judge.



## SECTION 2.5

### Notification of Rights at Time of Arrest

Upon arrest the suspect shall be advised of the following rights:

- (1) That he has the right to remain silent.
- (2) That any statements made by him may and will be used against him in court.
- (3) That he has the right to obtain counsel at his own expense.
- (4) That he has the right to have his counsel present before any questions are answered.

## SECTION 2.4

### Summons in Lieu of Warrant

(a) When otherwise authorized to arrest a suspect a tribal police officer or authorizing judge may, in lieu of a warrant, issue a summons commanding the suspect to appear before the tribal court at a stated time and place and answer to the charge.

(b) The summons shall contain the same information as a warrant, except that it may be signed by an authorized police officer.

(c) If a defendant fails to appear in response to a summons, a warrant for his arrest shall be issued.



## SECTION 3.1

### Search Warrant - Defined

A search warrant is a written order, signed by a tribal court judge, and directed to a tribal law enforcement officer ordering him to conduct a search and seize items or property specified in the warrant. A warrant shall describe the property or place to be searched and shall describe the items to be seized.

## SECTION 3.2

### Issuance of Search Warrant

(a) Every tribal court judge shall have the power to issue warrants for the search and seizure of property and premises of any person under the jurisdiction of the court.

(b) No warrant of search and seizure shall be issued except upon probable cause that a search will discover: stolen, embezzled or contraband property; property which has been or is being used to commit a criminal offense; or property which constitutes evidence of a criminal offense. Such probable cause shall be supported by a duly signed, written and sworn statement based upon reliable information.



### SECTION 3.3

#### Execution and Return of Search Warrant

Warrants of search and seizure shall only be executed by tribal law enforcement officers. The executing officer shall return the warrant to the tribal court within the time limit shown on the face of the warrant, which in no case shall be longer than 10 days from the date of issuance. Warrants not returned within such time limits shall be void.

## SECTION 3.4

### Search Without a Warrant

No tribal law enforcement officer shall conduct any search without a valid warrant except:

- (1) Incident to making a lawful arrest.
- (2) With consent of the person being searched.
- (3) When he has probable cause to believe that the person searched may be armed and dangerous.
- (4) When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen, or embezzled property.



## SECTION 3.5

### Disposition of Seized Property

(a) The police shall make an inventory of all property seized by warrant or otherwise, and a copy of such inventory shall be left with the person from whom the property was taken.

(b) A hearing shall be held by the tribal court to determine the disposition of all property seized by the police. Upon satisfactory proof of ownership, the property shall be delivered to the owner, unless such property is contraband or is to be used as evidence in a pending case. Property taken as evidence shall be returned to the owner after final judgement. Property confiscated as contraband shall become the property of the community and may be either destroyed, sold at public auction, retained for the benefit of the tribe, or otherwise lawfully disposed of as ordered by the court.

## SECTION 4.1

### Arraignment

(a) Arraignment is the bringing of an accused before the court, informing him of his rights and the charge against him, receiving his plea, and setting bail as appropriate in accordance with Section 5.1 of this Code.

(b) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regularly scheduled session of court.



## SECTION 4.2

### Rights of Accused at Arraignment

Before an accused is required to plead to any criminal charge the judge shall:

(1) Read to the accused and determine that he understands the complaint and the section of the tribal code which he is charged with violating, including the maximum authorized penalty; and

(2) Advise the accused that he has the right to remain silent; to be tried by a jury; and to be represented by counsel at his own expense and that the arraignment will be postponed should he desire to consult with counsel.

### SECTION 4.3

#### Receipt of Plea at Arraignment

(a) If the accused pleads "not guilty" to the charge, the judge shall then inform him of a trial date and set conditions for bail prior to trial.

(b) If the accused pleads "guilty" to the charge the judge shall determine that the plea is made voluntarily and that the accused understands the consequences of the plea, including the rights which he is waiving by the plea. The judge may then impose sentence or defer sentencing for a reasonable time in order to obtain any information he deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to inform the court of facts in mitigation of the sentence.

(c) If the accused refuses to plead, the judge shall enter a plea of not guilty on his behalf.

## SECTION 5.1

### Bail - Release Prior to Trial

Every person charged with a criminal offense before the tribal court shall be entitled to release from custody pending trial under whichever one or more of the following conditions is deemed necessary to reasonably assure the appearance of the person at any time lawfully required:

- (1) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times.
- (2) Release to the custody of a designated person or organization agreeing to assure the accused's appearance.
- (3) Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release.
- (4) Release after the deposit by the accused or a bondsman a cash bond in an amount specified by the judge or in a bail schedule. The judge, in his discretion, may require that the accused post only a portion of the total bond, the full sum to become due if the accused fails to appear as ordered.
- (5) Release after execution of a bail agreement by two responsible members of the community.



(6) Release upon any other condition deemed reasonable, necessary to assure the appearance of the accused as required.

## SECTION 5.2

### Bail - Release by Police Officer

Any tribal police officer authorized to do so by the court may admit an arrested person to bail pursuant to the bail schedule or release upon personal recognizance. Police officers shall have available a bail schedule prepared by the court or tribal counsel which shall be used for setting money bond where such condition of release is deemed necessary. Any police officer who refuses to release an accused on bail or who specifies a bail condition which the accused is unable to satisfy shall bring such accused before a tribal judge for review of the release conditions at the first available opportunity and without unnecessary delay.

### SECTION 5.3

#### Bail - Release Pending Appeal

Every person who has been convicted of a tribal offense and who has filed an appeal or a petition for a writ of habeas corpus shall be treated in accordance with the provisions of Section 5.1 above unless the judge has substantial reason to believe that no conditions of release will reasonably assure the appearance of the accused or that release of the accused is likely to pose a danger to the community or to any other person. If the judge finds such to be the case he may order detention of the accused.



## SECTION 6.1

### Withdrawal of Guilty Plea

The Court may, in its discretion, allow a defendant to withdraw a plea of guilty whenever it appears that the interest of justice and fairness would be served by doing so.

## SECTION 7.1

### Subpoenas - General

(a) The several judges of the Creek Tribal Courts shall have the power to issue subpoenas for the attendance of witnesses on their own motion or any of the parties to the case, which subpoena shall bear the signature of the judge issuing it.

(b) The subpoena shall contain the following information:

- (1) Name, address and phone, if known;  
of the person being subpoenaed.
- (2) Date, time and place of the hearing.
- (4) Date of issuance of the subpoena.
- (5) Signature of the issuing judge.

(c) Failure to obey such subpoena shall be deemed contempt of court and punishable as hereinafter set out.

## SECTION 7.2

### Service Of Subpoenas

(a) Service of such subpoena shall be made by a regularly acting member of the Indian Police or by an Indian appointed by the Court for that purpose.

(b) A return of service must be filed with the court within fifteen (15) days of the date of issuance of the subpoena.

(c) A return of service shall contain the following information.

- (1) Date, time and place of service.
- (2) Method of service.



### SECTION 1.3

#### Witness Fees

(a) Each witness answering such subpoena shall be entitled to a fee not less than the minimum wage scale established by the Federal Government (plus actual travel costs). Each witness testifying at a hearing shall receive pay for a full day (8 hrs.), plus travel allowance.

(b) Witnesses who testify voluntarily shall be paid by the party calling them.

## SECTION 8.1

### Trial Procedure

(a) Sessions of the Creek Court for the trial of cases shall be assigned to the various judges of the judiciary.

(b) The time and place of Court sessions, and all other details of judicial procedure not prescribed by the regulations in this part, shall be laid down as prescribed by the Constitution by the Creek National Legislature.

(c) It shall be the duty of the judges of each Court to make recommendations to the Creek National Legislature for the enactment or amendment of such rules of Court in the interests of improved judicial procedure.

## SECTION 8.2

### Jury Trial

(a) In any case where, upon preliminary hearing by the Court, a substantial question of fact is raised, or jail time is possible, either party to the case may demand a jury trial.

(b) A list of eligible jurors shall be prepared by the Court Administrator each year.

(c) In any case, a jury shall consist of six residents of the vicinity in which the trial is held, selected from the list of eligible jurors by the Judge. Any party to the case may challenge not more than three members of the jury panel so chosen.

(d) The judge shall instruct the jury in the law governing the case and the jury shall bring a verdict for the complaintant or the defendant. The Judge shall render judgement in accordance with the verdict and existing law. In criminal matters the juries verdict must be unanimous while civil cases require a majority vote.

(e) Each juror who serves upon a jury shall be entitled to a fee that equal to a witness as set out in Section 7.3.



## SECTION 9.1

### Sentencing

(a) Any individual who has been convicted by the Court of violation of a provision of Title II shall be sentenced by the Court to work for the benefit of the tribe for any period found by the Court to be appropriate; but the period fixed shall not exceed the maximum period set for the offense in the code, and shall begin to run from the day of sentencing. During the period the convicted individual may be confined to the jail if so directed by the Court.

(b) Whenever any convicted individual shall be unable or unwilling to work, the Court shall, in its discretion, sentence him to imprisonment for the period of the sentence or to pay a fine equal to two dollars (\$2.00) a day for the same period.

(c) In addition to any other sentence, the Court may require an offender who has inflicted injury upon the person or property of any individual to make restitution or to compensate the injured party, through the surrender of property, the payment of money damages, or the performance of any other act for the benefit of the injured party.

(d) In determining the character and duration of the sentence which shall be imposed, the Court shall take

into consideration the previous conduct of the Defendant,  
the circumstances under which the offense was committed,  
and whether the offense was malicious or willful and  
whether the offender has attempted to make consideration  
to the extent of the Defendants resources and the needs  
of his dependents.

## SECTION 9.2

### Probation

(a) Where sentence has been imposed upon any individual who has not previously been convicted of any offense, the Court may in its discretion suspend the sentence imposed and allow the offender his freedom on probation upon his signing a pledge of good conduct during the period of the sentence upon the form provided.

(b) Any individual who shall violate his probation pledge shall be required to serve the remainder of his original sentence for violation of his pledge.



### SECTION 9.3

#### Parole

(a) Any individual committed by the Court who shall have without misconduct served one-half the sentence imposed by such Court shall be eligible to parole. Parole shall be granted only by a judge of the Court where the prisoner was convicted and upon signing of the form provided therefor.

(b) Any individual who shall violate any of the provisions of such parole shall be required to serve out the rest of the original sentence.

CREEK NATION REPORT ON INDIAN CHILD WELFARE ACT

Appendix Two:

Organization Chart-the Government of the Creek Nation



THE GOVERNMENT OF THE CREEK NATION

The Constitution

Legislative

Government Printing Office  
The National Council  
Library of the Council  
Reference Service  
Copyright Service  
Records Service

Executive

The Principal Chief  
Executive Office of the Principal Chief  
Council of Economic Advisors  
Department of Agriculture  
Domestic Council  
Board of Citizenship Affairs  
Council of Special Representation for Liaison  
Council on War & Personal Relations

Judicial

The Supreme Court  
District Court Office of the Court  
Administration Office of the Court

Office of the Treasury  
Treasury  
Executive Office  
Comptroller  
Internal Audit

- DIVISION OF ASSESSMENT & REPORTING
- DIVISION OF DISBURSEMENTS
- DIVISION OF GOVERNMENT & BUSINESS MANAGEMENT
- DIVISION OF INVESTMENTS

Office of the Administration  
Executive Director  
Independent Agency Administration  
Policy Administration  
Management Operation & Systems  
Budgets  
Personnel Administration  
Information Services  
Management Information  
Programming  
Computer Operations  
The Executive Archives  
Library  
General Services Administration  
Personnel Property Control  
Graphic & Reproductions

- DIVISION OF TRIBAL AFFAIRS
- Light House Administration
- Cooperative Training Administration

- DIVISION OF COMMUNITY SERVICE
- Environment Services Administration
- Employment & Manpower Services Administration
- Health & Social Services Administration

- DIVISION OF HUMAN DEVELOPMENT
- Education Administration
- Cooperation & Training Administration
- Education Supplemental Services Administration

Independent Agencies  
Election Board  
The Housing Authority of the CREEK NATION  
Board of Regents for Education  
Board of Health Affairs

Office of the Justice  
Attorney General  
Executive Office

- DIVISION OF CIVIL & CRIMINAL AFFAIRS
- DIVISION OF CLAIMS
- DIVISION OF CIVIL RIGHTS
- DIVISION OF CITIZENSHIP ADMINISTRATION
- DIVISION OF JUDICIAL AFFAIRS

Approved by Joint Committee of the CREEK NATION Council March 10, 1977  
Composed of the Committee on Tribal Affairs and the Committee on Community Services,  
as Authorized by Resolution 77-09, Section 30., K



CREEK NATION REPORT ON INDIAN WELFARE ACT

Appendix Three:

Functions and Responsibilities of the Creek Government

# I. Functions and Responsibilities of the Creek Nation

## A. Organization and Structure of the Creek Government Since 1971

### (1) Growth

The most identifiable trait of Creek Government since 1971 is its growth. The last of the appointed Principal Chiefs, W.E. (Dode) McIntosh, operated out of his home in Tulsa with some part-time secretarial help.

As of July 1, 1977, there were 380 full-time employees of the Creek Nation. This computes roughly (considering the adequacy of current data) to one tribal employee for every one hundred tribal members (1:100), and one tribal employee for every seventy-five Indians living in the Creek Nation (1:75). The current employment growth rate is estimated at an additional one hundred twenty (120) employees per year.

This growth is currently concentrated in the Executive branch, but the development of a Legislative staff will begin in 1978, and the Judicial branch will be staffed when federal legislation allows. In addition, approximately thirty (30) of the above employees are part of one independent agency, the Creek Nation Housing Authority.

### (2) Legislative Branch

The National Council of the Creek Nation is a unicameral body of twenty-five members. Most of the current council members are holdovers from the McIntosh administration. As vacancies occur, new members are appointed by the Principal Chief and confirmed by the National Council.

The National Council is organized into three standing

committees: 1) Tribal Affairs, 2) Community Services, and 3) Human Development. The three committees have monthly meetings with staff from the Executive branch to discuss possible legislation within their respective jurisdiction.

The National Council meets regularly on the last Saturday of the first month of each fiscal quarter. The National Council also has special meetings at the call of the Speaker.

The Speaker of the National Council is elected by the National Council as its presiding officer. The Speaker is also the chief administrative officer for the Legislative branch, and is responsible for personnel, budgets, and other administrative matters.

The National Council currently has one employee who serves as the Speaker's secretary. Current plans include hiring a Clerk to head the National Council's planned professional staff, and a Recorder to be responsible for verbatim minutes of meetings of the National Council and its committees. In the near future, the National Council will hire additional legislative professionals, and the committees will hire legislative counsel. The stated goal of the National Council is an independent professional staff capable of working with and scrutinizing the work of the Executive Branch.



The National Council operates by passing or rejecting Resolutions proposed by Council members or proposed by the Principal Chief to the Speaker.

The National Council has also passed one Ordinance creating the Creek Nation Election Board and providing for the 1975 Quadrennial election. (Two proposed Ordinances will be considered at the July 1977, regular meeting.)

The National Council will continue to grow, in addition to its legislative staff, its functions also include the Government Printing Office, its own General Accounting Office, and the Library of the Council, to include collections, reference sources, copyrights, and extension services.

### (3) Judicial Branch

While an independent judicial branch of government has been a traditional component of Creek Government since prior to the 1854 Constitution, the capacity of the Creek Nation to establish its own courts is limited by the Curtis Act of 1898, which states:

Section 28. That on the first day of July, eighteen hundred and ninety-eight, all tribal courts in Indian Territory shall be abolished, and no (30 Stat. 504) officer of said courts shall thereafter have any authority whatever to do or perform any act theretofore authorized by any law in connection with said courts, or to receive any pay for same; and

all civil and criminal cases then pending in any such court shall be transferred to the United States court in said Territory by filing with the clerk of the court the original papers in the suit: Provided, that this section shall not be in force as to the Chickasaw, Choctaw, and Creek tribes or nations until the first day of October, eighteen hundred and ninety-eight (30 Stat. 505).

The Judicial branch, when established, is planned to include the Supreme Court of the Creek Nation, at least eight District Courts, and a central Administrative Office of the Creek Courts.

(4) Executive Branch

a. Office of the Principal Chief

The Office of the Principal Chief is staffed by the Principal Chief and a Secretary. This office is directly responsible for the actions of the Executive Director (Office of the Administration) and the Treasurer (Office of the Treasury). The Principal Chief is also responsible for the administration of the independent agencies, which currently include the Housing Authority and the Election Board. Additional duties anticipated in the near future include administering the affairs of two new independent agencies (Board of Health Affairs, Board of Economic Affairs) and direct supervision of the Attorney General (Office of Justice).



The Office of the Principal Chief will continue to grow as special councils and commissions are established, and planned to include the Council of Economic Advisors, the Comprehensive Planning Commission (already established), the Domestic Council, the Trust Property Council, the Board of Citizenship Appeals, the Council on Special Representation for Liason with other Governments, and a Council on Wage and Personnel Relations.

b. Office of the Administration

Headed by the Executive Director, the Office of the Administration is responsible for the administrative management of the Creek Nation, providing support services for the National Council, Independent Agencies, Offices of Justice and the Treasury, and direct supervision of the Division of Tribal Affairs, Community Services and Human Development.

The Office of the Administration includes the Executive Office (Executive Director), Policy Administration, Personnel Administration, General Services Administration, Executive Archives, Independent Agencies Administration, and the Management Information Administration.

Policy Administration is responsible for all proposals, contracts, budgets and administrative control.

Personnel Administration is responsible for administering the personnel system which includes hiring,



promotion, and fringe benefits.

General Services Administration is responsible for purchasing, leasing, graphics, reproduction and communication.

Executive Archives is responsible for the tribal library, Central Records, and research.

When staffed, Independent Agencies Administration will provide administrative management for the needs of the independent agencies.

Within the Office of the Administration, Executive Office, the organization entitled Management Information Administration has been established for the purpose of developing and administering automated systems, and other management systems, to provide a sound and effective management structure.

The activities associated with management information administration in carrying out the above purpose include (1) Data Programming, (2) Systems Design, (3) Systems implementation, and (4) Systems Maintenance and Audit. The computer system is being programmed for full automatic entry on October 1, 1977.

(i) Division of Tribal Affairs

The Division of Tribal Affairs, headed by its Director, is responsible for the administrative and

functional management of its particular programs, provided through the Governmental Operations Administration, the Lighthouse Administration, and the Comprehensive Planning Administration.

The Government Operations Administration is responsible for research and policy concerning tribal government and legislation, and manages the tribal lands, facilities, Natural Resources, and Tribal Resource development.

The Lighthouse Administration is being developed for the future utilization by the Creek Courts. It is presently responsible for security at the Capitol and nearby buildings, and will soon have responsibility for fish and game management.

The Comprehensive Planning Administration is responsible for all aspects of tribal and community planning and development, and administers most capital improvements.

(ii) Division of Community Services

The Division of Community Services, through its Director, is responsible for the Functional and administrative management of all programs which are service-oriented. It is also responsible for the organization of Creek communities into service-delivery mechanisms.

The Environmental Services Administration is responsible for providing housing rehabilitation services.



The Manpower and Employment Administration is responsible for seeking employment for capable persons, and for seeking training in salable skills for others.

The Health and Social Services Administration is responsible for all health and social services.

(iii) Division of Human Development

The Division of Human Development, through its Director, is responsible for the functional and administrative management of its education programs.

The Education Administration is responsible for all education programs related to classroom experiences and training opportunities for adults and school-aged children.

The Counseling and Testing Administration is responsible for independently evaluating students and trainees of the Education Administration.

The Supplemental Educational Services Administration is responsible for functions which are supplemental to the standard educational programs, including the Creek Language Center.

c. Office of the Treasury

The office of the Treasury, through the Treasurer and the Controller administer all finance and accounting function for the Creek government. The Office of the Treasury manages all functions related to internal audit, central accounting and reporting, central disbursements, cash management and investments.



d. Office of Justice

Planned for initial operation in October, 1977 the Office of Justice, through the Attorney General, will handle all legal aspects of government for the Creek Nation.

The Office of Justice will manage all functions related to civil and criminal cases, claims, civil rights, citizenship administration, and jurisdiction.

(5) Independent Agencies

Independent Agencies are those aspects of Creek government which are established to operate, in all functional matters, independent of the Executive, Legislative and Judicial branches. Constitutionally, they are responsible to all three branches. Administrative Management is provided by the Executive Branch.

Independent Agencies include the Election Board, the Housing Authority, the Board of Economic Affairs, the Board of Regents for Education, the Board of Health.

a. Creek Nation Election Board

The Creek Nation Election Board was established by ordinance in 1975 to provide for registration and certification of voters, administration of absentee and resident ballots, and conduct of the election. The Election Board will administer any referenda (questions referred to the voters), and will administer the 1979 quadrennial election of the Principal Chief. When a method of representation in the National Council is

agreed upon, the Election Board will administer those elections. Twenty-four Creeks sit on the Election Board.

b. Housing Authority of the Creek Nation

Established in 1965, the Housing Authority is the oldest existing organ of the existing administrative programs of the Creek Nation. It is the only Independent Agency which is responsible for its own administrative management. Headed by a five-member board, the Housing Authority is responsible for providing Mutual Help Housing assistance.

c. Board of Economic Affairs

To be established in 1977, the Board of Economic Affairs will serve as an oversight body to provide Functional management direction to tribal enterprises. The first tribal enterprise is expected to become operational in the fall of 1977.

d. Board of Regents for Education

Planned to be established in 1978 or 1979, the Board of Regents for Education will serve as an oversight body to provide functional management direction to the Creek Nation Community College, expected to be established at the same time as the Board.

e. Board of Health

Pending its establishment in July, 1977, the Board of Health will administer the Creek Nation Community Hospital at Okemah, expected to be established in the fall of 1977.



(6) Role of the Tribal Towns

In 1934, a special Interior Solicitor's report concluded that only six tribal towns (italua, in Creek) still functioned as local units of government. Even fewer, if any, function so today. Only one has requested assistance from the Creek Nation, and while information of the type of assistance available has been transmitted to the italua micco, no word has been received on his acceptance or rejection. Several tribal towns have been "organized" by small factions of their membership as hastily created "evidence" for the Harjo v. Secretary of Interior lawsuit, but this has had no result.

(7) Role of the Community Organizations

In 1976, the Division of Community Services began its attempts to organize Creek Communities into what have already become viable service-delivery mechanisms. The format has been for the community to organize under a constitution, elect officers, conduct a community needs analysis, and to compose a community plan.

There has been an expansion from an initial three to a current twenty-three organized communities. An estimated seven or eight rural communities need to be organized. In addition, the metropolitan areas near Tulsa have not been organized.

Each organized community is currently in the process of finalizing their constitution and bylaws, borders,



needs analysis, and community plan. Because of the inherent differences in each community, the goals and objectives of each community are different.

During the spring and summer of 1977, the communities were allocated 46 staff position to be utilized according to their own community plan. Each community has new employed from two to ten workers.

These community workers assist in the development of each community organization as a service-delivery mechanism. The communities as whole units receive the employment service from the Creek Nation allocations for community workers. In turn, these workers aid other functional elements of the Creek Nation in the provision of health service, employment services, technical assistance in developing community plans, and in developing long-term community associations with the central government of the Creek Nation.

In addition, these community workers spend their time providing services needed by the community, whether it be for home and health information, personal assistance for the elderly, services to incarcerated community members, voter registration, or information about contemporary tribal government.