

HOUSE BILL No. 2772

By Committee on Child Welfare and Foster Care

Requested by Representative Haswood

2-8

1 AN ACT concerning children and minors; establishing the Kansas Indian
2 child welfare act; providing additional requirements for child custody
3 proceedings involving Indian children; defining terms used in such act;
4 granting jurisdiction over proceedings that involved an Indian child to
5 such child's Indian tribe; requiring the secretary to notify Indian tribes
6 if a proceeding involves an Indian child, to seek placement of an Indian
7 child with an Indian custodian or person committed to such child's
8 culture; declaring standards for proceedings involving an Indian child;
9 providing for notice requirement of such proceedings; identifying when
10 to notify and duties of the United States secretary of the interior.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) The provisions of sections 1 through 17, and
14 amendments thereto, shall be known and may be cited as the Kansas
15 Indian child welfare act.

16 (b) The purpose of the Kansas Indian child welfare act is to clarify
17 state policies and procedures regarding the implementation by Kansas of
18 the federal Indian child welfare act. It shall be the policy of the state to
19 cooperate fully with Indian tribes in Kansas in order to ensure that the
20 intent and provisions of the federal Indian child welfare act are enforced.
21 This cooperation includes recognition by the state that Indian tribes have a
22 continuing and compelling governmental interest in an Indian child
23 whether or not the Indian child is in the physical or legal custody of a
24 parent, an Indian custodian or an Indian extended family member at the
25 commencement of an Indian child custody proceeding or the Indian child
26 has resided or is domiciled on an Indian reservation. The state shall be
27 committed to protecting the essential tribal relations and best interests of
28 an Indian child by promoting practices consistent with the federal Indian
29 child welfare act and other applicable law designed to prevent the Indian
30 child's out-of-home placement.

31 Sec. 2. For the purposes of the Kansas Indian child welfare act:

32 (a) "Active efforts" means and includes, but is not limited to:

33 (1) A concerted level of casework, both prior to and after the removal
34 of an Indian child, exceeding the level that is required under reasonable
35 efforts to preserve and reunify the family in a manner consistent with the

1 prevailing social and cultural conditions and way of life of the Indian
2 child's tribe or tribes to the extent possible under the circumstances;

3 (2) a request to the Indian child's tribe or tribes and extended family
4 known to the secretary to convene traditional and customary support and
5 services;

6 (3) actively engaging, assisting, and monitoring the family's access to
7 and progress in culturally appropriate and available resources of the Indian
8 child's extended family members, tribal service area, Indian tribe or tribes
9 and individual Indian caregivers;

10 (4) identification and provision of information to the Indian child's
11 extended family members known to the secretary concerning appropriate
12 community, state and federal resources that may be able to offer housing,
13 financial and transportation assistance and actively assisting the family in
14 accessing such community, state and federal resources;

15 (5) identification of and attempts to engage tribally designated
16 Kansas Indian child welfare act representatives;

17 (6) consultation with extended family members known to the
18 secretary, or a tribally designated Kansas Indian child welfare act
19 representative if an extended family member cannot be located, to identify
20 family or tribal support services that could be provided by extended family
21 members or other tribal members if extended family members cannot be
22 located;

23 (7) exhaustion of all available tribally appropriate family preservation
24 alternatives; and

25 (8) when the secretary is involved in a proceeding under the act, the
26 secretary shall provide a written report of its attempt to provide active
27 efforts to the court at every hearing involving an Indian child. This report
28 shall be sent to the Indian child's tribe or tribes within three days after
29 being filed with the court and shall be deemed to be admissible evidence
30 of active efforts in proceedings conducted under the act.

31 (b) "Best interests of the Indian child" means and includes, but is not
32 limited to:

33 (1) Using practices in compliance with the federal Indian child
34 welfare act, the Kansas Indian child welfare act and other applicable laws
35 that are designed to prevent the Indian child's voluntary or involuntary out-
36 of-home placement; and

37 (2) whenever an out-of-home placement is necessary, placing the
38 child, to the greatest extent possible, in a family foster home, adoptive
39 placement or other type of custodial placement that reflects the unique
40 values of the Indian child's tribal culture and is best able to assist the child
41 in establishing, developing and maintaining a political, cultural and social
42 relationship with the Indian child's tribe or tribes and tribal community.

43 (c) "Child custody proceeding" means an action that involves the

1 following:

2 (1) Removing an Indian child from the child's parent or Indian
3 custodian for temporary or emergency placement in a family foster home
4 or with a guardian or conservator if the parent or Indian custodian cannot
5 have the child returned upon demand and parental rights have not been
6 terminated;

7 (2) termination of parental rights;

8 (3) the temporary placement of an Indian child in a foster home or
9 institution after the termination of parental rights, but prior to or in lieu of
10 adoptive placement;

11 (4) the permanent placement of an Indian child for adoption,
12 including any action resulting in a final decree of adoption; and

13 (5) a non-court-involved proceeding in which the secretary is
14 facilitating a voluntary out-of-home placement or in-home services to
15 families at risk of entering the custody of the secretary. An Indian child,
16 parent or tribe involved in a voluntary out-of-home placement shall only
17 be provided protections as provided in sections 3(d), 4 and 6, and
18 amendments thereto. "Child custody proceeding" does not include a
19 placement based upon an act that, if committed by an adult, would be
20 deemed a crime, or, in a divorce proceeding, an award of custody to one of
21 the parents.

22 (d) "Secretary" means the secretary for children and families or the
23 secretary's designee.

24 (e) "Extended family member" means the same as defined in the law
25 or custom of the Indian child's primary tribe or, in the absence of such
26 laws or customs of the primary tribe, the law or custom of the Indian
27 child's other tribes. In the absence of such law or custom, "extended family
28 member" means a person who has reached 18 years of age and is the
29 Indian child's parent, grandparent, aunt or uncle, clan member, band
30 member, sibling, brother-in-law or sister-in-law, niece or nephew, cousin
31 or stepparent.

32 (f) "Indian" means any person having origins in the original peoples
33 of North America and who maintains cultural identification through tribal
34 affiliation or community recognition.

35 (g) "Indian child" means any unmarried person who is under 18 years
36 of age and is either:

37 (1) A member of an Indian tribe; or

38 (2) eligible for membership in an Indian tribe and is the biological
39 child of a member of an Indian tribe.

40 (h) "Indian child's primary tribe" means the primary tribe in the case
41 of an Indian child, if such child is a member or eligible for membership in
42 multiple tribes.

43 (i) "Indian child's tribe" means the Indian tribe or tribes in which an

1 Indian child is a member or eligible for membership.

2 (j) "Indian custodian" means any Indian person who has legal custody
3 of an Indian child under tribal law or custom or under state law or to
4 whom temporary physical care, custody, and control has been transferred
5 by the parent of such child.

6 (k) "Indian organization" means any group, association, partnership,
7 limited liability company, corporation or other legal entity owned or
8 controlled by Indians or a majority of whose members are Indians.

9 (l) "Indian tribe" means any Indian tribe, band, nation or other
10 organized group or community of Indians recognized as eligible for the
11 services provided to Indians by the secretary of the United States
12 department of the interior because of their status as Indians, including any
13 Alaska native village as defined in 43 U.S.C. § 1602(c).

14 (m) "Parent" means any biological parent or parents of an Indian
15 child or any Indian person who has lawfully adopted an Indian child,
16 including adoptions under tribal law or custom. "Parent" does not include
17 the unwed father if paternity has not been acknowledged or established.

18 (n) "Qualified expert witness" means one of the following persons, in
19 descending order of priority, except that a court may assess the credibility
20 of individual witnesses:

21 (1) A member of the Indian child's tribe or tribes who is recognized
22 by the tribal community as knowledgeable in tribal customs as they pertain
23 to family and child-rearing practices;

24 (2) a member of another tribe who is recognized to be a qualified
25 expert witness by the Indian child's tribe or tribes based on such Indian
26 child's tribe or tribes knowledge of the delivery of child and family
27 services to Indians and the Indian child's tribe or tribes;

28 (3) a lay expert witness that possesses substantial experience in the
29 delivery of child and family services to Indian persons and extensive
30 knowledge of prevailing social and cultural standards and child-rearing
31 practices within the Indian child's tribe or tribes;

32 (4) a professional person having substantial education and experience
33 in the area of such professional's specialty who can demonstrate
34 knowledge of the prevailing social and cultural standards and child-rearing
35 practices within the Indian child's tribe or tribes; or

36 (5) any other professional person having substantial education in the
37 area of such person's specialty.

38 (o) "Reservation" means Indian country as defined in 18 U.S.C. §
39 1151 and any lands not covered under such section for which the title is
40 either held by the United States in trust for the benefit of any Indian tribe
41 or individual subject to a restriction by the United States against alienation
42 or a federally designated or established service area that means a
43 geographic area designated by the United States where federal services

1 and benefits furnished to Indians and Indian tribes are provided or that is
2 otherwise designated to constitute an area on or near a reservation.

3 (p) "Tribal court" means a court with jurisdiction over child custody
4 proceedings that is either a court of Indian offenses or a court established
5 and operated under the code or custom of an Indian tribe or any other
6 administrative body of a tribe that has authority over child custody
7 proceedings.

8 (q) "Tribal service area" means a geographic area, as defined by the
9 applicable Indian tribe or tribes, wherein tribal services and programs are
10 provided to Indian persons, the Indian tribe that an Indian child is a
11 member or eligible for membership or, in the case of an Indian child who
12 is a member of or eligible for membership in more than one tribe, the
13 Indian tribe that the Indian child has more significant contacts.

14 Sec. 3. (a) An Indian tribe shall have exclusive jurisdiction over any
15 child custody proceeding involving an Indian child who resides or is
16 domiciled within the reservation of such tribe in this state, except when
17 such jurisdiction is otherwise vested in the state by existing federal law.
18 When an Indian child is a ward of a tribal court, the Indian tribe shall
19 retain exclusive jurisdiction, notwithstanding the residence or domicile of
20 the child.

21 (b) In any state court proceeding for the out-of-home placement of or
22 termination of parental rights to an Indian child not domiciled or residing
23 within the reservation of the Indian child's tribe, the state court, in the
24 absence of good cause to the contrary, shall transfer such proceeding to the
25 jurisdiction of the primary tribe, absent objection by either parent, upon
26 the petition of either parent or the Indian custodian or the Indian child's
27 tribe, except that such transfer shall be subject to declination by the tribal
28 court of the primary tribe.

29 (c) In any state court proceeding for the placement or termination of
30 parental rights to an Indian child, the Indian custodian of the child and the
31 Indian child's tribe or tribes shall have a right to intervene at any point in
32 the proceeding regardless of whether the intervening party is represented
33 by legal counsel. The Indian child's tribe or tribes and the tribe's counsel
34 may associate with local counsel. Such counsel shall not pay a fee to
35 appear pro hac vice in a child custody proceeding under the Kansas Indian
36 child welfare act. Representatives from the Indian child's tribe or tribes
37 have the right to fully participate in every court proceeding held under the
38 act.

39 (d) If the Indian child is eligible for membership or enrolled in
40 multiple Indian tribes and more than one Indian tribe intervenes in a state
41 court proceeding for the out-of-home placement of or termination of
42 parental rights to an Indian child, the Indian child's primary tribe shall be
43 determined in the following manner:

1 (1) The applicable Indian tribes shall enter into a unanimous
2 agreement designating which Indian tribe is the Indian child's primary
3 tribe for the underlying state court proceeding within 30 days after
4 intervention by one or more additional Indian tribes and consultation, if
5 practicable, with the parents of the Indian child and the Indian child if such
6 child is 12 years of age or older; or

7 (2) if unanimous agreement is not possible within the 30-day period,
8 the state court in which the proceeding is pending shall determine the
9 Indian child's primary tribe based upon the amount and significance of the
10 contacts between each Indian tribe and the Indian child.

11 (e) The state of Kansas shall give full faith and credit to the public
12 acts, records and judicial proceedings of any Indian tribe applicable to
13 Indian child custody proceedings to the same extent that the state gives full
14 faith and credit to the public acts, records and judicial proceedings of any
15 other entity.

16 Sec. 4. (a) In any involuntary proceeding in a state court, when the
17 court knows or has reason to know that an Indian child is involved, the
18 party seeking the out-of-home placement of or termination of parental
19 rights to an Indian child shall send a notice pursuant to 25 C.F.R. § 23.11
20 to the parents, the Indian custodian and the Indian child's tribe or tribes, by
21 registered mail with return receipt requested, of the pending proceedings
22 and their right of intervention. If the identity or location of the parent or
23 Indian custodian and the tribe or tribes cannot be determined, such notice
24 shall be given to the secretary of the United States department of the
25 interior in a similar manner, who may provide the requisite notice to the
26 parent or Indian custodian and the tribe or tribes. No out-of-home
27 placement or termination of parental rights proceeding shall be held until
28 at least 10 days after receipt of notice by the parent or Indian custodian
29 and the tribe or tribes or the secretary of the United States department of
30 the interior. The parent or Indian custodian or the tribe or tribes shall, upon
31 request, be granted up to 20 additional days to prepare for such
32 proceeding.

33 (b) In any case in which the court determines the parent or Indian
34 custodian is indigent, such parent or custodian shall have the right to court-
35 appointed counsel in any removal, placement or termination proceeding.
36 The court may, in its discretion, appoint a guardian ad litem or counsel for
37 the child upon a finding that such appointment is in the best interests of the
38 Indian child. The court shall promptly notify the secretary of the United
39 States department of the interior upon appointment of counsel and request
40 from the secretary of the United States department of the interior, upon
41 certification of the presiding judge, payment of reasonable attorney fees.

42 (c) Each party to a out-of-home placement or termination of parental
43 rights proceeding under state law involving an Indian child shall have the

1 right to examine all reports or other documents filed with the court upon
2 which any decision is based regarding such action.

3 (d) Any party seeking out-of-home placement or termination of
4 parental rights to an Indian child under state law shall report to the court
5 that active efforts have been made to provide remedial services and
6 rehabilitative programs designed to prevent the breakup of the Indian
7 family or unite the parent or Indian custodian with the Indian child, and
8 that such efforts have been determined unsuccessful. Any written evidence
9 showing that such active efforts have been made shall be admissible in a
10 proceeding under the Kansas Indian child welfare act. Prior to the court
11 ordering placement of the child in the custody of the secretary or
12 termination of parental rights, the court shall make a determination if
13 active efforts have been made or that the party seeking placement or
14 termination has demonstrated attempts at active efforts to the greatest
15 extent possible under the circumstances.

16 (e) The court shall not order out-of-home placement under this
17 section in the absence of a determination by the court, supported by clear
18 and convincing evidence, including testimony of qualified expert
19 witnesses, that the continued custody of the child by the parent or Indian
20 custodian is likely to result in serious emotional or physical damage to the
21 child.

22 (f) The court shall not order termination of parental rights under this
23 section in the absence of a determination by the court, supported by
24 evidence beyond a reasonable doubt, including testimony of qualified
25 expert witnesses, that the continued custody of the child by the parent or
26 Indian custodian is likely to result in serious emotional or physical damage
27 to the child.

28 Sec. 5. (a) Notice of an involuntary proceeding in state court
29 involving an Indian child shall conform with the requirements of 25 C.F.R.
30 § 23.11 and contain the following information, if known, and if unknown,
31 a statement indicating what attempts have been made to locate the
32 information:

- 33 (1) The name and last known address of the Indian child;
- 34 (2) the name and address of the Indian child's parents, paternal and
35 maternal grandparents and Indian custodians, if any;
- 36 (3) the tribal affiliation of the parents of the Indian child or, if
37 applicable, the Indian custodians;
- 38 (4) a statement as to whether the Indian child's residence or domicile
39 is on the tribe's reservation;
- 40 (5) an identification of any tribal court order affecting the custody of
41 the Indian child so that a state court may be required to accord full faith
42 and credit; and
- 43 (6) a copy of the motion for out-of-home placement of the Indian

1 child and any accompanying affidavits in support of such motion, if such
2 documents exist.

3 (b) A copy of the notice of an involuntary proceeding in state court
4 involving an Indian child, as described in subsection (a), shall be filed with
5 the court within three days after the date the notice was issued.

6 Sec. 6. (a) When any parent or Indian custodian voluntarily consents
7 to an out-of-home placement or relinquishment or termination of parental
8 rights, such consent shall not be valid unless executed in writing and
9 recorded before a judge of a court of competent jurisdiction and
10 accompanied by the presiding judge's certificate that such terms and
11 consequences of the consent were fully explained, in detail, and were fully
12 understood by the parent or Indian custodian. The court shall also certify
13 that either the parent or Indian custodian fully understood the explanation
14 in English or that it was translated to a language that the parent or Indian
15 custodian understood. Any consent given prior to, or within 10 days after,
16 the birth of the Indian child shall not be valid.

17 (b) When the secretary offers the parent, Indian child or Indian
18 custodian services through a voluntary out-of-home placement or in-home
19 services and the secretary knows or has reason to know that an Indian
20 child is involved, the secretary shall notify the parent or Indian custodian
21 and the Indian child's tribe or tribes by telephone call, fax, email or
22 registered mail, with return receipt requested, of the provision of services
23 and any pending child custody proceeding. If the identity or location of the
24 parent or Indian custodian and the tribe or tribes cannot be determined,
25 such notice shall be given to the secretary of the United States department
26 of the interior and the appropriate area director listed in 25 C.F.R. § 23.11
27 in a similar manner, who may provide the notice to the parent or Indian
28 custodian and the tribe or tribes. Such notice shall be provided within five
29 days after the initiation of voluntary services.

30 (c) When the secretary offers the parent or Indian custodian services
31 through a voluntary out-of-home placement or in-home services, the
32 parent or Indian custodian of the child and the Indian child's tribe or tribes
33 have a right to participate in, provide or consult with the secretary's
34 provision of services.

35 (d) When the secretary offers the parent or Indian custodian services
36 through a voluntary out-of-home placement or in-home services, the
37 secretary shall provide remedial services and rehabilitative programs
38 designed to prevent the breakup of the Indian family or unite the parent or
39 Indian custodian with the Indian child until these efforts have been
40 determined unsuccessful.

41 (e) Prior to any voluntary relinquishment or termination of parental
42 rights proceeding that the secretary is a party or was providing assistance
43 to a parent or Indian custodian, the secretary shall submit to the court the

1 following information, in writing, if it has not previously been provided:

2 (1) The jurisdictional authority of the court in the proceeding;

3 (2) the date of the Indian child's birth and the date of any voluntary
4 consent to relinquishment or termination;

5 (3) the age of the Indian child at the time voluntary consent was
6 given;

7 (4) the date the parent appeared in court and was informed by the
8 judge of the terms and consequences of any voluntary consent to
9 relinquishment or termination;

10 (5) that the parent fully understood the explanation of such terms and
11 consequences in English or, when necessary, the explanation was
12 translated into a language that the parent understood and the parent fully
13 understood the explanation as it was translated;

14 (6) the name and address of any prospective adoptive parent whose
15 identity is known to the consenting parent;

16 (7) the promises, if any, made to the parent, as a condition of the
17 parent's consent, including promises regarding the tribal affiliation or
18 health, ethnic, religious, economic or other personal characteristics of any
19 adoptive family with that the child would be placed; and

20 (8) the details, if any, of an enforceable communication or contact
21 agreement.

22 (f) Any parent or Indian custodian may withdraw consent to a out-of-
23 home or voluntary out-of-home placement under state law at any time,
24 and, upon such withdrawal, the child shall be returned to the parent or
25 Indian custodian.

26 (g) In any voluntary proceedings for termination of parental rights to
27 or adoptive placement of an Indian child, the consent of the parent may be
28 withdrawn for any reason at any time prior to the entry of a final decree of
29 termination or adoption, and the secretary shall return the child to the
30 parent.

31 (h) After the entry of a final decree of adoption of an Indian child, the
32 parent may withdraw consent of such adoption if the consent was obtained
33 through fraud or duress and petition the court to vacate such decree. Upon
34 a finding that such consent was obtained through fraud or duress, the court
35 shall vacate such decree and return the child to the parent. No adoption
36 that has been effective for at least two years may be invalidated under the
37 provisions of this subsection unless otherwise permitted under state law.

38 Sec. 7. Any Indian child who is the subject of any proceeding for out-
39 of-home placement or termination of parental rights under state law, any
40 parent or Indian custodian from whose custody such child was removed
41 and the Indian child's primary tribe may petition to invalidate such action
42 upon a showing that such action violated any provision of sections 3
43 through 6, and amendments thereto.

1 Sec. 8. (a) In any adoptive placement of an Indian child under state
2 law, preference shall be given, in the absence of good cause to the
3 contrary, to placement with the following, in descending order of priority:

- 4 (1) A member of the Indian child's extended family;
- 5 (2) other members of the Indian child's tribe or tribes;
- 6 (3) other Indian families; or
- 7 (4) a non-Indian family committed to enabling the child to have time
8 with such child's extended family and participation in the cultural and
9 ceremonial events of the Indian child's tribe or tribes.

10 (b) Any Indian child accepted for out-of-home or preadoptive
11 placement or a voluntary out-of-home placement shall be placed in the
12 least restrictive setting with a family that meets, if any, such child's special
13 needs. The child shall be placed within reasonable proximity to such
14 child's home, taking into account any special needs of the child. In any
15 out-of-home or preadoptive placement, a preference shall be given, in the
16 absence of good cause to the contrary, to a placement with one of the
17 following, in descending order of priority:

- 18 (1) A member of the Indian child's extended family;
- 19 (2) other members of the Indian child's tribe or tribes;
- 20 (3) a foster home that is licensed, approved or specified by the Indian
21 child's tribe or tribes;
- 22 (4) an Indian foster home that is licensed or approved by an
23 authorized non-Indian licensing authority;
- 24 (5) a non-Indian family that is committed to enabling the child to
25 have time with such child's extended family and participation in the
26 cultural and ceremonial events of the Indian child's tribe or tribes;
- 27 (6) an Indian facility or program for children that is approved by an
28 Indian tribe or operated by an Indian organization and that has a program
29 suitable to meet the Indian child's needs; or
- 30 (7) non-Indian facility or program for children that is approved by an
31 Indian tribe.

32 (c) In the case of a placement under subsection (a) or (b), if the Indian
33 child's primary tribe establishes a different order of preference by
34 resolution or in the absence of such resolution, the agency or court
35 deciding the placement shall follow such order of preference if the
36 placement is the least restrictive setting appropriate to the particular needs
37 of the child, as provided in subsection (b). When appropriate, the
38 preference of the Indian child or parent shall be considered, except when a
39 consenting parent would like to be anonymous, in which case, the court or
40 agency shall give weight to such preferences of the parent.

41 (d) The standards to be applied in meeting the preference
42 requirements of this section shall be the prevailing social and cultural
43 standards of the Indian community wherein the parent or extended family

1 resides or with which the parent or extended family members maintain
2 social and cultural ties. Good cause to deviate from the placement
3 preferences in subsections (a) through (c) includes:

4 (1) The request of the biological parents of the Indian child or the
5 Indian child when the child has reached 12 years of age;

6 (2) any extra physical or emotional needs of the Indian child as
7 established by testimony of a qualified expert witness; or

8 (3) the unavailability of suitable families for placement after a
9 diligent search has been completed for families meeting the preference
10 criteria.

11 (e) The burden of establishing good cause to deviate from the
12 placement preferences shall be by clear and convincing evidence on the
13 party urging such deviation from preferences.

14 (f) A record of each such placement of an Indian child shall be
15 maintained by the secretary evidencing the efforts to comply with the
16 preferences specified in this section. Such record shall be made available
17 at any time upon the request of the secretary or the Indian child's tribe or
18 tribes.

19 Sec. 9. (a) Notwithstanding any other state law to the contrary,
20 whenever a final decree of adoption of an Indian child has been vacated or
21 set aside or the adoptive parents voluntarily consent to the termination of
22 their parental rights to the child, a biological parent or prior Indian
23 custodian may petition for return of custody of the Indian child, and the
24 court shall grant such petition unless the court determines that such return
25 of custody is not in the best interests of the Indian child.

26 (b) Whenever an Indian child is removed from an out-of-home
27 placement for the purpose of another placement, preadoptive or adoptive
28 placement, such placement shall be in accordance with the Kansas Indian
29 child welfare act, except when the Indian child is being returned to the
30 parent or Indian custodian from whose custody the child was originally
31 removed.

32 Sec. 10. Upon application by an Indian person who has reached 18
33 years of age and was the subject of an adoptive placement, the court that
34 entered the final decree shall inform such individual of the tribal
35 affiliation, if any, of the person's biological parents and provide other
36 information as may be necessary to protect any rights flowing from the
37 person's tribal relationship.

38 Sec. 11. (a) The secretary is authorized to enter into agreements
39 with Indian tribes respecting care and custody of Indian children as well as
40 jurisdiction over child custody proceedings, including agreements that may
41 provide for the orderly transfer of jurisdiction on a case-by-case basis and
42 agreements that provide for concurrent jurisdiction between the secretary
43 and Indian tribes.

1 (b) Such agreements may be revoked by either party after 180 days
2 from when the other party received such written notice. Such revocation
3 shall not affect any action or proceeding over which a court has already
4 assumed jurisdiction, unless the agreement provides otherwise.

5 Sec. 12. When the secretary in an Indian child custody proceeding
6 before a state court has improperly removed the child from the custody of
7 the parent or Indian custodian or has improperly retained custody after a
8 visit or other temporary relinquishment of custody, the court shall decline
9 jurisdiction over such petition and return the child to the child's parent or
10 Indian custodian unless returning the child to the child's parent or
11 custodian would subject the child to a substantial and immediate danger or
12 threat of such danger.

13 Sec. 13. In any case when federal law applicable to a child custody
14 proceeding provides a higher standard of protection to the rights of the
15 parent or Indian custodian of an Indian child than the rights provided
16 under the Kansas Indian child welfare act, the court shall apply the federal
17 standard.

18 Sec. 14. (a) Nothing in the Kansas Indian child welfare act shall be
19 construed to prevent the emergency removal of an Indian child who is a
20 resident of or is domiciled on a reservation but who is temporarily located
21 off the reservation from the child's parent or Indian custodian or the
22 emergency placement of such child in an out-of-home placement, under
23 applicable state law, in order to prevent imminent physical damage or
24 harm to the child. The secretary or law enforcement agency involved shall
25 ensure that such emergency removal or placement terminates immediately
26 when such removal or placement is no longer necessary to prevent
27 imminent physical damage or harm to the child and expeditiously initiate a
28 child custody proceeding subject to the provisions of the Kansas Indian
29 child welfare act, transfer the child to the jurisdiction of the appropriate
30 Indian tribe or tribes or restore the child to the parent or Indian custodian,
31 as may be appropriate.

32 (b) During the course of each report received by the secretary, the
33 secretary shall inquire as to whether the person reporting abuse or neglect
34 believes one of the parties involved may be an Indian child or Indian
35 person. If the secretary has any reason to believe that an Indian child or
36 Indian person is involved in the report, the secretary shall immediately
37 document the information.

38 Sec. 15. No provision of the Kansas Indian child welfare act, except
39 section 3(a) and section 12, and amendments thereto, shall affect a
40 proceeding under state law for out-of-home placement, termination of
41 parental rights, preadoptive placement or adoptive placement that was
42 initiated or completed prior to 180 days after November 8, 1978. All
43 provisions of the Kansas Indian child welfare act shall apply to any

1 proceeding affecting the custody or placement of the same child
2 subsequent to November 8, 1978.

3 Sec. 16. (a) Any state court entering a final decree or order in any
4 Indian child adoptive placement after September 6, 1985, shall provide the
5 secretary of the United States department of the interior with a copy of
6 such decree or order together with:

- 7 (1) The name and tribal affiliation of the child;
- 8 (2) the names and addresses of the child's biological parents;
- 9 (3) the names and addresses of the adoptive parents; and
- 10 (4) the identity of any agency having records or information relating
11 to such adoptive placement.

12 (b) When the court records contain an affidavit of the biological
13 parent or parents that requires their identity remain confidential, the court
14 shall include such affidavit with the other information.

15 Sec. 17. The secretary, in consultation with Indian tribes, shall adopt
16 and promulgate rules and regulations to establish standards and procedures
17 for the secretary's review of cases subject to the Kansas Indian child
18 welfare act and methods for monitoring the secretary's compliance with
19 the federal Indian child welfare act and the Kansas Indian child welfare
20 act. The standards and procedures and monitoring methods shall be
21 integrated into the secretary's structure and plan for the federal
22 government's child and family service review process and any program
23 improvement plan resulting from that process.

24 Sec. 18. This act shall take effect and be in force from and after its
25 publication in the statute book.