

114TH CONGRESS
1ST SESSION

S. 184

To amend the Indian Child Protection and Family Violence Prevention Act to require background checks before foster care placements are ordered in tribal court proceedings, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 16, 2015

Mr. HOEVEN (for himself and Mr. TESTER) introduced the following bill;
which was read twice and referred to the Committee on Indian Affairs

A BILL

To amend the Indian Child Protection and Family Violence Prevention Act to require background checks before foster care placements are ordered in tribal court proceedings, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Native American Chil-
5 dren’s Safety Act”.

1 **SEC. 2. CRIMINAL RECORDS CHECKS.**

2 Section 408 of the Indian Child Protection and Fam-
 3 ily Violence Prevention Act (25 U.S.C. 3207) is amended
 4 by adding at the end the following:

5 “(d) BY TRIBAL SOCIAL SERVICES AGENCY FOR
 6 FOSTER CARE PLACEMENTS IN TRIBAL COURT PRO-
 7 CEEDINGS.—

8 “(1) DEFINITIONS.—In this subsection:

9 “(A) COVERED INDIVIDUAL.—The term
 10 ‘covered individual’ includes—

11 “(i) any individual 18 years of age or
 12 older; and

13 “(ii) any individual who the tribal so-
 14 cial services agency determines is subject
 15 to a criminal records check under para-
 16 graph (2)(A).

17 “(B) FOSTER CARE PLACEMENT.—The
 18 term ‘foster care placement’ means any action
 19 removing an Indian child from a parent or In-
 20 dian custodian for temporary placement in a
 21 foster home or institution or the home of a
 22 guardian or conservator if—

23 “(i) the parent or Indian custodian
 24 cannot have the child returned on demand;
 25 and

1 “(ii)(I) parental rights have not been
2 terminated; or

3 “(II) parental rights have been termi-
4 nated but the child has not been perma-
5 nently placed.

6 “(C) INDIAN CUSTODIAN.—The term ‘In-
7 dian custodian’ means any Indian—

8 “(i) who has legal custody of an In-
9 dian child under tribal law or custom or
10 under State law; or

11 “(ii) to whom temporary physical
12 care, custody, and control has been trans-
13 ferred by the parent of the child.

14 “(D) PARENT.—The term ‘parent’
15 means—

16 “(i) any biological parent of an Indian
17 child; or

18 “(ii) any Indian who has lawfully
19 adopted an Indian child, including adop-
20 tions under tribal law or custom.

21 “(E) TRIBAL COURT.—The term ‘tribal
22 court’ means a court—

23 “(i) with jurisdiction over foster care
24 placements; and

25 “(ii) that is—

1 “(I) a Court of Indian Offenses;

2 “(II) a court established and op-
3 erated under the code or custom of an
4 Indian tribe; or

5 “(III) any other administrative
6 body of an Indian tribe that is vested
7 with authority over foster care place-
8 ments.

9 “(F) TRIBAL SOCIAL SERVICES AGENCY.—

10 The term ‘tribal social services agency’ means
11 the agency of an Indian tribe that has the pri-
12 mary responsibility for carrying out foster care
13 licensing or approval (as of the date on which
14 the proceeding described in paragraph (2)(A)
15 commences) for the Indian tribe.

16 “(2) CRIMINAL RECORDS CHECK BEFORE FOS-
17 TER CARE PLACEMENT.—

18 “(A) IN GENERAL.—Except as provided in
19 paragraph (3), no foster care placement shall be
20 finally approved and no foster care license shall
21 be issued until the tribal social services agen-
22 cy—

23 “(i) completes a criminal records
24 check of each covered individual who re-
25 sides in the household or is employed at

1 the institution in which the foster care
2 placement will be made; and

3 “(ii) concludes that each covered indi-
4 vidual described in clause (i) meets such
5 standards as the Indian tribe shall estab-
6 lish in accordance with subparagraph (B).

7 “(B) STANDARDS OF PLACEMENT.—The
8 standards described in subparagraph (A)(ii)
9 shall include—

10 “(i) requirements that each tribal so-
11 cial services agency described in subpara-
12 graph (A)—

13 “(I) perform criminal records
14 checks, including fingerprint-based
15 checks of national crime information
16 databases (as defined in section
17 534(f)(3) of title 28, United States
18 Code);

19 “(II) check any abuse registries
20 maintained by the Indian tribe; and

21 “(III) check any child abuse and
22 neglect registry maintained by the
23 State in which the covered individual
24 resides for information on the covered
25 individual, and request any other

1 State in which the covered individual
2 resided in the preceding 5 years, to
3 enable the tribal social services agency
4 to check any child abuse and neglect
5 registry maintained by that State for
6 such information; and

7 “(ii) any other additional requirement
8 that the Indian tribe determines is nec-
9 essary and permissible within the existing
10 authority of the Indian tribe, such as the
11 creation of voluntary agreements with
12 State entities in order to facilitate the
13 sharing of information related to the per-
14 formance of criminal records checks.

15 “(C) RESULTS.—Except as provided in
16 paragraph (3), no foster care placement shall be
17 ordered in any proceeding described in subpara-
18 graph (A) if an investigation described in clause
19 (i) of that subparagraph reveals that a covered
20 individual described in that clause has been
21 found by a Federal, State, or tribal court to
22 have committed any crime listed in clause (i) or
23 (ii) of section 471(a)(20)(A) of the Social Secu-
24 rity Act (42 U.S.C. 671(a)(20)(A)).

1 “(3) EMERGENCY PLACEMENT.—Paragraph (2)
2 shall not apply to an emergency foster care place-
3 ment, as determined by a tribal social services agen-
4 cy.

5 “(4) RECERTIFICATION OF FOSTER HOMES OR
6 INSTITUTIONS.—

7 “(A) IN GENERAL.—Not later than 2 years
8 after the date of enactment of this subsection,
9 each Indian tribe shall establish procedures to
10 recertify homes or institutions in which foster
11 care placements are made.

12 “(B) CONTENTS.—The procedures de-
13 scribed in subparagraph (A) shall include, at a
14 minimum, periodic intervals at which the home
15 or institution shall be subject to recertification
16 to ensure—

17 “(i) the safety of the home or institu-
18 tion for the Indian child; and

19 “(ii) that each covered individual who
20 resides in the home or is employed at the
21 institution is subject to a criminal records
22 check in accordance with this subsection,
23 including any covered individual who—

24 “(I) resides in the home or is em-
25 ployed at the institution on the date

1 on which the procedures established
2 under subparagraph (A) commences;
3 and

4 “(II) did not reside in the home
5 or was not employed at the institution
6 on the date on which the investigation
7 described in paragraph (2)(A)(i) was
8 completed.

9 “(C) GUIDANCE ISSUED BY THE SEC-
10 RETARY.—The procedures established under
11 subparagraph (A) shall be subject to any regu-
12 lation or guidance issued by the Secretary that
13 is in accordance with the purpose of this sub-
14 section.

15 “(5) GUIDANCE.—Not later than 2 years after
16 the date of enactment of this subsection and after
17 consultation with Indian tribes, the Secretary shall
18 issue guidance regarding—

19 “(A) procedures for a criminal records
20 check of any covered individual who—

21 “(i) resides in the home or is em-
22 ployed at the institution in which the fos-
23 ter care placement is made after the date
24 on which the investigation described in
25 paragraph (2)(A)(i) is completed; and

1 “(ii) was not the subject of an inves-
2 tigation described in paragraph (2)(A)(i)
3 before the foster care placement was made;

4 “(B) self-reporting requirements for foster
5 care homes or institutions in which any covered
6 individual described in subparagraph (A) re-
7 sides if the head of the household or the oper-
8 ator of the institution has knowledge that the
9 covered individual—

10 “(i) has been found by a Federal,
11 State, or tribal court to have committed
12 any crime listed in clause (i) or (ii) of sec-
13 tion 471(a)(20)(A) of the Social Security
14 Act (42 U.S.C. 671(a)(20)(A)); or

15 “(ii) is listed on a registry described
16 in clause (II) or (III) of paragraph
17 (2)(B)(i);

18 “(C) promising practices used by Indian
19 tribes to address emergency foster care place-
20 ment procedures under paragraph (3); and

21 “(D) procedures for certifying compliance
22 with this Act.”.

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