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SENATE

{ REPORT
117-63

NATIVE AMERICAN CHILD PROTECTION ACT

FEBRUARY 2, 2022.—Ordered to be printed

Mr. SCHATZ, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany H.R. 1688]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill, (H.R. 1688), to amend the Indian Child Protection and Family Violence Prevention Act, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

H.R. 1688 would amend the *Indian Child Protection and Family Violence Prevention Act*, 25 U.S.C. 3202 *et seq.*, by modernizing and reauthorizing, through fiscal year 2027, three of the Act's programs: the Indian Child Abuse Treatment Grant Program, the Indian Child Protection and Family Violence Prevention Program, and the National Indian Resources Services Centers.

BACKGROUND & NEED FOR LEGISLATION

The federal government has a unique duty to Indian Tribes to assist in the protection of the health and welfare of Native American people and children. Congress and federal law have long acknowledged this duty, stating: "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children."¹

In response to reports of child abuse at Bureau of Indian Affairs (BIA) boarding schools and following investigations by the Com-

¹ 25 U.S.C. § 1901(3) (1978).

mittee and the Special Committee on Investigations,²³ Congress enacted the *Indian Child Protection and Family Violence Prevention Act* (ICPFVPA) in 1990. The Committees found—

- incidents of child abuse on Indian reservations were grossly underreported;
- increased incidents of federal prosecution of federal, state, and Tribal employees for crimes of child abuse committed on Indian reservations;
- background investigations of federal employees who care for, or teach, Indian children were deficient; and
- current programs and funding were inadequate to meet the growing needs for mental health treatment and counseling for victims of child abuse and family violence in Indian Country.

The ICPFVPA, which Congress last reauthorized in 1995,⁴ sought to identify the scope of child and family violence in Indian Country, fill any gaps in Tribal child welfare services to ensure better coordination between child welfare and domestic violence programs, and reduce such incidents by providing funds for mental health treatment. It mandated greater coordination between law enforcement and child protection agencies serving Native children, improved reporting standards before and during investigations of alleged child abuse and neglect, and required criminal background checks for the BIA, the Indian Health Service, and Tribal employees with contact or control over Native children.

The ICFVPA also authorized funding to create Indian Child Resource and Family Service Centers (ICRFS Centers) in each of the BIA regional areas and authorized funding for the only Tribal-specific prevention and treatment programs for Native children who are at risk of being abused or have been abused.⁵ However, the Centers were not established and the grant programs are the only programs available to at-risk Native youth. Congress set the total authorization for the Centers and both programs at \$43 million per year. Yet Congress has only appropriated \$5 million for these authorizations since enactment in 1990.

SUMMARY OF H.R. 1688

H.R. 1688 would modernize and reauthorize, through Fiscal Year 2027, three programs established by the ICPFVPA: the Indian Child Abuse Treatment Grant Program, the Indian Child Protection and Family Violence Prevention Program, and the ICRFS Centers.

Specifically, H.R. 1688—

- revises the Indian Child Abuse Treatment Grant Program and the Indian Child Protection and Family Violence Prevention Program to authorize Tribes, intertribal consortia, and partnerships with urban Indian organizations to use grants for culturally appropriate treatment services and programs;

²² 25 U.S.C. § 34 (1990).

²³ See, S. Rep. No. 101–203 (1989), S. Rep. No. 101–403 (1990), & S. Rep. No. 108–228 (2004).

⁴ Pub. L. No. 104–16 (1995) (reauthorizing the Indian Child Protection and Family Violence Prevention Act).

⁵ The Indian Child Protection and Family Violence Prevention Program funds prevention programming as well as investigation and emergency shelter services for victims of family violence, and the Treatment of Victims of Child Abuse and Neglect program funds treatment programs for victims of child abuse.

- converts the unfunded authorization for regional Indian Child Resource and Family Services Centers into an authorization for one National Indian Child Resource and Family Services Center; and
- requires the Center to—
 - provide advice, technical assistance, and training to urban Indian organizations;
 - develop certain technical assistance materials for Tribes, Tribal organizations, and urban Indian organizations; and
 - develop model intergovernmental agreements between Tribes and states to prevent, investigate, treat, and prosecute incidents of family violence, child abuse, and child neglect involving Indian children and families.

Additionally, the bill would authorize \$30 million, \$60 million, and \$3 million per fiscal year through Fiscal Year 2027 for the Indian Child Abuse Treatment Grant Program, the Indian Child Protection and Family Violence Prevention Program, and the National Indian Resources Services Center, respectively.

SECTION-BY-SECTION ANALYSIS OF H.R. 1688

Section 1.—Short title

This section sets forth the short title as the “Native American Child Protection Act.”

Section 2.—Indian Child Protection and Family Violence Protection Act amendments

Section 2(1) amends section 403(3)(A) of the *Indian Child Protection and Family Violence Protection Act* to make technical corrections to the definition of child abuse.

Section 2(2) amends section 409 of the ICPFVPA to:

- clarify the cooperative relationship between the Department of Health and Human Services and the Bureau of Indian Affairs in carrying out the Indian Child Abuse Treatment Grant Program;
- expand the types of victims that may be served by the program from victims of child sexual abuse to those suffering from abuse or neglect;
- allow for partnerships with urban Indian organizations;
- encourage the use of culturally appropriate treatment services;
- require, within two years of enactment of the Act, a report by the Department of Health and Human Services (HHS) describing treatment services used by grant recipients and other information required by the HHS; and
- authorize appropriations in the amount of \$30,000,000 for each of Fiscal Years 2022 2027.

Section 2(3) amends section 410 of the Act to:

- rename the Indian Child Resource and Family Services Centers as the National Indian Child Resource and Family Services Center;
- direct the Secretary of the Department of the Interior to submit a report on the status of the National Indian Child Resource and Family Service Center;

- expand recipients of technical assistance and training to include urban Indian organizations;
- develop certain technical assistance materials for Indian Tribes, Tribal organizations, and urban Indian organizations;
- develop model intergovernmental agreements between Indian Tribes and states to prevent, investigate, treat, and prosecute incidents of family violence, child abuse, and child neglect involving Indian children and families;
- direct the Secretary of the Interior to establish an advisory board to assist the Center in carrying out its activities;
- apply provisions of the *Indian Self-Determination and Education Assistance Act* to the Center; and
- authorize appropriations in the amount of \$3,000,000 for each of Fiscal Years 2022–2027.

Section 2(4) amends section 411 of the Act to:

- clarify that funds provided to the Indian Child Protection and Family Violence Prevention Program may be used to employ child protective services staff to investigate child abuse, neglect, or both;
- expand the use of program funds to include the development of agreements between Tribes, states, or private agencies on the coordination of child abuse and neglect prevention, investigation, and treatment services, other operational costs, and development of a multidisciplinary team to assist in carrying out program activities;
- set a 1-year deadline to develop appropriate case-load standards;
- expand the special circumstances warranting additional program funding to include abuse, neglect, and high incidents of family violence;
- expand the number of child protective services or family violence case workers funded by the Program to not less than one;
- direct the Secretary of the Interior to submit a report to Congress, within two years of passage of the Act, on the award of grants under the Program, including a description of treatment services used, and other information; and
- authorize appropriations in the amount of \$60,000,000 for each of Fiscal Years 2022–2027.

LEGISLATIVE HISTORY

On March 9, 2021, Representatives Gallego (D–AZ) and Young (R–AK) introduced H.R. 1688, the *Native American Child Protection Act*. The House of Representatives referred the bill to the Committee on Natural Resources on the same day. On May, 6, 2021, the Committee on Natural Resources further referred the bill to the Subcommittee for Indigenous Peoples of the United States. Following these referrals, Representatives Axne (D–IA), Bass (D–CA), Cartwright (D–PA), Cole (R–OK), Davids (D–KS), Fitzpatrick (R–PA), Johnson (R–SD), Kilmer (D–WA), Leger Fernandez (D–NM), Moore (D–WI), and O’Halloran (D–AZ), along with Resident Commissioner González-Colón (R–PR–At Large) and Delegate Radewagen (R–AS–At Large) joined the bill as cosponsors.

On May 12, 2021, Representative Soto (D–FL) successfully moved to suspend the rules and pass the bill. The House of Rep-

representatives considered the bill and agreed to its passage by voice vote the same day.

On May 13, 2021, the Senate received H.R. 1688 and referred it to the Committee. The Committee held a legislative hearing on July 12, 2021, at which the Department of the Interior testified in support of the bill.⁶ On October 27, 2021, at a duly convened business meeting, the Committee ordered H.R. 1688 reported favorably, without amendment, by voice vote.

On July 13, 2021, Senators Luján (D–NM) and Rounds (R–SD) introduced S. 2326, a companion bill to H.R. 1688. The Senate referred the bill to the Committee the same day. The Committee has taken no further action on S. 2326 to date.

116th Congress. On October 31, 2019, Representatives Gallego (D–AZ) and Cook (R–CA) introduced H.R. 4957, a predecessor bill to H.R. 1688. The House of Representatives referred H.R. 4957 to the Committee on Natural Resources the same day. On November 6, 2020, the Committee on Natural Resources further referred the bill to the Subcommittee for Indigenous Peoples of the United States. Following these referrals, Representatives Bass (D–CA), Case (D–HI), Cartwright (D–PA), Cole (R–OK), Haaland (D–NM), O’Halloran (D–AZ), Soto (D–FL), and Young (R–AK), along with Resident Commissioner González-Colón (R–PR–At Large) and Delegate Radewagen (R–AS–At Large) joined the bill as cosponsors.

On November 13, 2019, the Subcommittee held a legislative hearing on the bill. The Departments of the Interior and Health and Human Services testified in support of the bill at the hearing.⁷ On December 5, 2019, the Subcommittee discharged the bill and the Committee on Natural Resources held a markup. Representative Gallego offered an amendment that made minor technical corrections to the bill and clarified that the funding formula for the Indian Child Protection and Family Violence Prevention Program would include funding to support not less than one child protective services or family violence caseworker, including fringe benefits and support costs for each Tribe; the amendment was agreed to by unanimous consent. No other amendments to the bill were offered. The Committee on Natural Resources ordered the bill reported, with amendment, by unanimous consent.

The Committee on Natural Resources reported the bill on September 8, 2020, and the House of Representatives placed it on the Union Calendar. On September 21, 2020, Representative Haaland (D–NM) successfully moved to suspend the rules and pass the bill as reported. Following debate on the same day, the House of Representatives passed H.R. 4957 by voice vote.

The Senate received the bill on September 22, 2020, and referred it to the Committee the same day. No further action on H.R. 4957 took place prior to adjournment of the 116th Congress.

On October 10, 2020, Senator McSally (R–AZ) introduced S. 4787, a companion bill to H.R. 4957. The Senate referred the bill to the Committee on the same day but took no further action on the bill prior to adjournment of the 116th Congress.

⁶*Legislative Hearing: To Receive Testimony on S. 1797, S. 1895 and H.R. 1688: Hearing Before the S. Comm. On Indian Affairs, 117th Cong. (2021).*

⁷*Legislative Hearing: H.R. 4957 To amend the Indian Child Protection and Family Violence Prevention Act: Hearing Before the H. Subcomm. for Indigenous Peoples of the U.S., 116th Cong. (2019).*

Prior Congresses. Prior to the 116th Congress, the Senate and Committee considered various *Indian Child Protection and Family Violence Prevention Act* reauthorization and amendment proposals.⁸ The Senate passed several of these bills by unanimous consent, but the House of Representatives took no other action on those bills aside from referral to relevant Committees for consideration.

COST AND BUDGETARY CONSIDERATIONS

At a Glance			
H.R. 1688, Native American Child Protection Act			
As ordered reported by the Senate Committee on Indian Affairs on October 27, 2021			
By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	43	423	554
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	Yes, Under Threshold
		Contains private-sector mandate?	No

The act would:

- Expand the definition of child abuse under the Indian Child Protection and Family Violence Act
- Require the Bureau of Indian Affairs and the Indian Health Service to provide grants to tribal governments and organizations to combat child abuse, child neglect, and family violence affecting tribes
- Raise the cost of an existing mandate on local law enforcement and child protective services agencies by requiring those agencies to file additional reports on child abuse with the Federal Bureau of Investigation

Estimated budgetary effects would mainly stem from:

- Spending of amounts authorized to be appropriated in the act for services and grants provided by the Bureau of Indian Affairs and the Indian Health Service

Act Summary: H.R. 1688 would expand the definition of child abuse under the Indian Child Protection and Family Violence Act to include psychological or verbal abuse that causes serious emotional or mental injury to a child. The act also would direct the Indian Health Service (IHS) and the Bureau of Indian Affairs (BIA) to carry out programs to combat child abuse, child neglect, and family violence affecting tribes and would authorize appropriations through 2027 for those programs.

⁸See, Indian Child Protection and Family Violence Prevention Reauthorization Act of 2004, S. 1601, 108th Cong. (2004); the Comprehensive Entitlement Reform Commission Act of 2005, S. 1899, 109th Cong. (2005); and the Indian Child Protection and Family Violence Prevention Act Amendments of 2007, S. 398, 110th Cong. (2007).

Estimated Federal Cost: The estimated budgetary effect of H.R. 1688 is shown in Table 1. The costs of the legislation fall within budget functions 450 (community and regional development) and 550 (health).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 1688

	By fiscal year, millions of dollars—					
	2022	2023	2024	2025	2026	2022– 2026
Indian Child Protection and Family Violence Prevention Program:						
Authorization	60	60	60	60	60	300
Estimated Outlays	26	62	62	61	60	271
National Indian Child Resource and Family Services Center:						
Authorization	3	3	3	3	3	15
Estimated Outlays	2	4	3	3	3	15
Indian Health Service:						
Authorization	30	30	30	30	30	150
Estimated Outlays	15	33	31	29	29	137
Total Changes:						
Authorization	93	93	93	93	93	465
Estimated Outlays	43	99	96	93	92	423

Basis of Estimate: For this estimate, CBO assumes that H.R. 1688 will be enacted in fiscal year 2022 and that the authorized amounts will be appropriated for each fiscal year. Estimated outlays are based on historical spending patterns for similar programs and activities. CBO estimates that implementing H.R. 1688 would cost \$423 million over the 2022–2026 period and \$131 million after 2026.

Indian Child Protection and Family Violence Protection Program

H.R. 1688 would direct BIA to establish a program to investigate, treat, and prevent child abuse, child neglect, and family violence affecting tribes. The act would authorize BIA to provide those services directly or to enter into agreements with tribal agencies to carry out services funded by federal grants. H.R. 1688 would authorize the appropriation of \$60 million annually from 2022 through 2027 for BIA to carry out the program and would require the agency to report to the Congress within two years of enactment on how grantees have used funds awarded under the program.

National Indian Child Resources and Family Services Center

The act also would direct BIA to establish a National Indian Child Resource and Family Services Center to provide training and technical assistance to tribal governments and federal personnel on how to respond to cases of child abuse, child neglect, and family violence affecting tribes. The act would direct the agency to create an advisory board, consisting of members from tribal governments and organizations with expertise in those issues to advise the center on how to implement its programs. The act would authorize the appropriation of \$3 million annually from 2022 through 2027 for the operation of the center.

Indian Health Service

H.R. 1688 would direct IHS to establish a grant program for tribes and intertribal consortia to provide treatment to Indians who

have been victims of child abuse and neglect. The act would direct the agency, as part of the grant award process, to encourage the use of treatment services that are culturally appropriate for Indian tribes. The act would authorize the appropriation of \$30 million annually from 2022 through 2027 for IHS to carry out the program and would require the agency to report to the Congress within two years of enactment on how grantees have used funds awarded under the program.

Pay-as-you-go considerations: None.

Increase in long-term deficits: None.

Mandates: Current law requires local agencies of child protective services and local law enforcement to report instances of child abuse in Indian country to the Federal Bureau of Investigation (FBI). H.R. 1688 would expand the definition of child abuse in Indian country to include verbal and psychological abuse.

The act would impose an intergovernmental mandate under the Unfunded Mandates Reform Act (UMRA) on local law enforcement and local agencies of child protective services because the expanded definition would require those entities to file additional reports on child abuse with the FBI. CBO estimates the cost of the mandate would be below the annual threshold established in UMRA for the intergovernmental sector (\$85 million in 2021, adjusted annually for inflation).

H.R. 1688 contains no private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Jon Sperl (Bureau of Indian Affairs); Rob Stewart (Indian Health Service). Mandates: Rachel Austin.

Estimate reviewed by: Chad Chirico, Chief, Low-Income Health Programs and Prescription Drugs Cost Estimates Unit; Justin Humphrey, Chief, Finance, Housing, and Education Cost Estimates Unit; Kathleen FitzGerald, Chief, Public and Private Mandates Unit; H. Samuel Papenfuss, Deputy Director of Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that H.R. 1688 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding H.R. 1688.

CHANGES IN EXISTING LAW

On February 11, 2021, the Committee unanimously approved a motion to waive subsection 12 of rule XXVI of the Standing Rules of the Senate. In the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate to expedite the business of the Senate.