

Union Calendar No. 58

114TH CONGRESS
1ST SESSION

H. R. 1168

[Report No. 114-79]

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 HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2015

Mr. CRAMER introduced the following bill; which was referred to the
Committee on Natural Resources

APRIL 15, 2015

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

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”.

6 **SEC. 2. CRIMINAL RECORDS CHECKS.**

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

10 “(d) BY TRIBAL SOCIAL SERVICES AGENCY FOR
11 FOSTER CARE PLACEMENTS IN TRIBAL COURT PRO-
12 CEEDINGS.—

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

14 “(A) COVERED INDIVIDUAL.—The term
15 ‘covered individual’ includes—

16 “(i) any individual 18 years of age or
17 older; and

18 “(ii) any individual who the tribal so-
19 cial services agency determines is subject
20 to a criminal records check under para-
21 graph (2)(A).

22 “(B) FOSTER CARE PLACEMENT.—The
23 term ‘foster care placement’ means any action
24 removing an Indian child from a parent or In-
25 dian custodian for temporary placement in a

1 foster home or institution or the home of a
2 guardian or conservator if—

3 “(i) the parent or Indian custodian
4 cannot have the child returned on demand;
5 and

6 “(ii)(I) parental rights have not been
7 terminated; or

8 “(II) parental rights have been termi-
9 nated but the child has not been perma-
10 nently placed.

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

13 “(i) who has legal custody of an In-
14 dian child under tribal law or custom or
15 under State law; or

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

19 “(D) PARENT.—The term ‘parent’
20 means—

21 “(i) any biological parent of an Indian
22 child; or

23 “(ii) any Indian who has lawfully
24 adopted an Indian child, including adop-
25 tions under tribal law or custom.

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

3 “(i) with jurisdiction over foster care
4 placements; and

5 “(ii) that is—

6 “(I) a Court of Indian Offenses;

7 “(II) a court established and op-
8 erated under the code or custom of an
9 Indian tribe; or

10 “(III) any other administrative
11 body of an Indian tribe that is vested
12 with authority over foster care place-
13 ments.

14 “(F) TRIBAL SOCIAL SERVICES AGENCY.—

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

21 “(2) CRIMINAL RECORDS CHECK BEFORE FOS-
22 TER CARE PLACEMENT.—

23 “(A) IN GENERAL.—Except as provided in
24 paragraph (3), no foster care placement shall be
25 finally approved and no foster care license shall

1 be issued until the tribal social services agen-
2 cy—

3 “(i) completes a criminal records
4 check of each covered individual who re-
5 sides in the household or is employed at
6 the institution in which the foster care
7 placement will be made; and

8 “(ii) concludes that each covered indi-
9 vidual described in clause (i) meets such
10 standards as the Indian tribe shall estab-
11 lish in accordance with subparagraph (B).

12 “(B) STANDARDS OF PLACEMENT.—The
13 standards described in subparagraph (A)(ii)
14 shall include—

15 “(i) requirements that each tribal so-
16 cial services agency described in subpara-
17 graph (A)—

18 “(I) perform criminal records
19 checks, including fingerprint-based
20 checks of national crime information
21 databases (as defined in section
22 534(f)(3) of title 28, United States
23 Code);

24 “(II) check any abuse registries
25 maintained by the Indian tribe; and

1 “(III) check any child abuse and
2 neglect registry maintained by the
3 State in which the covered individual
4 resides for information on the covered
5 individual, and request any other
6 State in which the covered individual
7 resided in the preceding 5 years, to
8 enable the tribal social services agency
9 to check any child abuse and neglect
10 registry maintained by that State for
11 such information; and

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

20 “(C) RESULTS.—Except as provided in
21 paragraph (3), no foster care placement shall be
22 ordered in any proceeding described in subpara-
23 graph (A) if an investigation described in clause
24 (i) of that subparagraph reveals that a covered
25 individual described in that clause has been

1 found by a Federal, State, or tribal court to
2 have committed any crime listed in clause (i) or
3 (ii) of section 471(a)(20)(A) of the Social Secu-
4 rity Act (42 U.S.C. 671(a)(20)(A)).

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

9 “(4) RECERTIFICATION OF FOSTER HOMES OR
10 INSTITUTIONS.—

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

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

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

23 “(ii) that each covered individual who
24 resides in the home or is employed at the
25 institution is subject to a criminal records

1 check in accordance with this subsection,
2 including any covered individual who—

3 “(I) resides in the home or is em-
4 ployed at the institution on the date
5 on which the procedures established
6 under subparagraph (A) commences;
7 and

8 “(II) did not reside in the home
9 or was not employed at the institution
10 on the date on which the investigation
11 described in paragraph (2)(A)(i) was
12 completed.

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

19 “(5) GUIDANCE .—Not later than 2 years after
20 the date of enactment of this subsection and after
21 consultation with Indian tribes, the Secretary shall
22 issue guidance regarding—

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

1 “(i) resides in the home or is em-
2 ployed at the institution in which the fos-
3 ter care placement is made after the date
4 on which the investigation described in
5 paragraph (2)(A)(i) is completed; and

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

9 “(B) self-reporting requirements for foster
10 care homes or institutions in which any covered
11 individual described in subparagraph (A) re-
12 sides if the head of the household or the oper-
13 ator of the institution has knowledge that the
14 covered individual—

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

20 “(ii) is listed on a registry described
21 in clause (II) or (III) of paragraph
22 (2)(B)(i);

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

1 “(D) procedures for certifying compliance
2 with this Act.”.

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