

Calendar No. 77114TH CONGRESS
1ST SESSION**S. 184****[Report No. 114-37]**

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, Mr. TESTER, and Ms. HEITKAMP) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

MAY 11, 2015

Reported by Mr. BARRASSO, without amendment

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. CRIMINAL RECORDS CHECKS.**

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

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

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

12 “(A) COVERED INDIVIDUAL.—The term
13 ‘covered individual’ includes—

14 “(i) any individual 18 years of age or
15 older; and

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

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

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

4 “(ii)(I) parental rights have not been
5 terminated; or

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

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

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

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

17 “(D) PARENT.—The term ‘parent’
18 means—

19 “(i) any biological parent of an Indian
20 child; or

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

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

1 “(i) with jurisdiction over foster care
2 placements; and

3 “(ii) that is—

4 “(I) a Court of Indian Offenses;

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

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

12 “(F) TRIBAL SOCIAL SERVICES AGENCY.—

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

19 “(2) CRIMINAL RECORDS CHECK BEFORE FOS-
20 TER CARE PLACEMENT.—

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

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

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

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

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

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

22 “(II) check any abuse registries
23 maintained by the Indian tribe; and

24 “(III) check any child abuse and
25 neglect registry maintained by the

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

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

18 “(C) RESULTS.—Except as provided in
19 paragraph (3), no foster care placement shall be
20 ordered in any proceeding described in subpara-
21 graph (A) if an investigation described in clause
22 (i) of that subparagraph reveals that a covered
23 individual described in that clause has been
24 found by a Federal, State, or tribal court to
25 have committed any crime listed in clause (i) or

1 (ii) of section 471(a)(20)(A) of the Social Secu-
2 rity Act (42 U.S.C. 671(a)(20)(A)).

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

7 “(4) RECERTIFICATION OF FOSTER HOMES OR
8 INSTITUTIONS.—

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

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

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

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

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

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

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

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

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

23 “(i) resides in the home or is em-
24 ployed at the institution in which the fos-
25 ter care placement is made after the date

1 on which the investigation described in
2 paragraph (2)(A)(i) is completed; and

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

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

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

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

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

23 “(D) procedures for certifying compliance
24 with this Act.”.

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