

Union Calendar No. 530

113TH CONGRESS
2^D SESSION

H. R. 4534

[Report No. 113–699]

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

APRIL 30, 2014

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

DECEMBER 22, 2014

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on April 30, 2014]

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 FOS-*
 11 *TER CARE PLACEMENTS IN TRIBAL COURT PRO-*
 12 *CEEDINGS.*—

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

14 “(A) *COVERED INDIVIDUAL.*—*The term ‘cov-*
 15 *ered individual’ includes—*

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

18 “(ii) *any individual who an Indian*
 19 *tribe described in paragraph (2)(A) deter-*
 20 *mines is subject to a criminal records checks*
 21 *under that paragraph.*

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

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

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

6 “(ii) *parental rights have not been ter-*
7 *minated.*

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

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

13 “(ii) *to whom temporary physical care,*
14 *custody, and control has been transferred by*
15 *the parent of the child.*

16 “(D) *PARENT.—The term ‘parent’ means—*

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

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

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

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

1 “(ii) that is—

2 “(I) a Court of Indian Offenses;

3 “(II) a court established and oper-
4 ated under the code or custom of an
5 Indian tribe; or

6 “(III) any other administrative
7 body of a tribe that is vested with au-
8 thority over foster care placements.

9 “(F) TRIBAL SOCIAL SERVICES AGENCY.—
10 The term ‘tribal social services agency’ means the
11 agency of the Federal Government or of an In-
12 dian tribe described in paragraph (2)(A) that
13 has the primary responsibility for carrying out
14 foster care services or approval (as of the date on
15 which the proceeding described in paragraph
16 (2)(A) commences) of the Indian tribe.

17 “(2) CRIMINAL RECORDS CHECKS BEFORE
18 PLACEMENT.—

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

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

tion in which the foster care placement will
be made; and

“(ii) concludes that each covered individual described in clause (i) meets such standards as the Indian tribe shall establish in accordance with subparagraph (B).

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

“(i) requirements that each tribal social services agency described in subparagraph (A)—

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

“(II) check any child abuse and neglect registry maintained by the State, and tribal abuse registries if they exist, in which the covered individual resides for information on the covered individual, and request any other State in which the covered indi-

1 vidual resided in the preceding 5
2 years, to enable the tribal social serv-
3 ices agency to check any child abuse
4 and neglect registry maintained by
5 that State for such information; and

6 “(ii) any other additional requirement
7 that the Indian tribe determines is nec-
8 essary.

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

19 “(D) *DEADLINE.*—Except as provided in
20 paragraph (3), the tribal social services agency
21 shall satisfy the requirements of clauses (i) and
22 (ii) of subparagraph (A) before issuing a final
23 foster care license.

24 “(3) *EMERGENCY PLACEMENT.*—Paragraph (2)
25 shall not apply to an emergency foster care place-

1 *ment, as determined by Tribal Social Services Agency*
 2 *described in paragraph (2)(A).*

3 *“(4) RECERTIFICATION OF FOSTER HOMES OR*
 4 *INSTITUTIONS.—*

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

10 *“(B) CONTENTS.—The procedures described*
 11 *in subparagraph (A) shall include, at a min-*
 12 *imum, periodic intervals at which the home or*
 13 *institution shall be subject to recertification to*
 14 *ensure—*

15 *“(i) the safety of the home or institu-*
 16 *tion for the Indian child; and*

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

22 *“(I) resides in the home or is em-*
 23 *ployed at the institution on the date on*
 24 *which the procedures established under*
 25 *subparagraph (A) commences; and*

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

6 “(C) *GUIDANCE ISSUED BY THE SEC-*
7 *RETARY.—The procedures established under sub-*
8 *paragraph (A) shall be subject to any regulation*
9 *promulgated or guidance issued by the Secretary*
10 *that is in accordance with the purpose of this*
11 *subsection.*

12 “(5) *GUIDANCE.—Not later than 1 year after the*
13 *date of enactment of this subsection and after con-*
14 *sultation with Indian tribes, the Secretary shall pro-*
15 *mulgate guidance regarding—*

16 “(A) *procedures for a criminal records check*
17 *of any covered individual who—*

18 “(i) *resides in the home or is employed*
19 *at the institution in which the foster care*
20 *placement is made after the date on which*
21 *the investigation described in paragraph*
22 *(2)(A)(i) is completed; and*

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

1 “(B) self-reporting requirements for foster
2 care homes or institutions in which any covered
3 individual described in subparagraph (A) resides
4 if the head of the household or the operator of the
5 institution has knowledge that the covered indi-
6 vidual—

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

12 “(ii) is listed on a registry described in
13 paragraph (2)(B)(i)(II);

14 “(C) procedures and guidelines for emer-
15 gency foster care placements under paragraph
16 (3); and

17 “(D) procedures for certifying compliance
18 with this Act.”.

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