

NATIVE AMERICAN CHILDREN'S SAFETY ACT

DECEMBER 22, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 4534]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4534) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Native American Children’s Safety Act”.

SEC. 2. CRIMINAL RECORDS CHECKS.

Section 408 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3207) is amended by adding at the end the following:

“(d) BY TRIBAL SOCIAL SERVICES AGENCY FOR FOSTER CARE PLACEMENTS IN TRIBAL COURT PROCEEDINGS.—

“(1) DEFINITIONS.—In this subsection:

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

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

“(ii) any individual who an Indian tribe described in paragraph (2)(A) determines is subject to a criminal records checks under that paragraph.

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

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

“(ii) parental rights have not been terminated.

“(C) INDIAN CUSTODIAN.—The term ‘Indian custodian’ means any Indian—

“(i) who has legal custody of an Indian child under tribal law or custom or under State law; or

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

“(D) PARENT.—The term ‘parent’ means—

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

“(ii) any Indian who has lawfully adopted an Indian child, including adoptions under tribal law or custom.

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

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

“(ii) that is—

“(I) a Court of Indian Offenses;

“(II) a court established and operated under the code or custom of an Indian tribe; or

“(III) any other administrative body of a tribe that is vested with authority over foster care placements.

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

“(2) CRIMINAL RECORDS CHECKS BEFORE PLACEMENT.—

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

“(i) completes a criminal records check of each covered individual who resides in the household or is employed at the institution 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 individual resided in the preceding 5 years, to enable the tribal social services agency to check any child abuse and neglect registry maintained by that State for such information; and

“(ii) any other additional requirement that the Indian tribe determines is necessary.

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

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

“(3) EMERGENCY PLACEMENT.—Paragraph (2) shall not apply to an emergency foster care placement, as determined by Tribal Social Services Agency described in paragraph (2)(A).

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

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

“(B) CONTENTS.—The procedures described in subparagraph (A) shall include, at a minimum, periodic intervals at which the home or institution shall be subject to recertification to ensure—

“(i) the safety of the home or institution for the Indian child; and

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

“(I) resides in the home or is employed at the institution on the date on which the procedures established under subparagraph (A) commences; and

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

“(C) GUIDANCE ISSUED BY THE SECRETARY.—The procedures established under subparagraph (A) shall be subject to any regulation promulgated or guidance issued by the Secretary that is in accordance with the purpose of this subsection.

“(5) GUIDANCE.—Not later than 1 year after the date of enactment of this subsection and after consultation with Indian tribes, the Secretary shall promulgate guidance regarding—

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

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

“(ii) was not the subject of an investigation described in paragraph (2)(A)(i) before the foster care placement was made;

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

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

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

“(C) procedures and guidelines for emergency foster care placements under paragraph (3); and

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

PURPOSE OF THE BILL

The purpose of H.R. 4534 is 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.

BACKGROUND AND NEED FOR LEGISLATION

On June 24, 2014, the Subcommittee on Indian and Alaska Native Affairs held an oversight hearing titled “Child Protection and the Justice System on the Spirit Lake Indian Reservation.” The purpose of this hearing was to determine the state of child protection and safety on the Spirit Lake Reservation in North Dakota. For several years, incidents of child abuse, neglect, and death in the Reservation were believed to be at epidemic levels. Several incidents came to light after at least two federal employees alerted the press that their agency superiors, the Bureau of Indian Affairs (BIA), tribal law enforcement, and federal law enforcement were not adequately responding to reports of child abuse and neglect on the reservation.

It was revealed that the Tribe placed children in unlicensed foster homes where sex offenders were known to reside. In 2013, a local ABC television network affiliate in Grand Forks, North Dakota, reported that the U.S. Marshals verified there were 41 registered sex offenders on the Spirit Lake Reservation, out of approximately 6,200 residents. By comparison, the Sex Offender website for the State of North Dakota indicates that nearby Grand Forks currently has 19 registered sex offenders out of a population of 53,000.

At the Subcommittee on Indian and Alaska Native Affairs hearing, testimony was received from the Director of the BIA, the chairman of the Spirit Lake Tribe, a former tribal judge, the Administration for Children and Families of the Department of Health and Human Services, and the Casey Foundation, which works with tribes and federal agencies to improve tribal child welfare services. It was heard that despite a BIA finding that the Tribe's administration of a BIA social services program, through a Public Law 93-638 contract, was posing an "imminent danger" to the health and safety of certain Indian children on the Reservation, the Tribe was allowed to continue operating the program for an additional five months before it relinquished control to the BIA.

While the BIA assumed the Public Law 93-638 contract, the Tribe nonetheless retained certain powers over the placement of Indian children in foster homes. Witnesses voiced concerns that the Tribe failed to take sufficient measures to protect the health and welfare of Indian children under its jurisdiction. At the hearing the BIA witness acknowledged the possibility that the Public Law 93-638 contract for federally-funded child social services could eventually be restored to the Tribe.

Witness testimony at the hearing revealed that one of the many problems facing Indian children in Indian country is the lack of a federal requirement for a tribe to conduct background checks on individuals in foster homes to which the tribe may order the placement of Indian children. In addition, tribes may be subject to as many as three different sets of requirements when trying to license their foster care homes.

H.R. 4534, if enacted, would amend the Indian Child Protection and Family Violence Prevention Act to strengthen background checks on prospective foster care parents prior to placement of Indian children into foster homes. Current law does not require the federal government or Indian tribes to perform rigorous background checks on foster parents and on foster homes that are sufficient to ensure the safety, health, and protection of Indian children on an Indian reservation. The bill is necessary step to improve the health and well-being of Indian children. The Administration testified in support of the goals of the bill at the Subcommittee's July 29, 2014, hearing on H.R. 4534.

During Committee markup of the bill, an en bloc amendment was adopted that incorporates some recommendations received from the National Indian Child Welfare Association and the National Congress of American Indians. The amendment makes some technical changes as well as substantive changes to the length of time a tribe has to establish procedures to recertify foster homes and the length of time the Secretary of the Interior has to promulgate guidance after enactment of the bill.

COMMITTEE ACTION

H.R. 4534 was introduced on April 30, 2014, by Congressman Kevin Cramer (R-ND). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian and Alaska Native Affairs. On July 29, 2014, the Subcommittee held a hearing on the bill. On September 18, 2014, the Natural Resources Committee met to consider the bill. The Subcommittee on Indian and Alaska Native Affairs was discharged by

unanimous consent. Congressman Cramer offered an amendment designated .018 to the bill; the amendment was adopted by unanimous consent. No further amendments were offered and the bill, as amended, was adopted and ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office. The Committee believes that enactment of this bill will not have a significant effect on the federal budget.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is 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.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT

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TITLE IV—INDIAN CHILD PROTECTION

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SEC. 408. CHARACTER INVESTIGATIONS.

(a) BY SECRETARY OF THE INTERIOR AND THE SECRETARY OF HEALTH AND HUMAN SERVICES.—The Secretary and the Secretary of Health and Human Services shall—

(1) compile a list of all authorized positions within their respective departments the duties and responsibilities of which involve regular contact with, or control over, Indian children,

(2) conduct an investigation of the character of each individual who is employed, or is being considered for employment, by the respective Secretary in a position listed pursuant to paragraph (1), and

(3) prescribe by regulations minimum standards of character that each of such individuals must meet to be appointed to such positions.

(b) CRIMINAL RECORDS.—The minimum standards of character that are to be prescribed under this section shall ensure that none of the individuals appointed to positions described in subsection (a) have been found guilty of, or entered a plea of *nolo contendere* or guilty to, any offense under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; or crimes against persons.

(c) INVESTIGATIONS BY INDIAN TRIBES AND TRIBAL ORGANIZATIONS.—Each Indian tribe or tribal organization that receives funds under the Indian Self-Determination and Education Assistance Act or the Tribally Controlled Schools Act of 1988 shall—

(1) conduct an investigation of the character of each individual who is employed, or is being considered for employment,

by such tribe or tribal organization in a position that involves regular contact with, or control over, Indian children, and

(2) employ individuals in those positions only if the individuals meet standards of character, no less stringent than those prescribed under subsection (a), as the Indian tribe or tribal organization shall establish.

(d) *BY TRIBAL SOCIAL SERVICES AGENCY FOR FOSTER CARE PLACEMENTS IN TRIBAL COURT PROCEEDINGS.—*

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

(A) *COVERED INDIVIDUAL.—The term “covered individual” includes—*

- (i) *any individual 18 years of age or older; and*
- (ii) *any individual who an Indian tribe described in paragraph (2)(A) determines is subject to a criminal records checks under that paragraph.*

(B) *FOSTER CARE PLACEMENT.—The term “foster care placement” means any action removing an Indian child from a parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator if—*

- (i) *the parent or Indian custodian cannot have the child returned on demand; and*
- (ii) *parental rights have not been terminated.*

(C) *INDIAN CUSTODIAN.—The term “Indian custodian” means any Indian—*

- (i) *who has legal custody of an Indian child under tribal law or custom or under State law; or*
- (ii) *to whom temporary physical care, custody, and control has been transferred by the parent of the child.*

(D) *PARENT.—The term “parent” means—*

- (i) *any biological parent of an Indian child; or*
- (ii) *any Indian who has lawfully adopted an Indian child, including adoptions under tribal law or custom.*

(E) *TRIBAL COURT.—The term “tribal court” means a court—*

- (i) *with jurisdiction over foster care placements; and*
- (ii) *that is—*

- (I) *a Court of Indian Offenses;*
- (II) *a court established and operated under the code or custom of an Indian tribe; or*
- (III) *any other administrative body of a tribe that is vested with authority over foster care placements.*

(F) *TRIBAL SOCIAL SERVICES AGENCY.—The term “tribal social services agency” means the agency of the Federal Government or of an Indian tribe described in paragraph (2)(A) that has the primary responsibility for carrying out foster care services or approval (as of the date on which the proceeding described in paragraph (2)(A) commences) of the Indian tribe.*

(2) *CRIMINAL RECORDS CHECKS BEFORE PLACEMENT.—*

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

(i) completes a criminal records check of each covered individual who resides in the household or is employed at the institution 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 individual resided in the preceding 5 years, to enable the tribal social services agency to check any child abuse and neglect registry maintained by that State for such information; and

(ii) any other additional requirement that the Indian tribe determines is necessary.

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

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

(3) *EMERGENCY PLACEMENT.*—Paragraph (2) shall not apply to an emergency foster care placement, as determined by Tribal Social Services Agency described in paragraph (2)(A).

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

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

(B) *CONTENTS.*—The procedures described in subparagraph (A) shall include, at a minimum, periodic intervals at which the home or institution shall be subject to recertification to ensure—

(i) the safety of the home or institution for the Indian child; and

(ii) that each covered individual who resides in the home or is employed at the institution is subject to a

criminal records check in accordance with this subsection, including any covered individual who—

(I) resides in the home or is employed at the institution on the date on which the procedures established under subparagraph (A) commences; and

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

(C) GUIDANCE ISSUED BY THE SECRETARY.—The procedures established under subparagraph (A) shall be subject to any regulation promulgated or guidance issued by the Secretary that is in accordance with the purpose of this subsection.

(5) GUIDANCE.—Not later than 1 year after the date of enactment of this subsection and after consultation with Indian tribes, the Secretary shall promulgate guidance regarding—

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

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

(ii) was not the subject of an investigation described in paragraph (2)(A)(i) before the foster care placement was made;

(B) self-reporting requirements for foster care homes or institutions in which any covered individual described in subparagraph (A) resides if the head of the household or the operator of the institution has knowledge that the covered individual—

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

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

(C) procedures and guidelines for emergency foster care placements under paragraph (3); and

(D) procedures for certifying compliance with this Act.

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