

113TH CONGRESS
2D SESSION

S. 2160

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

MARCH 26, 2014

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

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”.

1 **SEC. 2. CHARACTER INVESTIGATIONS.**

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

5 “(d) BY TRIBAL SOCIAL SERVICES AGENCY FOR
 6 FOSTER CARE PLACEMENTS IN TRIBAL COURT PRO-
 7 CEEDINGS.—

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

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

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

13 “(ii) any individual who an Indian
 14 tribe described in paragraph (2)(A) deter-
 15 mines is subject to a character investiga-
 16 tion under that paragraph.

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

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

1 “(ii) parental rights have not been
2 terminated.

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

5 “(i) who has legal custody of an In-
6 dian child under tribal law or custom or
7 under State law; or

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

11 “(D) PARENT.—The term ‘parent’
12 means—

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

15 “(ii) any Indian who has lawfully
16 adopted an Indian child, including adop-
17 tions under tribal law or custom.

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

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

22 “(ii) that is—

23 “(I) a Court of Indian Offenses;

1 “(II) a court established and op-
 2 erated under the code or custom of an
 3 Indian tribe; or

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

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

16 “(2) CHARACTER INVESTIGATIONS BEFORE
 17 PLACEMENT.—

18 “(A) IN GENERAL.—Except as provided in
 19 paragraph (3), no foster care placement shall be
 20 ordered in any proceeding over which an Indian
 21 tribe has exclusive jurisdiction until the tribal
 22 social services agency—

23 “(i) completes an investigation of the
 24 character of each covered individual who
 25 resides in the household or is employed at

1 the institution in which the foster care
2 placement will be made; and

3 “(ii) concludes that each covered indi-
4 vidual described in clause (i) meets such
5 standards of character as the Indian tribe
6 shall establish in accordance with subpara-
7 graph (B).

8 “(B) STANDARDS OF CHARACTER.—The
9 standards of character described in subpara-
10 graph (A)(ii) shall include—

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

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

20 “(II) check any child abuse and
21 neglect registry maintained by the
22 State in which the covered individual
23 resides for information on the covered
24 individual, and request any other
25 State in which the covered individual

1 resided in the preceding 5 years, to
2 enable the tribal social services agency
3 to check any child abuse and neglect
4 registry maintained by that State for
5 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—

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 subparagraph (B)(i)(II).

22 “(D) DEADLINE.—Except as provided in
23 paragraph (3), the tribal social services agency
24 shall satisfy the requirements of clauses (i) and
25 (ii) of subparagraph (A) not later than 14 days

1 after the date on which the proceeding de-
2 scribed in subparagraph (A) commences.

3 “(3) EMERGENCY PLACEMENT.—Paragraph (2)
4 shall not apply to an emergency foster care place-
5 ment, as determined by an Indian tribe described in
6 paragraph (2)(A).

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

9 “(A) IN GENERAL.—Not later than 180
10 days after the date of enactment of this sub-
11 section, each Indian tribe shall establish proce-
12 dures to recertify homes or institutions in which
13 foster 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 character inves-
24 tigation 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) REGULATIONS PROMULGATED OR
12 GUIDANCE ISSUED BY THE SECRETARY.—The
13 procedures established under subparagraph (A)
14 shall be subject to any regulation promulgated
15 or guidance issued by the Secretary that is in
16 accordance with the purpose of this subsection.

17 “(5) REGULATIONS.—Not later than 180 days
18 after the date of enactment of this subsection and
19 after consultation with Indian tribes, the Secretary
20 shall promulgate a regulation regarding—

21 “(A) procedures for a character investiga-
22 tion 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 paragraph (2)(B)(i)(II);

19 “(C) procedures and guidelines for emer-
20 gency foster care placements under paragraph
21 (3); and

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

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