

NATIVE AMERICAN CHILDREN'S SAFETY ACT

APRIL 15, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 1168]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1168) 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 without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 1168 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

H.R. 1168 amends current law to require tribal social service agencies to perform character background investigations of all foster care parents and adults living in foster care homes, prior to placement of an Indian child into a foster home. Placement is disallowed if the background check reveals a federal, state, or tribal crime of child neglect or abuse.

The need for the bill was highlighted in a June 24, 2014, hearing held by the Subcommittee on Indian and Alaska Native Affairs,¹ to determine the state of child protection and safety on the Spirit

¹ Child Protection and the Justice System on the Spirit Lake Indian Reservation: Hearing before Subcommittee on Indian and Alaska Native Affairs of the House. Natural Resources Committee, 113th Congress (2013).

Lake Reservation in North Dakota. The hearing was requested by Congressman Kevin Cramer (R-ND) following numerous reports by the media and tribal members that over several years, incidents of child abuse, neglect, and death in the Reservation were at epidemic levels.² It was revealed that the tribe had been placing children under its jurisdiction in unlicensed foster homes where sex offenders were known to reside.

Testimony was obtained from the Director of the Bureau of Indian Affairs (BIA), the chairman of the Spirit Lake Tribe, a former tribal judge, a witness from the Administration for Children and Families (Department of Health and Human Services), and a witness from the Casey Foundation, which works with tribes to improve child welfare services. It was learned that despite a BIA finding that the tribe's administration of a BIA social services program through a Public Law 93-638 contract had been posing an "imminent danger" to the health and safety of certain Indian children on Spirit Lake, the tribe was allowed to continue operating the program for an additional five months before relinquishing control to the BIA.

While the BIA assumed control over the Public Law 93-638 contract, the tribe nonetheless retained certain powers over the placement of Indian children in foster homes. In the hearing, the BIA witness acknowledged the possibility that the contract for federally-funded child social services could eventually be restored to the tribe.

One of the Indian child safety problems identified at the Subcommittee hearing is the lack of a federal requirement for a tribe or tribal agency to conduct background checks on individuals in foster homes to which the tribe may order the placement of Indian children. To address this shortcoming, in the 113th Congress Congressman Cramer introduced H.R. 4534 to require a tribe to conduct background checks on individuals who reside in or are employed by foster homes where an Indian child may be placed by a tribe through a tribal foster placement proceeding. H.R. 4534 was reported by the Natural Resources Committee by unanimous consent during the last few days of the Congress (House Report 113-699). This measure has been reintroduced with technical changes in the 114th Congress as H.R. 1168.

H.R. 1168 amends section 408 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3207) to prohibit the ordering of a foster placement of an Indian child until a tribe, within 14 days of the foster care proceeding, completes a background investigation of a covered individual who resides in or is employed by the foster home or institution in which the foster placement will be made. No foster placement may be ordered by the tribe if the background investigation shows that a covered individual has been convicted by a federal, state, or tribal court or has 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)). Such crimes include but are not limited to felony child abuse or neglect and felony physical assault.

²In 2013, the local ABC affiliate for Grand Forks, North Dakota reported the U.S. Marshals verified there were 41 registered sex offenders on the reservation out of approximately 6,200 residents. In comparison, the Sex Offender web site for the State of North Dakota indicates that nearby Grand Forks currently has 19 registered sex offenders out of a population of 53,000.

The bill also provides that in an instance where an “emergency placement” of an Indian child is necessary, a background check may not be required, as determined by the tribal social services agency.

H.R. 1168 further requires a tribe, within 24 months of enactment of the bill, to establish procedures to recertify the safety of foster homes where a tribe may place an Indian child. The Secretary of the Interior is to issue guidance within two years of enactment (and after tribal consultation) concerning the implementation of background check procedures and self-reporting requirements for foster homes.

COMMITTEE ACTION

H.R. 1168 was introduced on February 27, 2015, 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, Insular and Alaska Native Affairs. On March 24, 2015, the Natural Resources Committee met to consider the bill. The Subcommittee on Indian, Insular and Alaska Native Affairs was discharged by unanimous consent. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by unanimous consent on March 25, 2015.

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 received the following cost estimate for this bill from the Director of the Congressional Budget Office:

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H.R. 1168 would expand the background check requirements for people who hold tribal positions related to the foster care of Native American children. The bill would require tribal social services agencies to complete criminal records checks of each individual who resides in or is employed by a foster care institution that serves Native American children. Under current law, those checks are required only if the tribal agency receives federal funds. H.R. 1168 also would require tribal agencies to develop procedures to certify the safety of foster care institutions. Under the bill, the Secretary of the Interior would promulgate guidance to tribes regarding pro-

cedures for conducting criminal records checks and certifying the safety of foster care institutions.

Based on information provided by the Bureau of Indian Affairs (BIA), CBO estimates that implementing the legislation would have no significant effect on the federal budget. CBO estimates that promulgating the procedural guidance required by the legislation would cost less than \$500,000 over the 2015–2020 period, and would be subject to the availability of appropriated funds. Enacting H.R. 1168 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1168 would impose an intergovernmental mandate, as defined in the Unfunded Mandates Reform Act (UMRA) because it would require tribal social services agencies to complete criminal records checks and to recertify existing foster homes and institutions periodically. The bill also would impose private-sector mandates by requiring individuals to submit to criminal records checks and requiring foster care homes and institutions to comply with recertification procedures.

Tribes could incur costs associated with paying fees to federal and state governments for background checks as well as administrative costs for processing background check applications and recertifying existing foster care homes. However, because many tribal social services agencies are required to conduct criminal records checks as a condition of receiving federal foster care payments and other federal assistance from the BIA, CBO estimates that the costs of the mandates to tribal governments would fall well below the annual threshold established in UMRA (\$77 million in 2015, adjusted annually for inflation).

Individuals and entities in the private sector also could incur costs associated with the requirement to submit to a background check or comply with recertification procedures. However, many institutions and foster care providers already meet requirements that are similar to those in the bill. Further, according to agency officials and professionals in the field, most tribal social services agencies would probably absorb the cost of conducting the check of criminal records to avoid imposing a burden on potential foster parents. Therefore, CBO estimates that the costs to the private sector of complying with the mandates in the bill would fall well below the annual threshold established in UMRA (\$154 million in 2015, adjusted annually for inflation).

On February 9, 2015, CBO transmitted a cost estimate for S. 184, the Native American Children’s Safety Act, as ordered reported by the Senate Committee on Indian Affairs on February 4, 2015. The two bills are similar, and the CBO cost estimates are the same.

The CBO staff contacts for this estimate are Martin von Gnechten (for federal costs), J’nell Blanco Suchy (for state and local effects), and Amy Petz (for private-sector effects). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

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. According to the Congressional Budget Office, implementing the bill would have no significant effect on the federal budget.

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 as defined in Public Law 104-4.

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

TITLE IV—INDIAN CHILD PROTECTION

SEC. 401. SHORT TITLE.

This title may be cited as the “Indian Child Protection and Family Violence Prevention Act”.

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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 the tribal social services agency determines is subject to a criminal records check under paragraph (2)(A).

(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)(I) parental rights have not been terminated; or

(II) parental rights have been terminated but the child has not been permanently placed.

(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 an Indian 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 an Indian tribe that has the primary responsibility for carrying out foster care licensing or approval (as of the date on which the proceeding described in paragraph (2)(A) commences) for the Indian tribe.

(2) CRIMINAL RECORDS CHECK BEFORE FOSTER CARE PLACEMENT.—

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

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

(III) check any child abuse and neglect registry maintained by the State 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 and permissible within the existing authority of the Indian tribe, such as the creation of voluntary agreements with State entities in order to facilitate the sharing of information related to the performance of criminal records checks.

(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)).

(3) *EMERGENCY PLACEMENT.*—Paragraph (2) shall not apply to an emergency foster care placement, as determined by a tribal social services agency.

(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 or guidance issued by the Secretary that is in accordance with the purpose of this subsection.

(5) *GUIDANCE.*—Not later than 2 years after the date of enactment of this subsection and after consultation with Indian tribes, the Secretary shall issue 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 clause (II) or (III) of paragraph (2)(B)(i);

(C) promising practices used by Indian tribes to address emergency foster care placement procedures under paragraph (3); and

(D) procedures for certifying compliance with this Act.

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