



EVERY CHILD IS SACRED



SENATE COMMITTEE ON INDIAN AFFAIRS OVERSIGHT FIELD HEARING REGARDING:

“SAFEGUARDING TO THE SEVENTH GENERATION: PROTECTION AND JUSTICE FOR INDIAN CHILDREN AND THE IMPLEMENTATION OF THE NATIVE AMERICAN CHILDREN’S SAFETY ACT OF 2016.”

COMMENTS PROVIDED BY THE NATIONAL INDIAN CHILD WELFARE ASSOCIATION, NATIONAL CONGRESS OF AMERICAN INDIANS, NATIONAL INDIAN EDUCATION ASSOCIATION, AND NATIONAL INDIAN HEALTH BOARD (Founding partners of the First Kids 1st Initiative)

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Introduction

The safety and well-being of a community’s children is one of the highest responsibilities for any government. Tribal governments, like states, have a special obligation to ensure that their community’s children are safe from harm like child abuse and neglect. The tools for helping meet this responsibility include establishment of clear policies, adequately resourced child protection infrastructure and services, well-trained workforce, well-coordinated and effective partnerships with federal and state partners, and easy and reliable access to national criminal databases and child abuse registries. We applaud the Chairman and Vice-Chairman for holding this oversight hearing and providing our organizations with an opportunity to share our experiences, thoughts, and recommendations regarding the implementation of the Native American Children’s Safety Act and overall efforts to support the safety and well-being of Native children. Our testimony will focus on key challenges to successfully

implementing the Native Children’s Safety Act, barriers to creating effective child protection programming in Indian Country, and recommendations for addressing these challenges.

About First Kids 1st: The First Kids 1st Initiative is a national collaborative effort comprised of leading Native American organizations, allies, and partners from all backgrounds, focused on changing national, tribal, and state policy to create conditions in which American Indian and Alaska Native children can thrive. We are working to cultivate and nurture strategies and policies that build and strengthen equitable and local supports for vulnerable Native children in their communities. The Founding Partners formally joined together to support the healthy development of Native youth by coordinating efforts to transform the systems that have the greatest impact on Native youth and families—systems of health, child welfare, education, and governance. Learn more at: www.FirstKids1st.org

A Brief History of Criminal Background Checks for Tribally Licensed Foster Homes and Implications for Implementation of the Native American Children’s Safety Act

Indian Child Protection and Family Violence Prevention Act (1988–1997). Following widespread reports that Native children were being physically and sexually abused in Bureau of Indian Affairs (BIA) run boarding schools in the 1980’s Chairman McCain and Vice-Chairman Inouye of the Senate Committee on Indian Affairs held several hearings to further investigate and document the problem and solicit suggestions on how to prevent further exploitation of Native children. What followed was legislation that was enacted into law in 1990 entitled the Indian Child Protection and Family Violence Prevention Act (P.L. 101-630). The law mandated greater coordination between law enforcement and child protection agencies serving Native children on tribal lands, improved reporting standards before and during investigations of alleged child abuse and neglect involving Native children on tribal lands, required criminal background checks for the Bureau of Indian Affairs (BIA), Indian Health Services (IHS), and tribal employees with contact or control over Native children, and grant programs to address child abuse and domestic violence prevention and treatment for victims, including the establishment of regional child abuse resource centers for Indian Country. The grant programs were, and still are today, the only tribal specific prevention and treatment program funds for Native children who are at risk of being abused or have been abused.

The criminal background check requirements under the law were later interpreted by the BIA to also apply to licensing of tribal foster care homes. At the time, criminal background checks were primarily done by name (now referred to as Code X criminal background checks) and fingerprint cards. Electronic submission of digitized fingerprint scans became more common after 1997 when the Adoption and Safe Families Act (P.L. 105-89) established first ever federal requirements for criminal background checks for prospective foster families licensed by state agencies. Later in 2006 the Adam Walsh Child Protection and Safety Act added additional requirements for states and tribes regarding criminal background checks and checking of child abuse registries for prospective foster families. Training for tribes on how to conduct the criminal background checks required under the Indian Child Protection and Family Violence Prevention Act was slow in coming and did not adequately address issues of differences in tribal infrastructure and resources for mandated activities, opportunity to work with state partners, and access to national criminal databases like those that the Federal Bureau of Investigation (FBI) operate. A

few years after the law went into effect the BIA created a process for tribes to submit name-based criminal background checks, but the process was slow leading to delays of anywhere from one to six months in getting the check completed in some cases. Regulations and agency guidance was also slow to be developed and did not address key issues such as access to national criminal databases adding to an already challenging environment for implementation. The result was low awareness within Indian Country of the law's new requirements, widespread frustration at the difficulty in meeting the law's requirements with respect to criminal background checks, and a lack of uniformity in interpretation and implementation.

Tribes Working with States to Conduct Criminal Background Checks (1997–2013). Following the passage of the Adoption and Safe Families Act in 1997, increasing numbers of tribes began to look to their state partners to help them perform the background checks required under the Indian Child Protection and Family Violence Prevention Act, especially those tribes that had limited child welfare and law enforcement infrastructure. This tribal-state collaboration was also boosted by increasing numbers of tribes (over 120) that developed agreements with their states to operate the Title IV-E Foster Care and Adoption Assistance program, which contained the Adoption and Safe Families Act criminal background check requirements for states. While the state assistance was welcomed by tribes in over 14 states, there were some downsides to the partnership. Tribes found they had little control over what violations the state criminal background checks looked at and many states had gone far beyond the federal minimum requirements for these checks. In several states, tribes were only able to get a finding of pass or fail on the background checks that the state performed, which did little to empower tribes to work with prospective foster families to see if they would have passed a background check that was matched to the requirements of federal law or pursue expungement of a person's record when it seemed appropriate. Nonetheless, more and more tribes relied upon their states to provide this critical service in an effort to ensure safety of children placed in tribal foster care homes.

Changes in State's Ability to Assist Tribes (2014 to the present). In 2014, nearly 13 years after many states and tribes developed agreements on conducting criminal background checks for prospective foster families, Washington State and Oregon discovered that FBI Criminal Justice Information Services had concerns about whether these arrangements met federal mandates and security requirements for the sharing of criminal background information with tribes by states. Both Washington and Oregon felt they needed to cease offering tribes the option of doing criminal background checks for over a year while trying to sort out how to meet federal requirements. During this intervening process, it became obvious that the federal policy landscape for tribes to gain access to state criminal background check processes was more complicated than many had believed earlier. While the Indian Child Protection and Family Violence Prevention Act and Adam Walsh Child Protection and Safety Act specifically identified tribes as being authorized to receive criminal background check information from the FBI regarding foster home criminal background checks, other federal law required states to enact legislation listing who specifically was eligible to receive this information before the FBI would make criminal records available to state and local governments specifically (see Title II, Section 201 of Public Law 92-544, 86 Stat. from October 25, 1972). This enabling legislation exists in only a handful of states where tribes are licensing foster homes and relying on the state to assist them in their criminal background checks.

Federal Responses to Tribal Advocacy to Improve Access to National Crime Databases (2015 to the present). In 2015, after concerted efforts by tribes, NICWA, and NCAI to work with FBI Criminal Justice Information Services and BIA, two new opportunities to address criminal background checks barriers for tribes licensing foster homes were developed. The first was access to Code X name-based criminal background checks. These are typically used when placing a child in an emergency foster placement late at night or during the weekend when there is not time to do a more comprehensive criminal background check with fingerprints. The BIA provides this access through their Office of Justice Services. The second is the Tribal Access Program (TAP). The TAP program is a demonstration project sponsored by the Department of Justice to provide tribes with a more effective access to FBI national crime information systems for both civil and criminal purposes. In the TAP program the Department of Justice acts as the conduit for select tribes who have been approved to participate in the TAP program. Currently, 10 tribes have been selected to participate in the TAP program. The demonstration project is well suited for tribes that have resources to develop and maintain the necessary infrastructure to meet federal security requirements connected to the access of FBI operated national crime data information databases, but is not a good fit for smaller, less well resourced tribes that need a less costly and more administratively feasible option. While both of these programs are helpful and improve tribal access to national crime databases, they do not provide uniform and effective access for all tribes that are licensing foster families on tribal lands.

Overall, it is estimated that there are over 300 tribes that license or approve their own foster care homes on tribal lands. These homes are not only helpful to tribal children living on tribal lands, but also to states that often need to borrow these homes to place Native children that live off tribal lands to ensure that Native children remain connected to their extended families and tribal culture. Our analysis and experience tells us that with reduced access to states that are willing to do criminal background checks for tribes and are authorized under federal law to share this information, combined with limited capacity for many tribes to develop direct access to the FBI's national crime databases, implementation of the Native Children's Safety Act may suffer from some of the same ailments that has plagued implementation of the Indian Child Protection and Family Violence Prevention Act since its enactment in 1990.

Recommendations

- 1) Harmonize current federal law requirements that impact tribal access to national crime databases so that all tribes that license their own foster care homes can have easy and effective access to submit, process, and receive criminal background check information related to the placement of Native children in tribal foster care from the FBI national crime databases.
- 2) Amend federal law to help make it easier for states to provide criminal background check services to tribes that are licensing tribal foster homes. This access should allow tribes to not only submit requests to states to perform this service, but also allow tribes access to all criminal violations findings resulting from the background check.
- 3) In coordination with tribes, work with BIA administrative officials to create a comprehensive training and technical assistance package to assist tribes in their knowledge and skills development to be able to successfully implement the Native Children's Safety Act

requirements. The training and technical assistance should be provided through regular training sessions held throughout Indian Country and also by electronic resources, such as webinars and internet-based resources.

Child Protection Programming in Indian Country

The need for effective child protection programs in tribal communities is significant, especially given high rates of at risk indicators that many tribal communities experience. Elevated levels of poverty, alcohol and substance abuse, and domestic violence can increase the risk for child abuse and neglect, especially in geographically isolated areas where often fewer services are available and many tribal communities reside. Access to state or county services in these rural areas are also less accessible and often are not well-equipped to effectively address the unique needs of tribal families and communities. Current data indicates that while Native children experience child abuse and neglect at an elevated rate, child neglect is by far the most commonly reported form of child maltreatment. State reported data on child maltreatment where Native children are involved indicates Native children are victims of child maltreatment at a rate of 13.8 per 1,000, the second highest rate for any racial or ethnic group, compared to the national rate of 9.2 children per 1,000 (Department of Health and Human Services, 2015).

All tribes provide some level of child abuse prevention and child protection services. These services may often be informal and include the use of extended family members or community elders, but they are an important partner to formal tribal child welfare program services. We sometimes describe how this natural helping system works as the more eyes and ears that you have in the community watching out for children the less likely you will have children experience maltreatment. Parents learn the expectations of the community in their role for helping keep children safe and benefit from those around them that support and guide them. This natural helping system came under attack several generations ago as Native children were forcibly separated from their families and tribes during the boarding school era and on into the 1950s through the 1970s with the Indian Adoption Project and Relocation era. These federal policies had disastrous effects upon generations of Native families destabilizing and disrupting the natural helping systems that once formed the core of child protection efforts in tribal communities.

Today, as tribes work to decolonize their communities and programs there is a resurgence of interest and movement to reinvigorate the natural helping systems within tribes and design child protection systems that are based upon community values and tribal culture. The success of these more contemporary efforts are seen in a number of tribes that have redesigned their programs to place less emphasis on doing primarily crisis services such as foster care and more to identify families at risk of abusing or neglecting their child early on before a full blown crisis ensues that requires removing the child and causing the family and child unnecessary trauma. In these tribal communities, we see outcomes that are beyond anything seen in other public child welfare systems. Foster care rates are reduced by as much as 70% and families are able to safely keep their children at home and avoid the revolving door that plagues many foster care systems in this country. These tribal models rely heavily on surrounding the family early on with support and having social workers that are appropriately trained

and dedicated to intensive family engagement that works with the family in their unique cultural and social environment. All available supports, whether formal or informal, are actively utilized to help families succeed and keep children safe.

The ability to redesign a program from the inside using the community as your guide is open to all tribes, but the capacity to continue operating a program like the ones mentioned above happens because tribes have resources, ongoing sources of funding that can support this model of child safety. The examples in Indian Country are still promising and all have in common available tribal revenues that exceed most tribes. However, with additional federal support, like grant programs authorized under the Indian Child Protection and Family Violence Prevention Act, every tribe could potentially develop and operate this type of enhanced child protection programming. The child abuse prevention and treatment grant programs authorized under the Indian Child Protection and Family Violence Prevention Act are the only federal dedicated child abuse prevention and victim treatment funding for tribal governments, but have only been appropriated \$5 million since 1990 when the law was enacted. Compare this to the \$43 million of authorizations in the law for these critical grant programs which have never been funded. This is support that could help tribes develop much needed child abuse prevention and treatment services in their community, tribal programs that are similar to those mentioned earlier, and result in less trauma and uncertainty for tribal children and families. While the reforms of the Native American Children's Safety Act is an important move forward in ensuring child safety once they have been placed in foster care, appropriating grant funding under the Indian Child Protection and Family Violence Prevention Act is an opportunity to reduce the need to remove many Native children from their families in the first place.

Recommendations

- 1) Work with Congressional appropriations committees to support FY 2018 appropriations for the Indian Child Protection and Family Violence Prevention Act grant programs for tribes with special attention given to fully funding the Indian Child Abuse Treatment grant program (\$10 million) and Indian Child Protection and Family Violence Prevention grant program (\$30 million).

Conclusion

The First Kids 1st partner organizations greatly appreciate the efforts of Chairman Hoeven and Vice-Chairman Udall to hold this field hearing on efforts to protect Native children. Our organizations are involved in several different areas of work, but our common bond is our dedication to the well-being of Native children. No child can succeed in school or feel secure in their home or community if there aren't appropriate supports and protections in place to safeguard their well-being. The Native American Children's Safety Act helps by streamlining a number of the federal laws guiding criminal background checks for foster families licensed by tribes and improving safety for children by incorporating what is widely deemed as good practice in this process. The important next steps are to detangle and clarify the web of laws that govern tribal access to the national criminal databases administered by the FBI's Criminal Justice Information Center so every tribe can have easy and reliable access regardless of size,

resources, and whether they want to work with a state or gain access directly. Furthermore, comprehensive and well-coordinated efforts to educate and train tribes about the requirements of the law are needed immediately. Lastly, we are seeing the great strides that tribes are making in increasing safety for their children and reducing the trauma for children and families that comes from over use of foster care. Investing in tribal child protection services and community-based resources with funding from the Indian Child Protection and Family Violence Prevention Act grant programs is key to increased child safety in Indian Country. As we are seeing in a number of successful tribal communities, there is no substitute for the kind of positive outcomes that can be found in tribal communities that have designed their child protection systems with culturally-based services that incorporate their unique community resources and approaches. This work is so important to our community's future and we greatly appreciate the opportunity to share our experience and knowledge in this area. As the Senate Committee on Indian Affairs continues their efforts to advance the well-being of our children and families we look forward to working closely with you.

Please contact David Simmons, Government Affairs and Advocacy Director for the National Indian Child Welfare Association at desimmons@nicwa.org for any comments or questions related to this testimony.

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