

November 08, 2019

TO: Republican Members, Subcommittee for Indigenous Peoples of the United States  
FROM: Republican Committee Staff - Chris Fluhr and Ken Degenfelder (x69725)

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The Subcommittee for Indigenous Peoples of the United States will hold a hearing on H.R. 4957 (Gallego), the Native American Child Protection Act, on Wednesday, November 13, 2019, at 10am in 1324 Longworth HOB.

## I. WITNESSES

- **Mr. Spike Bighorn**, Acting Deputy Bureau Director, Office of Indian Services, Bureau of Indian Affairs, Department of the Interior, Washington, D.C.
- **Rear Admiral Michael Weahkee**, Chief of Staff, Indian Health Service, Department of Health and Human Services, Washington, D.C.
- **Ms Aurene Martin**, Board Member, National Indian Child Welfare Association, Portland, OR
- **Mr. Art Martinez**, Co-Director, Center for Native Child and Family Resilience, Tribal Law and Policy Institute, Carson City, NV

## II. BACKGROUND

This bill would reauthorize (and increase) appropriations for three programs and grants administered by the Department of Health and Human Services and the Department of the Interior that are intended to prevent cases within Indian communities where child abuse, neglect, family violence, and trauma may occur, and to provide treatment for victims of Indian child sexual abuse. The authorization for appropriations for the programs expired in 1997.<sup>1</sup> The bill also makes several technical changes to the underlying statute, requiring agency reports on grant awards and performance. One purpose of the hearing will be to determine what would be suitable authorization levels given that Congress has never appropriated monies for these grants and programs.

From 1988 to 1990, the Senate Select Committee on Indian Affairs, the Special Committee on Investigations, and the House Committee on Interior and Insular Affairs (now the Committee on Natural Resources) held hearings focusing on allegations of abuse and the protection of Indian children on the Navajo Nation and Hopi Reservations in Arizona, and in the Cherokee Nation of Oklahoma.<sup>2</sup> Testimony received at these hearings found that incidents of child abuse on Indian reservations were underreported, and that agency responses to incidents of

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<sup>1</sup> At the time of this writing, the Indian Health Service testimony has indicated that Congress never appropriated funds for the program it was charged with administering, the Indian Child Abuse Treatment Grant Program.

<sup>2</sup> S. Rpt. 101-403, S. 2340 (1990). At 1.

child abuse by Bureau of Indian Affairs employees and teachers furthered the traumatization of victims and their families.

In response to these hearings, Senator John McCain in 1989 introduced S.1783, legislation intended to improve the reporting of cases of child abuse in Indian Country and to provide resources for the treatment of victims of child sexual abuse. The bill created two new grant programs, the Indian Child Abuse Treatment Grant Program and the Indian Child Protection and Family Violence Prevention Program. The bill further required the Department of Health and Human Services and the Department of the Interior to conduct character investigations of employees who are in close contact with or have control over Indian children.

After Senate passage in November 1989, the House Committee on Interior and Insular Affairs subsequently held three hearings on physical and sexual abuse of children in Indian Country and on S. 1783.<sup>3</sup> Senator McCain subsequently introduced a revised bill, which included provisions to provide technical assistance, training and other resources related to the investigation and treatment of cases of family violence, abuse and neglect. The bill further included the language for the establishment of regional child abuse resource centers located within each Bureau of Indian Affairs service region. The bill was included in a broader tribal bill and became law on November 28, 1990.<sup>4</sup>

While advocates cite the Indian Child Protection and Family Violence Prevention Act as the only federal dedicated child abuse prevention and victim treatment funding for tribal governments, Congress has only appropriated approximately \$5 million for its programs.<sup>5</sup> However, the Indian Health Service spends approximately \$11.2 million annually on 83 tribes and tribal organizations under its Domestic Violence Prevention Initiative.<sup>6</sup>

### Recent Committee Action on Indian Child Safety

In 2014, the Natural Resources Committee held a hearing on Indian child abuse cases on the Spirit Lake Reservation in North Dakota, where it was learned a significant number of registered sex offenders were residing in prospective foster homes to which Indian children were placed by the Spirit Lake Tribe. Congressman Kevin Cramer (R-ND) led efforts in the House to amend the Indian Child Protection and Family Violence Prevention Act to strengthen background checks on prospective foster homes. That bill became law in June 2016.<sup>7</sup>

In the 114<sup>th</sup> Congress, the Natural Resources Committee examined a bill which would establish a Native Children Commission to conduct a comprehensive study regarding the federal and local programs, grants, and support available for Native communities and Native children. This bill became law in October 2016.<sup>8</sup> The Commission has formed and recently held its first meeting on October 31, 2019.

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<sup>3</sup> H. Hrg 101-60 (1990). *Oversight and S. 1783*.

<sup>4</sup> P.L. 101-630.

<sup>5</sup> <https://www.nicwa.org/wp-content/uploads/2016/11/native-american-childrens-safety-act-field-hearing-testimony-2017-proofed.pdf>.

<sup>6</sup> <https://www.ihs.gov/dvpi/aboutdvpi/>.

<sup>7</sup> P.L. 114-165, Native American Children's Safety Act

<sup>8</sup> P.L. 114-244, Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act.

### **III. ANALYSIS OF MAJOR PROVISIONS OF BILL**

#### **Section 2. Indian Child Protection and Family Violence Prevention Act (ICPFVPA) Amendments.**

*Amendments to 25 U.S.C. 3202 (ICPFVPA section 403).* Expands the definition of child abuse to include psychological or verbal abuse that causes serious emotional or mental injury, and sexual assault or molestation, exploitation, sexual contact or prostitution.

*Amendments to 25 U.S.C. 3208 (ICPFVPA section 409).* Expands eligibility of grant awardees to include urban Indian organizations. Directs the Indian Health Service (IHS) to encourage grantees to use culturally-appropriate treatment services. Mandates that the IHS submit a report to Congress after two years containing information regarding descriptions of treatment and services grantees have used. Includes an authorization for appropriations for \$30 million per year for each of Fiscal Years (FY) 2021-2026 (an increase of \$20 million per year over current authorized levels).

*Amendments to 25 U.S.C. 3209 (ICPFVPA section 410).* Mandates establishment of a National Indian Child Resource and Family Center. Requires the Bureau of Indian Affairs (BIA) to report to Congress within 2 years on the status of the creation of the Center. Expands the Center's responsibilities and functions to include urban Indian organizations. Also requires the Center to develop model agreements between tribes and States to provide maximum cooperation between those entities. Expands the Center advisory board to 12 members. Provides that tribes and tribal organizations and urban Indian organizations can appoint members to the advisory board. Authorizes the BIA to contract with an eligible Indian organization to operate the Center, provided the organization is governed by an Indian-controlled board of directors that have substantial experience in child abuse, child neglect, and family violence involving Indian children and families. Authorizes \$3 million in appropriations for the Center per year for each of FY 2021-2026.

*Amendments to 25 U.S.C. 3210 (ICPFVPA section 411).* Expands the responsibilities of the Indian Child Protection and Family Violence Prevention Program to include the development of agreements between tribes, States, or private agencies on preventative child abuse actions. Funds may also now be used for child protective services operational costs, background checks, transportation and home studies. Funds may now be used for the development of a tribal child protection team to prevent and investigate child abuse and neglect. Requires the Department of the Interior to submit a report to Congress including information on the award of grants for this program. Authorizes \$60 million in appropriations per year for each of FY 2021-2026, a \$30 million increase per year over current authorized levels.

### **IV. COSTS**

The Congressional Budget Office has not scored this bill. However, the bill reauthorizes total appropriations for the Indian Child Abuse Treatment Grant Program, the National

Indian Child Resource and Family Services Center, and the Indian Child Protection and Family Violence Prevention Program of \$558 million over six years.

**V. ADMINISTRATION POSITION**

Unknown.

**VI. CURRENT LAW AS AMENDED BY H.R. 4957 (RAMEYER)**

**Showing Current Law as Amended by H.R. 4957, to amend the Indian Child Protection and Family Violence Prevention Act (dated 10/29/19 12:53pm)**

[text to be added highlighted in yellow; text to be deleted bracketed and highlighted in gray]

**The Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3202 et seq.)**

Section 403 (25 U.S.C. 3202)

**§3202. Definitions**

For the purposes of this chapter, the term-

\* \* \* \* \*

(3) "child abuse" includes but is not limited to-

[(A) any case in which-

(i) a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and

(ii) such condition is not justifiably explained or may not be the product of an accidental occurrence; and]

(A) in any case that—

(i)(I) a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling; and

(II) such condition is not justifiably explained or may not be the product of an accidental occurrence;

(ii) psychological or verbal abuse that causes serious emotional or mental injury to a child; or

(iii) a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution;

(B) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution;

\* \* \* \* \*

Section 409 (25 U.S.C. 3208)

**§3208. Indian Child Abuse Treatment Grant Program**

**(a) Establishment**

[The Secretary of Health and Human Services, acting through the Service and in cooperation with the Bureau] The Service, in cooperation with the Bureau, shall establish an Indian Child

Abuse Treatment Grant Program that provides grants to any Indian tribe or intertribal consortium for the establishment on Indian reservations of treatment programs for Indians who have been victims of child [sexual abuse] abuse or neglect.

**(b) Grant applications**

(1) Any Indian tribe or intertribal consortium, on its own or in partnership with an urban Indian organization, may submit to the [Secretary of Health and Human Services] Service, an application for a grant under subsection (a).

(2) Any application submitted under paragraph (1)-

(A) shall be in such form as the [Secretary of Health and Human Services] Service may prescribe;

(B) shall be submitted to [such Secretary] the Service on or before the date designated by [such Secretary] the Service; and

(C) shall specify-

(i) the nature of the program proposed by the applicant,

(ii) the data and information on which the program is based,

(iii) the extent to which the program plans to use or incorporate existing services available on the reservation, and

(iv) the specific treatment concepts to be used under the program.

**[(c) Maximum grant amount**

The maximum amount of any grant awarded under subsection (a) shall not exceed \$500,000.]

**(c) Culturally Appropriate Treatment.**—In awarding grants under this section, the Service shall encourage the use of culturally appropriate treatment services and programs that respond to the unique cultural values, customs, and traditions of applicant Indian Tribes.

**(d) Grant administration and final report**

Each recipient of a grant awarded under subsection (a) shall-

(1) furnish the [Secretary of Health and Human Services] Service with such information as such Secretary may require to-

(A) evaluate the program for which the grant is made, and

(B) ensure that the grant funds are expended for the purposes for which the grant was made, and

(2) submit to such Secretary at the close of the term of the grant a final report which shall include such information as [the Secretary] the Service may require.

**(e) REPORT.**—Not later than 2 years after the date of the enactment of the Native American Child Protection Act, the Service shall submit a report to Congress on the award of grants under this section. The report shall contain—

(1) a description of treatment and services for which grantees have used funds awarded under this section; and

(2) any other information that the Service requires.

**[(e) Authorization of appropriations**

there <sup>1</sup> is hereby authorized to be appropriated to carry out the provisions of this section \$10,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, 1996, and 1997.]

**(f) Authorization of Appropriations.**—There is authorized to be appropriated to carry out this section \$30,000,000 for each of fiscal years 2021 through 2026.

## §3209. **National Indian Child Resource and Family Services [Centers] Center**

### **[(a) Establishment]**

The Secretary shall establish within each area office of the Bureau an Indian Child Resource and Family Services Center.

### **(b) Memorandum of Agreement**

The Secretary and the Secretary of Health and Human Services shall enter into a Memorandum of Agreement which provides for the staffing of the Centers established under this section.]

**(a) ESTABLISHMENT.**—Not later than one year after the date of the enactment of the Native American Child Protection Act, the Secretary shall establish a National Indian Child Resource and Family Services Center.

**(b) REPORT.**—Not later than 2 years after the date of the enactment of the Native American Child Protection Act, the Secretary of the Interior, acting through the Bureau of the Indian Affairs, shall submit a report to Congress on the status of the National Indian Child Resource and Family Service Center.

### **(c) Center staffing**

[Each] **The** Center established under subsection (a) shall be staffed by a [multidisciplinary] team of personnel with experience and training in prevention, identification, investigation, and treatment of incidents of family violence, child abuse, and child neglect.

### **(d) Center responsibilities and functions**

[Each] **The** Center established under subsection (a) shall-

(1) provide advice, technical assistance, and consultation to Indian tribes, tribal organizations, [and inter-tribal consortia] **inter-tribal consortia, and urban Indian organizations** upon request;

(2) provide training to appropriate personnel of Indian tribes, tribal organizations, **urban Indian organizations,** the Bureau and the Service on the identification and investigation of cases of family violence, child abuse, and child neglect and, to the extent practicable, coordinate with institutions of higher education, including tribally controlled community colleges, to offer college-level credit to interested trainees;

(3) develop training **and technical assistance** materials on the prevention, identification, investigation, and treatment of incidents of family violence, child abuse, and child neglect for distribution to Indian tribes [and to tribal organizations] **Tribal organizations, and urban Indian organizations;**

(4) develop recommendations to assist Federal, **State,** [and tribal] **Tribal, and urban Indian** personnel to respond to cases of family violence, child abuse, and child neglect; and

[(5) develop policies and procedures for each agency office of the Bureau and service unit of the Service within the area which, to the extent feasible, comply with tribal laws pertaining to cases of family violence, child abuse, and child neglect, including any criminal laws, and which provide for maximum cooperation with the enforcement of such laws.]

(5) develop model intergovernmental agreements between Tribes and States, and other materials that provide examples of how Federal, State, and Tribal governments can develop effective relationships and provide for maximum cooperation in the furtherance of prevention, investigation, treatment, and prosecution of incidents of family violence and child abuse and child neglect involving Indian children and families.

**(e) [Multidisciplinary team] Team personnel**

[Each multidisciplinary] The team established under this section shall include, but is not limited to, personnel with a background in-

- (1) law enforcement,
- (2) child protective services,
- (3) juvenile counseling and adolescent mental health, and
- (4) domestic violence.

**[(f) Center advisory board]**

The Secretary, in consultation with the Secretary of Health and Human Services, shall establish, for each Indian Child Resource and Family Services Center, an advisory board to advise and assist such Center in carrying out its activities under this chapter. Each advisory board shall consist of 7 members appointed by the Secretary from Indian tribes and human service providers served by an area office of the Bureau. Members shall serve without compensation, but may be reimbursed for travel and other expenses while carrying out the duties of the board. The advisory board shall assist the Center in coordinating programs, identifying training materials, and developing policies and procedures relating to family violence, child abuse, and child neglect.

**(g) Application of Indian Self-Determination Act to Centers**

Indian Child Resource and Family Services Centers established under subsection (a) shall be subject to the provisions of the Indian Self-Determination Act [25 U.S.C. 5321 et seq.]. If a Center is located in an area office of the Bureau which serves more than one Indian tribe, any application to enter into a contract to operate the Center pursuant to such Act must have the consent of each of the other tribes to be served under the contract, except that, in the Juneau Area, only the consent of such tribes or tribal consortia that are engaged in contracting of Indian Child Protection and Family Violence Prevention programs pursuant to such Act shall be required. This section shall not preclude the designation of an existing child resource and family services center operated by a tribe or tribal organization as a Center if all of the tribes to be served by the Center agree to such designation.

**(h) Authorization of appropriations**

There are authorized to be appropriated to carry out the provisions of this section \$3,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, 1996, and 1997.]

**(f) CENTER ADVISORY BOARD.**—The Secretary shall establish an advisory board to advise and assist the National Indian Child Resource and Family Services Center in carrying out its activities under this section. The advisory board shall consist of 12 members appointed by the Secretary from Indian Tribes, Tribal organizations and urban Indian organizations with expertise in child abuse and child neglect. Members shall serve without compensation, but may be reimbursed for travel and other expenses while carrying out the duties of the board. The advisory board shall assist the Center in coordinating programs, identifying training and technical assistance materials, and developing intergovernmental agreements relating to family violence, child abuse, and child neglect.

**(g) APPLICATION OF INDIAN SELF-DETERMINATION ACT TO THE CENTER.**—The National Indian Child Resource and Family Services Center shall be subject to the provisions of the Indian Self-Determination Act. The Secretary may also contract for the operation of the Center with a nonprofit Indian organization governed by an Indian-controlled board of directors that have substantial experience in child abuse, child neglect, and family violence involving Indian children and families.

**(h) AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section \$3,000,000 for each of fiscal years 2021 through 2026.



## §3210. Indian Child Protection and Family Violence Prevention Program

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### (d) Program responsibilities and functions

Funds provided pursuant to this section may be used for-

(1) the establishment of a child protective services program which may include-

(A) the employment of child protective services staff to investigate cases of child [abuse and child neglect] abuse, neglect, or both,

(B) training programs for child protective services personnel, law enforcement personnel, and judicial personnel in the investigation, prevention, and treatment of cases of child abuse and child neglect, [and]

(C) purchase of equipment to assist in the investigation of cases of child abuse and child neglect;

(D) development of agreements between Tribes, States or private agencies on the coordination of child abuse and neglect prevention, investigation, and treatment services;

(E) child protective services operational costs including transportation, risk and protective factors assessments, family engagement and kinship navigator services, and relative searches, criminal background checks for prospective placements, and home studies; and

(F) development of a Tribal child protection or multidisciplinary team to assist in the prevention and investigation of child abuse and neglect;

(2) the establishment of a family violence prevention and treatment program which may include-

(A) the employment of family violence prevention and treatment staff to respond to incidents of family violence in culturally appropriate ways,

(B) the provision of immediate shelter and related assistance for victims of family violence and their dependents,

(C) training programs that may include culturally appropriate programs for family violence prevention and treatment personnel, law enforcement personnel, and judicial personnel in the investigation, prevention, and treatment of cases of family violence;

(D) construction or renovation of facilities for the establishment of family violence shelters;

(3) the development and implementation of a multidisciplinary child abuse investigation and prosecution program which may-

(A) coordinate child abuse and neglect prevention, investigation, prosecution, treatment, and counseling services,

(B) develop protocols among related agencies to ensure that investigations of child abuse [cases, to the extent practicable,] and neglect cases minimize the trauma to the child victim, [and] or

(C) provide for the coordination and cooperation of law enforcement agencies, courts of competent jurisdiction, and other tribal, Federal, and State agencies through intergovernmental or interagency agreements that define and specify each party's responsibilities;

(4) the development of tribal child protection codes and regulations;

(5) the establishment of training programs for-



(A) professional and paraprofessional personnel in the fields of medicine, law, education, social work, and other relevant fields who are engaged in, or intend to work in, the field of prevention, identification, investigation, and treatment of family violence, child abuse, and child neglect,

(B) instruction in methods of protecting children from abuse and neglect for persons responsible for the welfare of Indian children, including parents of, and persons who work with, Indian children, or

(C) educational, identification, prevention and treatment services for child abuse and child neglect in cooperation with preschool, elementary and secondary schools, or tribally controlled college or university <sup>1</sup> (within the meaning of [section 1801 of this title](#));

(6) other community education efforts for tribal members (including school children) regarding issues of family violence, child abuse, and child neglect; and

(7) such other innovative and culturally relevant programs and projects as the Secretary may approve, including programs and projects for-

(A) parental awareness and self-help,

(B) prevention and treatment of alcohol and drug-related family violence, child abuse, and child neglect, or

(C) home health visitor programs,

that show promise of successfully preventing and treating cases of family violence, child abuse, and child neglect.

**(f) Secretarial regulations; base support funding**

(1) The Secretary, with the participation of Indian tribes, shall establish, and promulgate by regulations, a formula which establishes base support funding for Indian Child Protection and Family Violence Prevention programs.

(2) In the development of regulations for base support funding for such programs, the Secretary shall [develop, in consultation with Indian tribes, appropriate caseload standards and staffing requirements which are comparable to standards developed by the National Association of Social Work, the Child Welfare League of America and other professional associations in the field of social work and child welfare] develop, not later than one year after the date of the enactment of the Native American Child Protection Act, in consultation with Indian Tribes, appropriate caseload standards and staffing requirements. Each level of funding assistance shall correspond to the staffing requirements established by the Secretary pursuant to this section.

(3) Factors to be considered in the development of the base support funding formula shall include, but are not limited to-

(A) projected service population of the program;

(B) projected service area of the program;

(C) projected number of cases per month; and

(D) special circumstances warranting additional program resources, such as high incidence of child [sexual abuse] abuse and neglect, high incidents of family violence, [sic] high incidence of violent crimes against women, or the existence of a significant victim population within the community.

(4) The formula established pursuant to this subsection shall provide funding necessary to support-

(A) one child protective services or family violence caseworker, including fringe benefits and support costs, for each [tribe] Indian Tribe; and

(B) an additional child protective services and family violence caseworker, including fringe benefits and support costs, for each [level of assistance for which an Indian tribe qualifies] Indian Tribe.

(5) In any fiscal year that appropriations are not sufficient to fully fund Indian Child Protection and Family Violence Prevention programs at each level of assistance under the formula required to be established in this subsection, available funds for each level of assistance shall be evenly divided among the [tribes] Indian Tribes qualifying for that level of assistance.

**[(g) Maintenance of effort]**

Services provided under contracts made under this section shall supplement, not supplant, services from any other funds available for the same general purposes, including, but not limited to-

(1) treatment, including, but not limited to-

- (A) individual counseling,
- (B) group counseling, and
- (C) family counseling;

(2) social services and case management;

(3) training available to Indian tribes, tribal agencies, and Indian organizations regarding the identification, investigation, prevention, and treatment of family violence, child abuse, and child neglect; and

(4) law enforcement services, including investigations and prosecutions.]

**(g) REPORT.**—Not later than 2 years after the date of the enactment of the Native American Child Protection Act, the Secretary of the Interior, acting through the Bureau of the Indian Affairs, shall submit a report to Congress on the award of grants under this section. The report shall contain—

(1) a description of treatment and services for which grantees have used funds awarded under this section; and

(2) any other information that the Secretary of the Interior requires.

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**[(i) Authorization of appropriations]**

There are authorized to be appropriated to carry out the provisions of this section \$30,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, 1996, and 1997.]

**(i) AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section \$60,000,000 for each of fiscal years 2021 through 2026.