

UNITED STATES CODE TITLE 25
- INDIANS CHAPTER 34 -
INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION

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Contents

- 3201. Findings and purpose.
- 3202. Definitions.
- 3203. Reporting procedures.
- 3204. Central registry.
- 3205. Confidentiality.
- 3206. Waiver of parental consent.
- 3207. Character investigations.
- 3208. Indian Child Abuse Treatment Grant Program.
- 3209. Indian Child Resource and Family Services Centers.
- 3210. Indian Child Protection and Family Violence Prevention Program.
- 3211. Report to Congress.

3201. Findings and purpose

(a) Findings

The Congress, after careful review of the problem of child abuse on Indian reservations and the historical and special relationship of the Federal Government with Indian people,

(1) finds that - (A) incidents of abuse of children on Indian reservations are grossly underreported; (B) such underreporting is often a result of the lack of a mandatory Federal reporting law; (C) multiple incidents of sexual abuse of children on Indian reservations have been perpetrated by persons employed or funded by the Federal Government; (D) Federal Government investigations of the background of Federal employees who care for, or teach, Indian children are often deficient; (E) funds spent by the United States on Indian reservations or otherwise spent for the benefit of Indians who are victims of child abuse or family violence are inadequate to meet the growing needs for mental health treatment and counseling for victims of child abuse or family violence and their families; and (F) there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and the United States has a direct interest, as trustee, in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe; and (2) declares that two major goals of the United States are to - (A) identify the scope of incidents of abuse of children and family violence in Indian country and to reduce such incidents; and (B) provide funds for mental health treatment for Indian victims of child abuse and family violence on Indian reservations. (b) Purpose

The purposes of this chapter are to -

(1) require that reports of abused Indian children are made to the appropriate authorities in an effort to prevent further abuse; (2) establish a reliable data base for statistical purposes and to authorize a study to determine the need for a central registry for reported incidents of abuse; (3) authorize such other actions as are necessary to ensure effective child protection in Indian country; (4) establish the Indian Child Abuse Prevention and Treatment Grant Program to provide funds for the establishment on Indian reservations of treatment programs for victims of child sexual abuse; (5) provide for technical assistance and training related to the investigation and treatment of cases of child abuse and neglect; (6) establish Indian Child Resource and Family Services Centers in each Bureau of Indian

Affairs Area Office which will consist of multi-disciplinary teams of personnel with experience and training in the prevention, identification, investigation, and treatment of child abuse and neglect; (7) provide for the treatment and prevention of incidents of family violence; (8) establish tribally operated programs to protect Indian children and reduce the incidents of family violence in Indian country; and (9) authorize other actions necessary to ensure effective child protection on Indian reservations.

3202. Definitions

For the purposes of this chapter, the term -

(1) "Bureau" means the Bureau of Indian Affairs of the Department of the Interior; (2) "child" means an individual who - (A) is not married, and (B) has not attained 18 years of age; (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 (B) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution; (4) "child neglect" includes but is not limited to, negligent treatment or maltreatment of a child by a person, including a person responsible for the child's welfare, under circumstances which indicate that the child's health or welfare is harmed or threatened thereby; (5) "family violence" means any act, or threatened act, of violence, including any forceful detention of an individual, which - (A) results, or threatens to result, in physical or mental injury, and (B) is committed by an individual against another individual - (i) to whom such person is, or was, related by blood or marriage or otherwise legally related, or (ii) with whom such person is, or was, residing; (6) "Indian" means any individual who is a member of an Indian tribe; (7) "Indian child" has the meaning given to such term by section 1903(4) of this title; (8) "Indian country" has the meaning given to such term by section 1151 of title 18; (9) "Indian reservation" means any Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, or lands held by incorporated Native groups, regional corporations, or village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); (10) "Indian tribe" and "tribal organization" have the respective meanings given to each of such terms under section 450b of this title; (11) "inter-tribal consortium" means a partnership between - (A) an Indian tribe or tribal organization of an Indian tribe, and (B) one or more Indian tribes or tribal organizations of one or more other Indian tribes; (12) "local child protective services agency" means that agency of the Federal Government, of a State, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian country; (13) "local law enforcement agency" means that Federal, tribal, or State law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian country involved; (14) "persons responsible for a child's welfare" means any person who has legal or other recognized duty for the care and safety of a child, including - (A) any employee or volunteer of a children's residential facility, and (B) any person providing out-of-home care, education, or services to children; (15) "related assistance" - (A) includes counseling and self-help services to abusers, victims, and dependents in family violence situations (which shall include counseling of all family members to the extent feasible) and referrals for appropriate health-care services (including alcohol and drug abuse treatment), and (B) may include food, clothing, child care, transportation, and emergency services for victims of family violence and their dependents; (16) "Secretary" means the Secretary of the Interior; (17) "shelter" means the provision of temporary refuge and related assistance in compliance with applicable Federal and tribal laws and regulations governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence or their dependents; and (18) "Service" means the Indian Health Service of the Department of Health and Human Services.

3203. Reporting procedures

(a) Omitted (b) Notification of child abuse reports (1) When a local law enforcement agency or local child protective services agency receives an initial report from any person of - (A) the abuse of a child in Indian country,

or (B) actions which would reasonably be expected to result in abuse of a child in Indian country, the receiving agency shall immediately notify appropriate officials of the other agency of such report and shall also submit, when prepared, a copy of the written report required under subsection (c) of this section to such agency. (2) Where a report of abuse involves an Indian child or where the alleged abuser is an Indian and where a preliminary inquiry indicates a criminal violation has occurred, the local law enforcement agency, if other than the Federal Bureau of Investigation, shall immediately report such occurrence to the Federal Bureau of Investigation. (c) Written report of child abuse (1) Within 36 hours after receiving an initial report described in subsection (b) of this section, the receiving agency shall prepare a written report which shall include, if available - (A) the name, address, age, and sex of the child that is the subject of the report; (B) the grade and the school in which the child is currently enrolled; (C) the name and address of the child's parents or other person responsible for the child's care; (D) the name and address of the alleged offender; (E) the name and address of the person who made the report to the agency; (F) a brief narrative as to the nature and extent of the child's injuries, including any previously known or suspected abuse of the child or the child's siblings and the suspected date of the abuse; and (G) any other information the agency or the person who made the report to the agency believes to be important to the investigation and disposition of the alleged abuse. (2) (A) Any local law enforcement agency or local child protective services agency that receives a report alleging abuse described in section 3202(3) (FOOTNOTE 1) of this title shall immediately initiate an investigation of such allegation and shall take immediate, appropriate steps to secure the safety and well-being of the child or children involved.

(FOOTNOTE 1) See References in Text note below.

(B) Upon completion of the investigation of any report of alleged abuse that is made to a local law enforcement agency or local child protective services agency, such agency shall prepare a final written report on such allegation.

(d) Confidentiality of informant

The identity of any person making a report described in subsection (b)(1) of this section shall not be disclosed, without the consent of the individual, to any person other than a court of competent jurisdiction or an employee of an Indian tribe, a State or the Federal Government who needs to know the information in the performance of such employee's duties.

3204. Central registry

(a) Preparation of study

The Secretary, in consultation with the Secretary of Health and Human Services and the Attorney General of the United States, is hereby authorized and directed to prepare a written study on the feasibility of, and need for, the establishment of a Central Register for reports or information on the abuse of children in Indian country.

(b) Content of study

The study conducted pursuant to subsection (a) of this section shall include, but shall not be limited to -

(1) the need for, and purpose of, a Central Register; (2) the examination of due process implication of the maintenance of such a register; (3) the extension of access to information contained in the register; (4) the need and process for expunging information from the register; (5) the types, and duration of maintenance, of information in the register; and (6) the classes of persons who should be covered by such register. (c) Submission to Congress

The Secretary shall complete the study conducted pursuant to this section and shall submit such study, together with recommendations and draft legislation to implement such recommendations, to the Congress within 180 days after November 28, 1990.

3205. Confidentiality

Pursuant to section 552a of title 5, the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g), or any other provision of law, agencies of any Indian tribe, of any State, or of the Federal Government that investigate and treat incidents of abuse of children may provide information and records to those agencies of any Indian tribe, any State, or the Federal Government that need to know the information in performance of their duties. For purposes of this section, Indian tribal governments shall be treated the same as other Federal Government entities.

3206. Waiver of parental consent

(a) Examinations and interviews

Photographs, x-rays, medical examinations, psychological examinations, and interviews of an Indian child alleged to have been subject to abuse in Indian country shall be allowed without parental consent if local child protective services or local law enforcement officials have reason to believe the child has been subject to abuse.

(b) Interviews by law enforcement and child protective services officials

In any case in which officials of the local law enforcement agency or local child protective services agency have reason to believe that an Indian child has been subject to abuse in Indian country, the officials of those agencies shall be allowed to interview the child without first obtaining the consent of the parent, guardian, or legal custodian.

(c) Protection of child

Examinations and interviews of a child who may have been the subject of abuse shall be conducted under such circumstances and with such safeguards as are designed to minimize additional trauma to the child and, where time permits, shall be conducted with the advise, or under the guidance, of a local multidisciplinary team established pursuant to section 3210 of this title or, in the absence of a local team, a multidisciplinary team established pursuant to section 3209 of this title.

(d) Court orders

Upon a finding of reasonable suspicion that an Indian child has been the subject of abuse in Indian country, a Federal magistrate or United States District Court may issue an order enforcing any provision of this section.

3207. Character investigations

(a) By Secretary of the Interior and 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) of this section 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 (25 U.S.C. 450 et seq.) or the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.) 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) of this section, as the Indian tribe or tribal organization shall establish.

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, 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.

(b) Grant applications (1) Any Indian tribe or intertribal consortium may submit to the Secretary of Health and Human Services an application for a grant under subsection (a) of this section. (2) Any application submitted under paragraph (1) - (A) shall be in such form as the Secretary of Health and Human Services may prescribe; (B) shall be submitted to such Secretary on or before the date designated by such Secretary; 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) of this section shall not exceed \$500,000.

(d) Grant administration and final report

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

(1) furnish the Secretary of Health and Human Services 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 may require. (e) Authorization of appropriations

there (FOOTNOTE 1) 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, and 1995.

(FOOTNOTE 1) So in original. Probably should be capitalized.

3209. Indian Child Resource and Family Services Centers

(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.

(c) Center staffing

Each Center established under subsection (a) of this section 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 Center established under subsection (a) of this section shall -

(1) provide advice, technical assistance, and consultation to Indian tribes, tribal organizations, and inter-tribal consortia upon request; (2) provide training to appropriate personnel of Indian tribes, tribal 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 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; (4) develop recommendations to assist Federal and tribal 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. (e) Multidisciplinary team personnel

Each multidisciplinary 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) of this section shall be subject to the provisions of the Indian Self-Determination Act (25 U.S.C. 450f 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, and 1995.

3210. Indian Child Protection and Family Violence Prevention Program

(a) Establishment

The Secretary shall establish within the Bureau an Indian Child Protection and Family Violence Prevention Program to provide financial assistance to any Indian tribe, tribal organization, or inter-tribal consortium for the development of an Indian Child Protection and Family Violence Prevention program.

(b) Indian Self-Determination Act agreements

The Secretary is authorized to enter into agreements with Indian tribes, tribal organizations, or inter-tribal consortia pursuant to the Indian Self-Determination Act (25 U.S.C. 450f et seq.) for the establishment of Indian Child Protection and Family Violence Prevention programs on Indian reservations.

(c) Investigation and treatment and prevention of child abuse and family violence

An Indian tribe operating an Indian Child Protection and Family Violence Prevention program established under this section shall designate the agency or officials which shall be responsible -

(1) for the investigation of reported cases of child abuse and child neglect; and (2) for the treatment and prevention of incidents of family violence; and (3) for the provision of immediate shelter and related assistance for victims of family violence and their dependents. (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, (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; (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, (B) the provision of immediate shelter and related assistance for victims of family violence and their dependents, (C) training 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; and (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 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, minimize the trauma to the child victim, and (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 community colleges (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) (FOOTNOTE 1) Secretarial regulations; base support funding (FOOTNOTE 1) So in original. No subsec. (e) has been enacted. (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. 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, 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; 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. (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 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. (h) Contract evaluation and annual report

Each recipient of funds awarded pursuant to subsection (a) of this section shall -

(1) furnish the Secretary with such information as the Secretary may require to -

(A) evaluate the program for which the award is made, and (B) ensure that funds are expended for the purposes for which the award was made; and (2) submit to the Secretary at the end of each fiscal year an annual report which shall include such information as the Secretary may require. (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, and 1995.

3211. Report to Congress

On or before March 1, 1991, and March 1 of each calendar year thereafter, the Secretary shall submit to the Congress a report involving the administration of this chapter during the calendar year preceding the calendar year in which such report is submitted.

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