

§ 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) shall include, but shall not be limited to—

- (1) the need for, and purpose of, a Central Register;
- (2) the examination of due process implications 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.

(Pub. L. 101-630, title IV, § 405, Nov. 28, 1990, 104 Stat. 4549.)

§ 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.

(Pub. L. 101-630, title IV, § 406, Nov. 28, 1990, 104 Stat. 4550.)

REFERENCES IN TEXT

The Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g), referred to in text, is section 513 of title V of Pub. L. 93-380, Aug. 21, 1974, 88 Stat. 571, which enacted section 1232g of Title 20, Education, and provisions set out as notes under sections 1221 and 1232g of Title 20. For complete classification of this Act to the Code, see Short Title of 1974 Amendment note set out under section 1221 of Title 20 and Tables.

§ 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 with-

out 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,¹ 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 judge or United States District Court may issue an order enforcing any provision of this section.

(Pub. L. 101-630, title IV, § 407, Nov. 28, 1990, 104 Stat. 4550; Pub. L. 101-650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

CHANGE OF NAME

“Federal magistrate judge” substituted for “Federal magistrate” in subsec. (d) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 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) have been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense, or any of two or

¹ So in original. Probably should be “advice”.

more misdemeanor offenses, under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children.

(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. 5301 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), 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);

(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 671(a)(20)(A) of title 42.

(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 June 3, 2016, 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;¹ 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 June 3, 2016, 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 671(a)(20)(A) of title 42; 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 chapter.

(Pub. L. 101-630, title IV, § 408, Nov. 28, 1990, 104 Stat. 4551; Pub. L. 106-568, title VIII, § 814, Dec. 27, 2000, 114 Stat. 2918; Pub. L. 114-165, § 2, June 3, 2016, 130 Stat. 415.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (c), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to chapter 46 (§5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Tribally Controlled Schools Act of 1988, referred to in subsec. (c), is part B (§§5201-5212) of title V of Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 385, which is classified generally to chapter 27 (§2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

This chapter, referred to in subsec. (d)(5)(D), was in the original “this Act” and was translated as reading “this title”, meaning title IV of Pub. L. 101-630, Nov. 28, 1990, 104 Stat. 4544, known as the Indian Child Protection and Family Violence Prevention Act, which is classified principally to this chapter, to reflect the probable intent of Congress. For complete classification of title IV to the Code, see Short Title note set out under section 3201 of this title and Tables.

AMENDMENTS

2016—Subsec. (d). Pub. L. 114-165 added subsec. (d).

2000—Subsec. (b). Pub. L. 106-568 substituted “any felonious offense, or any of two or more misdemeanor offenses,” for “any offense” and “crimes against persons; or offenses committed against children” for “or crimes against persons”.

§ 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).

(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

¹ So in original. Probably should be “commence;”.