

109TH CONGRESS
1ST SESSION

S. 1899

To amend the Indian Child Protection and Family Violence Prevention Act to identify and remove barriers to reducing child abuse, to provide for examinations of certain children, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 20, 2005

Mr. MCCAIN (for himself, Mr. DORGAN, Mr. CRAPO, and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To amend the Indian Child Protection and Family Violence Prevention Act to identify and remove barriers to reducing child abuse, to provide for examinations of certain children, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Indian Child Protec-
5 tion and Family Violence Prevention Act Amendments of
6 2005”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 Section 402 of the Indian Child Protection and Fam-
3 ily Violence Prevention Act (25 U.S.C. 3201) is amend-
4 ed—

5 (1) in subsection (a)—

6 (A) in paragraph (1)—

7 (i) by redesignating subparagraphs
8 (E) and (F) as subparagraphs (F) and
9 (G), respectively; and

10 (ii) by inserting after subparagraph
11 (D) the following:

12 “(E) the Federal Government and certain
13 State governments are responsible for inves-
14 tigating and prosecuting certain felony crimes,
15 including child abuse, in Indian country, pursu-
16 ant to chapter 53 of title 18, United States
17 Code;” and

18 (B) in paragraph (2)—

19 (i) in the matter preceding subpara-
20 graph (A), by striking “two” and inserting
21 “the”;

22 (ii) in subparagraph (A), by striking
23 “and” at the end;

24 (iii) in subparagraph (B), by striking
25 the period at the end and inserting “;
26 and”; and

1 (iv) by adding at the end the fol-
2 lowing:

3 “(C) identify and remove any impediment
4 to the immediate investigation of incidents of
5 child abuse in Indian country.”; and

6 (2) in subsection (b)—

7 (A) by striking paragraph (3) and insert-
8 ing the following:

9 “(3) provide for a background investigation for
10 any employee that has access to children;” and

11 (B) in paragraph (6), by striking “Area
12 Office” and inserting “Regional Office”.

13 **SEC. 3. DEFINITIONS.**

14 Section 403 of the Indian Child Protection and Fam-
15 ily Violence Prevention Act (25 U.S.C. 3202) is amend-
16 ed—

17 (1) by striking paragraph (14);

18 (2) by redesignating paragraphs (5) through
19 (13) as paragraphs (6) through (14), respectively;

20 (3) by inserting after paragraph (4) the fol-
21 lowing:

22 “(5) ‘conviction’, with respect to an offense,
23 means a final judgment of guilty through a verdict
24 by a judge or jury or a plea of guilty or no contest,
25 but does not include any final judgment that has

1 been expunged by pardon, reversed, set aside, or
2 otherwise voided;”;

3 (4) in paragraph (13) (as redesignated by para-
4 graph (2)), by striking “that agency” and all that
5 follows through “Indian tribe” and inserting “the
6 Federal, State, or tribal agency”;

7 (5) in paragraph (14) (as redesignated by para-
8 graph (2)), by inserting “(including a tribal law en-
9 forcement agency operating pursuant to a grant,
10 contract, or compact under the Indian Self-Deter-
11 mination and Education Assistance Act (25 U.S.C.
12 450 et seq.))” after “State law enforcement agen-
13 cy”;

14 (6) in paragraph (17), by striking “and” at the
15 end;

16 (7) in paragraph (18), by striking the period at
17 the end and inserting “; and”; and

18 (8) by adding at the end the following:

19 “(19) ‘telemedicine’ means a telecommuni-
20 cations link to an end user through the use of eligi-
21 ble equipment that electronically links health profes-
22 sionals or patients and health professionals at separ-
23 ate sites in order to exchange health care informa-
24 tion in audio, video, graphic, or other format for the

1 purpose of providing improved health care diagnosis
2 and treatment.”.

3 **SEC. 4. REPORTING PROCEDURES.**

4 Section 404 of the Indian Child Protection and Fam-
5 ily Violence Prevention Act (25 U.S.C. 3203) is amend-
6 ed—

7 (1) in subsection (c)—

8 (A) in paragraph (1), by striking “(1)
9 Within” and inserting the following:

10 “(1) IN GENERAL.—Not later than”; and

11 (B) in paragraph (2)—

12 (i) by striking “(2)(A) Any” and in-
13 serting the following:

14 “(2) INVESTIGATION OF REPORTS.—

15 “(A) IN GENERAL.—Any”;

16 (ii) in subparagraph (B)—

17 (I) by striking “(B) Upon” and
18 inserting the following:

19 “(B) FINAL WRITTEN REPORT.—On”; and

20 (II) by inserting “including any
21 Federal, State, or tribal conviction re-
22 sulting from the allegation” before the
23 period at the end; and

24 (iii) by adding at the end the fol-
25 lowing:

1 “(C) MAINTENANCE OF FINAL REPORTS.—
2 The Federal Bureau of Investigation shall
3 maintain a record of each written report sub-
4 mitted under subsection (b) in a manner in
5 which the report is accessible to—

6 “(i) a local law enforcement agency
7 that requires the information to carry out
8 an official duty; and

9 “(ii) any agency requesting the infor-
10 mation under section 408.

11 “(D) COLLECTION OF DATA.—Not less fre-
12 quently than once each year, the Secretary, in
13 consultation with the Attorney General and any
14 appropriate Indian tribe, shall collect any infor-
15 mation not otherwise reported under subsection
16 (b), including information relating to, during
17 the preceding calendar year—

18 “(i) the number of child abuse allega-
19 tions and investigations in Indian country;

20 “(ii) the number of child abuse pros-
21 ecutions declined or deferred in Indian
22 country; and

23 “(iii) the number of acquittals of
24 charges of child abuse in Indian country.”;
25 and

1 (2) by adding at the end the following:

2 “(e) CONFIDENTIALITY OF CHILDREN.—No local law
3 enforcement agency or local child protective services agen-
4 cy shall disclose the name of or information concerning
5 the child to anyone other than any person who, by reason
6 of their participation in the treatment of the child, the
7 investigation, or the adjudication of the allegation, needs
8 to know the information in the performance of the duties
9 of the individual.

10 “(f) REPORT TO CONGRESS.—Not later than 1 year
11 after the date of enactment of this subsection, and annu-
12 ally thereafter, the Director of the Federal Bureau of In-
13 vestigation, in coordination with the Secretary and the At-
14 torney General, shall submit to the Committees on Indian
15 Affairs and the Judiciary of the Senate, and the Commit-
16 tees on Resources and the Judiciary of the House of Rep-
17 resentatives, a report on child abuse in Indian country
18 during the preceding year.”.

19 **SEC. 5. REMOVAL OF IMPEDIMENTS TO REDUCING CHILD**
20 **ABUSE.**

21 Section 405 of the Indian Child Protection and Fam-
22 ily Violence Prevention Act (25 U.S.C. 3204) is amended
23 to read as follows:

1 **“SEC. 405. REMOVAL OF IMPEDIMENTS TO REDUCING**
2 **CHILD ABUSE.**

3 “(a) STUDY.—The Secretary, in consultation with
4 the Attorney General and the Service, shall conduct a
5 study under which the Secretary shall identify any impedi-
6 ment to the reduction of child abuse in Indian country
7 and on Indian reservations.

8 “(b) INCLUSIONS.—The study under subsection (a)
9 shall include a description of—

10 “(1) any impediment to reporting child abuse in
11 Indian country and on Indian reservations;

12 “(2) any impediment to, or advance in, Federal,
13 State, and tribal investigations and prosecutions of
14 allegations of child abuse in Indian country and on
15 Indian reservations; and

16 “(3) any impediment to, or advance in, the
17 treatment of child abuse in Indian country and on
18 Indian reservations.

19 “(c) REPORT.—Not later than 18 months after the
20 date of enactment of the Indian Child Protection and
21 Family Violence Prevention Act Amendments of 2005, the
22 Secretary shall submit to the Committees on Indian Af-
23 fairs and the Judiciary of the Senate, and the Committees
24 on Resources and the Judiciary of the House of Rep-
25 resentatives, a report describing—

1 “(1) the findings of the study under this sec-
2 tion; and

3 “(2) recommendations for legislative actions to
4 reduce instances of child abuse in Indian country
5 and on Indian reservations, if any.”.

6 **SEC. 6. CONFIDENTIALITY.**

7 Section 406 of the Indian Child Protection and Fam-
8 ily Violence Prevention Act (25 U.S.C. 3205) is amended
9 to read as follows:

10 **“SEC. 406. CONFIDENTIALITY.**

11 “Any Federal, State, or tribal government agency
12 that treats or investigates incidents of child abuse may
13 provide information and records to an officer of any other
14 Federal, State, or tribal government agency that requires
15 the information to carry out the duties of the officer, in
16 accordance with section 552a of title 5, United States
17 Code, section 361 of the Public Health Service Act (42
18 U.S.C. 264), the Family Educational Rights and Privacy
19 Act of 1974 (20 U.S.C. 1232g), part C of title XI of the
20 Social Security Act (42 U.S.C. 1320d et seq.), and other
21 applicable Federal law.”.

22 **SEC. 7. WAIVER OF PARENTAL CONSENT.**

23 Section 407 of the Indian Child Protection and Fam-
24 ily Violence Prevention Act (25 U.S.C. 3206) is amend-
25 ed—

1 (1) in subsection (a), by inserting “or forensic”
2 after “psychological”; and

3 (2) in subsection (c), by striking “advise” and
4 inserting “advice”.

5 **SEC. 8. CHARACTER INVESTIGATIONS.**

6 Section 408(b) of the Indian Child Protection and
7 Family Violence Prevention Act (25 U.S.C. 3207(b)) is
8 amended by striking “guilty to” and all that follows and
9 inserting the following: “guilty to, any offense under Fed-
10 eral, State, or tribal law involving—

11 “(1) a crime of violence;

12 “(2) sexual assault;

13 “(3) child abuse;

14 “(4) exploitation; or

15 “(5) sexual contact or prostitution.”.

16 **SEC. 9. INDIAN CHILD ABUSE TREATMENT GRANT PRO-**
17 **GRAM.**

18 Section 409 of the Indian Child Protection and Fam-
19 ily Violence Prevention Act (25 U.S.C. 3208) is amended
20 by striking subsection (e) and inserting the following:

21 “(e) **AUTHORIZATION OF APPROPRIATIONS.**—There
22 are authorized to be appropriated such sums as are nec-
23 essary to carry out this section for each of fiscal years
24 2006 through 2010.”.

1 **SEC. 10. INDIAN CHILD RESOURCE AND FAMILY SERVICES**
2 **CENTERS.**

3 Section 410 of the Indian Child Protection and Fam-
4 ily Violence Prevention Act (25 U.S.C. 3209) is amend-
5 ed—

6 (1) in subsection (a), by striking “area office”
7 and inserting “Regional Office”;

8 (2) in subsection (b), by striking “The Sec-
9 retary” and all that follows through “Human Serv-
10 ices” and inserting “The Secretary, the Secretary of
11 Health and Human Services, and the Attorney Gen-
12 eral”;

13 (3) in subsection (d)—

14 (A) in paragraph (4), by inserting “,
15 State,” after “Federal”; and

16 (B) in paragraph (5), by striking “agency
17 office” and inserting “Regional Office”;

18 (4) in subsection (e)—

19 (A) in paragraphs (1) and (2), by striking
20 the commas at the ends of the paragraphs and
21 inserting semicolons;

22 (B) by striking paragraph (3) and insert-
23 ing the following:

24 “(3) adolescent mental and behavioral health
25 (including suicide prevention and treatment);”;

1 (C) in paragraph (4), by striking the pe-
2 riod at the end and inserting a semicolon; and

3 (D) by adding at the end the following:

4 “(5) criminal prosecution; and

5 “(6) medicine.”;

6 (5) in subsection (f)—

7 (A) in the first sentence, by striking “The
8 Secretary” and all that follows through
9 “Human Services” and inserting the following:

10 “(1) ESTABLISHMENT.—The Secretary, in con-
11 sultation with the Service and the Attorney Gen-
12 eral”;

13 (B) in the second sentence—

14 (i) by striking “Each” and inserting
15 the following

16 “(2) MEMBERSHIP.—Each”; and

17 (ii) by striking “shall consist of 7
18 members” and inserting “shall be”;

19 (C) in the third sentence, by striking
20 “Members” and inserting the following:

21 “(3) COMPENSATION.—Members”; and

22 (D) in the fourth sentence, by striking
23 “The advisory” and inserting the following:

24 “(4) DUTIES.—Each advisory”;

25 (6) in subsection (g)—

1 (A) in the first sentence—

2 (i) by striking “Indian Child” and in-
3 serting the following:

4 “(1) IN GENERAL.—Indian Child”; and

5 (ii) by adding before the period at the
6 end the following: “(25 U.S.C. 450 et
7 seq.)”;

8 (B) by striking the second sentence and in-
9 serting the following:

10 “(2) CERTAIN REGIONAL OFFICES.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), if a Center is located in a
13 Regional Office of the Bureau that serves more
14 than 1 Indian tribe, an application to enter into
15 a grant, contract, or compact under the Indian
16 Self-Determination and Education Assistance
17 Act (25 U.S.C. 450 et seq.) to operate the Cen-
18 ter shall contain a consent form signed by an
19 official of each Indian tribe to be served under
20 the grant, contract, or compact.

21 “(B) ALASKA REGION.—Notwithstanding
22 subparagraph (A), for Centers located in the
23 Alaska Region, an application to enter into a
24 grant, contract, or compact described in that
25 subparagraph shall contain a consent form

1 signed by an official of each Indian tribe or
 2 tribal consortium that is a member of a grant,
 3 contract, or compact relating to an Indian child
 4 protection and family violence prevention pro-
 5 gram under the Indian Self-Determination and
 6 Education Assistance Act (25 U.S.C. 450 et
 7 seq.).”; and

8 (C) in the third sentence, by striking “This
 9 section” and inserting the following:

10 “(3) EFFECT OF SECTION.—This section”; and

11 (7) by striking subsection (h) and inserting the
 12 following:

13 “(h) AUTHORIZATION OF APPROPRIATIONS.—There
 14 are authorized to be appropriated such sums as are nec-
 15 essary to carry out this section for each of fiscal years
 16 2006 through 2010.”.

17 **SEC. 11. INDIAN CHILD PROTECTION AND FAMILY VIO-**
 18 **LENCE PREVENTION PROGRAM.**

19 Section 411 of the Indian Child Protection and Fam-
 20 ily Violence Prevention Act (25 U.S.C. 3210) is amend-
 21 ed—

22 (1) in subsection (c), by striking the subsection
 23 heading and inserting “COORDINATING INVESTIGA-
 24 TION, TREATMENT, AND PREVENTION OF CHILD
 25 ABUSE AND FAMILY VIOLENCE”;

1 (2) by redesignating subsections (f) through (i)
2 as subsections (e) through (h), respectively; and

3 (3) by striking subsection (h) (as redesignated
4 by paragraph (2)) and inserting the following:

5 “(h) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated such sums as are nec-
7 essary to carry out this section for each of fiscal years
8 2006 through 2010.”.

9 **SEC. 12. USE OF TELEMEDICINE.**

10 The Indian Child Protection and Family Violence
11 Prevention Act (25 U.S.C. 3201 et seq.) is amended by
12 adding at the end the following:

13 **“SEC. 412. USE OF TELEMEDICINE.**

14 “(a) CONTRACTS AND AGREEMENTS.—The Service is
15 authorized to enter into any contract or agreement for the
16 use of telemedicine with a public or private medical univer-
17 sity or facility, or any private practitioner, with experience
18 relating to pediatrics, including the diagnosis and treat-
19 ment of child abuse, to assist the Service with respect to—

20 “(1) the diagnosis and treatment of child abuse;

21 or

22 “(2) methods of training Service personnel in
23 diagnosing and treating child abuse.

1 “(b) ADMINISTRATION.—In carrying out subsection
2 (a), the Service shall, to the maximum extent prac-
3 ticable—

4 “(1) use existing telemedicine infrastructure;
5 and

6 “(2) give priority to Service units and medical
7 facilities operated pursuant to grants, contracts, or
8 compacts under the Indian Self-Determination and
9 Education Assistance Act (25 U.S.C. 450 et seq.)
10 that are located in, or providing service to, remote
11 areas of Indian country or Indian reservations.

12 “(c) INFORMATION AND CONSULTATION.—On receipt
13 of a request, the Service may provide to public and private
14 medical universities, facilities, and practitioners any infor-
15 mation or consultation on the treatment of Indian children
16 who have, or may have, been subject to abuse or neglect.

17 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated such sums as are nec-
19 essary to carry out this section for each of fiscal years
20 2006 through 2010.”.

21 **SEC. 13. CONFORMING AMENDMENTS.**

22 Section 1169 of title 18, United States Code, is
23 amended—

24 (1) in subsection (a)(1)—

1 (A) in subparagraph (B), by inserting “or
2 volunteering for” after “employed by”;

3 (B) in subparagraph (D)—

4 (i) by inserting “or volunteer” after
5 “child day care worker”; and

6 (ii) by striking “worker in a group
7 home” and inserting “worker or volunteer
8 in a group home”;

9 (C) in subparagraph (E), by striking “or
10 psychological assistant,” and inserting “psycho-
11 logical or psychiatric assistant, or mental or be-
12 havioral health professional;”;

13 (D) in subparagraph (F), by striking
14 “child” and inserting “individual”;

15 (E) by striking subparagraph (G), and in-
16 serting the following:

17 “(G) foster parent; or”; and

18 (F) in subparagraph (H), by striking “law
19 enforcement officer, probation officer” and in-
20 serting “law enforcement personnel, probation
21 officer, criminal prosecutor”; and

22 (2) in subsection (c), by striking paragraphs (3)
23 and (4) and inserting the following:

24 “(3) ‘local child protective services agency’ has
25 the meaning given the term in section 403 of the In-

1 dian Child Protection and Family Violence Preven-
2 tion Act (25 U.S.C. 3202); and

3 “(4) ‘local law enforcement agency’ has the
4 meaning given the term in section 403 of that Act.”.

○