



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

Dear Tribal Leader:

Tribes work hard to protect the safety and wellbeing of their children, especially when placing a child into foster care under a tribal court order. The Native American Children's Safety Act (NACSA) (Public Law 114-165), enacted in 2016, amends the Indian Child Protection and Family Violence Prevention Act to further ensure children's safety by requiring Indian Tribes to conduct background checks before placing children in foster care.

The Bureau of Indian Affairs (BIA) seeks to assist Indian Tribes in complying with NACSA by providing information on how to conduct background checks. The BIA has prepared the enclosed Draft NACSA Guidance, entitled *Background Checks For Foster Care Placements under NACSA*, for your review and input. The Draft NACSA Guidance is also available at the following website:

<https://www.bia.gov/as-ia/raca/regulations-and-other-documents-in-development>.

The BIA will be hosting the following Tribal consultation sessions to hear your input on this Draft NACSA Guidance:

<b>Date</b>	<b>Time</b>	<b>Location</b>
Wednesday, February 21, 2018	9:00 a.m. – 12:00 a.m. Local Time	National Indian Training Center 1011 Indian School Road, NW Albuquerque, New Mexico
Tuesday, February 27, 2018	9:00 a.m. – 12:00 a.m. Local Time	Mystic Lake Casino Hotel 2400 Mystic Lake Boulevard Prior Lake, Minnesota 55372
Tuesday, March 6, 2018	1:00 p.m. – 3:00 p.m. Eastern Time	(877) 716-4291 Passcode 6919058

Please RSVP to [consultation@bia.gov](mailto:consultation@bia.gov) if you plan to attend. As our schedule is still evolving, please periodically check the calendar on the above website for times and other updates.

Please provide any written input on the Draft NACSA Guidance, on March 16, 2017, by midnight to [consultation@bia.gov](mailto:consultation@bia.gov) or the address below:

Attn: NACSA Guidance  
Office of Regulatory Affairs & Collaborative Action  
Office of the Assistant Secretary – Indian Affairs  
1849 C Street NW  
Mail Stop 4660-MIB  
Washington, DC 20240

Once we incorporate your input, we plan to issue final guidance by NACSA's deadline of June 2018. Please feel free to contact Liz Appel at (202) 273-4680 if you would like any additional information on this effort.

Sincerely,



John Tahsuda  
Principal Deputy Assistant Secretary –  
Indian Affairs

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DRAFT FOR TRIBAL CONSULTATION – January 2018

**Guidance:  
Background Checks  
for  
Foster Care Placements under the  
Native American Children’s Safety Act  
(NACSA)**

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U.S. Department of the Interior  
Bureau of Indian Affairs

Prepared in collaboration with:

- ❖ U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau
- ❖ U.S. Department of Justice
  - ❖ Federal Bureau of Investigation Criminal Justice Information Services Division
  - ❖ Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART)
  - ❖ Office of Tribal Justice.

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## Guidance: Background Checks for Foster Care Placements under the Native American Children’s Safety Act (NACSA)

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This guidance is issued in accordance with the Native American Children’s Safety Act<sup>1</sup> (NACSA).

### I. Overview of the NACSA

The NACSA updates the Indian Child Protection and Family Violence Prevention Act<sup>2</sup> (Act), which requires background investigations (“background checks” or “character investigations”) of certain Federal and Tribal employees, or individuals being considered for employment, who have regular contact with or control over Indian children, when receiving funds under the Indian Self-Determination and Education Assistance Act<sup>3</sup> or the Tribally Controlled Schools Act of 1988<sup>4</sup>. The NACSA adds to §3207 *Character Investigations* of the Act a new paragraph (d) entitled “By tribal social services agency for foster care placements in tribal court proceedings.”

**Foster care placements** include 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, when the parent or Indian custodian cannot have the child returned on demand and the parental rights have not been terminated (or rights have been terminated but the child has not been permanently placed). This includes placement with relatives of the child or parents. Foster care placements may be in the form of a residential group home, a family home setting, or an institutional setting.

The NACSA extends the requirement for background checks to Tribal court **foster care placements** of Indian children. Previously, background checks were authorized by many states for non-Tribal foster care placements and tribal foster care placements under title IV-E. NACSA requires character investigations by tribal social services agencies for foster care placements in tribal court proceedings. Tribal social services agencies are required to conduct a background check on every adult (age 18 or over) living in a foster care home or working in a foster care institution to determine whether the individuals meet Federal standards and standards as the Tribe establishes in accordance with NACSA. “Tribal social services” is the agency of an Indian Tribe that has the primary responsibility for carrying out foster care licensing or approval for the Tribe. If BIA has the responsibility of out-of-home placements of Indian children, then NACSA applies. BIA does not license foster care home placements.

The NACSA requires Tribes to establish standards for foster care placement that include background checks consisting of: A criminal records check, including fingerprint-based checks of national crime information databases; a check of any abuse registries maintained by the Tribe; and a check of any child abuse and neglect registry maintained by the State in which the covered individual resides or previously resided in the

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<sup>1</sup> Native American Children’s Safety Act, Pub. L. 114-165, 130 Stat. 415 (June 3, 2016)).

<sup>2</sup> 25 U.S.C. 3201 et seq.

<sup>3</sup> 25 U.S.C. 5301 et seq.

<sup>4</sup> 25 U.S.C. 2501 et seq.

preceding five years. NACSA requirements emphasize the importance of Tribes creating and implementing foster home licensing standards, or updating Tribal codes and licensing standards, to ensure safety for children when parents are unable to provide for their welfare.

The NACSA further requires Tribes to establish procedures to periodically recertify homes or institutions in which foster care placements are made. Recertification should be aimed at ensuring: (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, including any covered individual who resides in the home or is employed at the institution.

In summary, the NACSA requires Tribes to:

- ✓ Conduct background checks for all foster care placements by Tribal social services agencies;
- ✓ Establish standards for foster care placements that include procedures for conducting background checks; and
- ✓ Establish procedures for periodically recertifying foster care homes and institutions.

This guidance is intended to help Tribes by:

- ✓ Recommending procedures for background checks of individuals residing in foster care homes or employed at foster care institutions, which Tribes may choose to incorporate into their Tribal placement standards;
- ✓ Recommending self-reporting requirements for foster care homes and institutions; and
- ✓ Recommending procedures for certifying compliance with the NACSA.

While the NACSA does not authorize background checks for emergency foster care placements, this guidance also provides some promising emergency foster care placement procedures used by Tribes to help to make sure children are placed in safe homes in an emergency.

The definitions in the NACSA (available at Appendix A) apply to this guidance.

## II. Background Checks for Foster Care Placements (Including Homes, Institutions, and Relative Care Placements)

Except [emergency placements], 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).

NACSA § 2, codified at 25 U.S.C. § 3207(d)(2)(A).

The NACSA requires Tribes to conduct a background check on all foster care placements, with the exception of emergency placements which are not authorized under the NACSA (see Section III.A of this guidance for promising practices for emergency placements). Specifically, Tribal social services must complete a criminal records check of everyone (age 18 or older) in the foster care home or institution and determine whether each individual meets the Tribe's standards of placement (which the NACSA requires the Tribe to establish) before approving any foster care placement or issuing a foster care license.

The standards [of placement] 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.

NACSA § 2, codified at 25 U.S.C. § 3207(d)(2)(B).

The Tribe’s standards for foster care placement must include requirements that the Tribal social services:

- Perform criminal records checks, including fingerprint-based-checks of national crime information databases; and
- Check any abuse registries maintained by the Tribe; and
- Check any child abuse and neglect registry<sup>5</sup> maintained by the State in which a “covered individual” resides and any other State in which a “covered individual” resided in the preceding 5 years.

The Tribe’s standards for foster care placement may include requirements that are more stringent than Federal standards

The Tribe determines how it uses the results of fingerprint and registry checks. However, the Tribe may not approve a foster care placement, or an employee of an institution, with an adult individual who resides in a foster family home or an employee of an institution who has been found by a Federal, State, or Tribal court to have committed any crime listed in **42 U.S.C. 671(a)(20)(a)(i) or (ii)**.

Tribes may not approve any foster care placement with an adult individual who resides in a foster family home or an employee of an institution who has been found by a Federal, State, or Tribal court to have a felony conviction for any of the following crimes:

*Committed at any time—*

- Child abuse or neglect;
- Spousal abuse;
- A crime against children (including child pornography); or
- A crime involving violence (including rape, sexual assault, or homicide, but not including other physical assault or battery).

*Committed within the past 5 years—*

- Physical assault;
- Battery; or
- Drug-related offense.

**42 U.S.C. 671(a)(20)(A)**

(i) ... a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery...;

(ii) ... a record check reveals a felony conviction for physical assault, battery, or a drug-related offense... committed within the past 5 years...

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<sup>5</sup> Most States maintain a central registry, which is a centralized database of child abuse and neglect investigation records. Central registries and the systematic record keeping of child abuse and neglect reports serve to assist in the identification and protection of abused and neglected children. Central registries are used by states to aid social services agencies including using the records to screen persons who will be entrusted with the care of children. For more information see <https://www.childwelfare.gov/topics/responding/resources-cps/central-registries/>

The Tribe may wish to include in its standards:

- additional results that disqualify an individual for placement;
- Who within the Tribe reviews and assesses the results of the character investigation;
- Processes by which background check information is safeguarded, maintained, and disposed according to Federal and Tribal law<sup>6</sup>; and
- How to handle various situations that may arise, such as where a conviction has been expunged.

## A. How to Conduct a Background Check

To best assess the suitability of potential caregivers to provide a safe home for children placed in their care Tribes should access Tribal, State, and Federal criminal database systems. No single system exists that captures all the information required for conducting character investigations of prospective foster and adoptive parents and other out-of-home caregivers, as well as any adults residing in the prospective caregivers' households.

Tribes should conduct all of the following searches when conducting a character investigation in compliance with the NACSA:

1. A fingerprint-based search of the national crime information database called the Federal Bureau of Investigation's (FBI's) Next Generation Identification system (NGI), which contains criminal history record information (CHRI; also known as the "Identity History Summary" or "rap sheet").
2. A check of the National Sex Offender Public Website (NSOPW).
3. A check of State Registries for Child Abuse and Neglect.
4. A check of Tribal Registries & Records.

### 1. National Crime Information Databases (Fingerprint Check)

#### **What These Records Include:**

The records in the FBI's NGI System include fingerprints and corresponding criminal history record information indexed in the Interstate Identification Index (III) System. The III is a national index of criminal histories throughout the United States maintained by the FBI at the Criminal Justice Information Services (CJIS) Division. The III System ties computerized criminal history record files

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<sup>6</sup> For information on State processes detailing the officials and entities that may have access to the confidential records of child abuse and neglect reports and investigations, the circumstances under which information may be disclosed, and the appropriate use of confidential information see, "Disclosure of Confidential Child Abuse and Neglect Records"

<https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/confide/>

of the FBI and the centralized files maintained by each State into a national system. Included in the index are criminal history records of arrests and court data voluntarily submitted by States, Tribal, and Federal agencies. If a search reveals an arrest but does not indicate how the case was disposed or adjudicated, Tribes should contact the State central record repository or the Federal or Tribal contributing agency for the information.

### **How to Access:**

To access national crime information databases using a **fingerprint-based search for authorized purposes**, Tribes have several choices:

- (i) The State criminal history record repository;
- (ii) The U.S. Department of Justice’s Tribal Access Program (TAP);
- (iii) An FBI-approved Channeler; or
- (iv) Directly to the FBI.

Each of these fingerprint submission options is discussed below and additional details are provided in Table 1 at Appendix B.

#### i. Through the State’s Criminal History Record Repository

Tribes may obtain access to national crime information databases through the State’s criminal history record repository. To do so, the Tribe must contact the State Criminal Justice Information Services (CJIS) Systems Officer (CSO) or State Identification Bureau and enter into one or more agreements to address the Tribe’s user rights and how the State will bill and audit the Tribe for access. (A list of State Identification Bureaus is available at: <https://www.fbi.gov/services/cjis/identity-history-summary-checks/state-identification-bureau-listing>). This method may also require assignment of a Z-ending Originating Agency Identifier (ORI), depending on the State’s requirements. This method is commonly used by Tribes and is a familiar model for both Tribes and States.

#### ii. Using the U.S. Department of Justice’s (DOJ) Tribal Access Program (TAP)

The DOJ launched the Tribal Access Program for National Crime Information (TAP) in August 2015 to provide Tribes an additional optional method to access national crime information databases. Participating Tribes receive an electronic kiosk that provides access to national systems. The TAP kiosk expedites fingerprint processing and usually provides results of the national fingerprint-based background checks relatively quickly. Tribes interested in participating in the TAP should contact the DOJ at [TRIBALACCESS@USDOJ.GOV](mailto:TRIBALACCESS@USDOJ.GOV).

Once selected as a DOJ TAP participant, a Tribe must execute a user fee Memorandum of Agreement/Billing Agreement with the FBI's CJIS Division. Participation in the TAP may also require assignment of a specific ORI.

iii. Using an FBI-approved Channeler

Tribes may use an FBI-approved Channeler, who works as an agent for authorized recipients, to conduct the national fingerprint-based checks. They submit fingerprints, receive the results of the criminal history checks from the FBI's NGI System, and forward those results to the authorized recipient.

This option requires a contract between the authorized recipient and the FBI-approved Channeler. A letter is sent by the Tribe to the FBI Compact Officer requesting approval to use one of the current FBI-approved Channelers. A current list of FBI-approved Channelers may be accessed at: [www.fbi.gov/services/cjis/compact-council/list-of-approved-channelers](http://www.fbi.gov/services/cjis/compact-council/list-of-approved-channelers).

Please note that some companies may conduct other types of background checks, but only FBI-approved Channelers may submit fingerprints to obtain CHRI contained in the FBI's NGI System.

iv. Directly through the FBI

Tribes may submit hard copy fingerprint cards directly to the FBI through the U.S. mail (for faster processing, Tribes may send by USPS Priority Mail or overnight delivery service). The FBI returns Identity History Summary responses to the tribe via the U.S. Postal Service, First Class Mail. This option requires a billing agreement between the Tribe and the FBI, and requires the Tribe to apply for an Originating Agency Identifier (ORI). Please note that this method is not an electronic process and results in slower response times.

## **2. National Sex Offender Public Website (NSOPW)**

### **What These Records Include:**

The NSOPW links public sex offender registration and notification systems of participating States, territories, and Tribes into one national search site. The information on the website is provided by each jurisdiction, so available search criteria are limited to what each individual jurisdiction may provide based on State, Territory or Tribal law and/or policies and procedures. While the Sex Offender Registration and Notification Act sets out a national standard for the information that must be made available, not all jurisdictions fully comply with these standards. Information about each State, Tribe and Territory's systems can be found on the Department of Justice, Sex Offender Sentencing, Monitoring, Apprehending, Registering and Track Office (SMART) website at: [www.smart.gov](http://www.smart.gov).

**How to Access:**

Tribes may access the National Sex Offender Public Website (NSOPW) at [www.nsopw.gov](http://www.nsopw.gov). By linking all the registries, NSOPW allows for nationwide searches of sex offender information, as well as local searches within a geographic radius. Individuals may also sign up to be notified of changes to sex offender registration information in their area.

### 3. State Child Abuse and Neglect Registries

**What These Records Include:**

Every State has procedures for maintaining records of child abuse and neglect. Most States maintain a central registry, which is a centralized database of child abuse and neglect investigation records. The information contained in central registries varies by State, usually the information includes the nature of the harm to the child; the name of the alleged perpetrator(s); and the findings of any investigations. Some States maintain all investigated reports of abuse and neglect in their central registries, while others maintain only substantiated reports.<sup>7</sup>

When a name appears on a state registry it does not necessarily mean that an individual was convicted of a crime. Even where an individual was not prosecuted or is found not guilty their name may remain in some State child abuse and neglect registries unless they have legally petitioned to have their name removed.

**How to Access:**

The NACSA requires a search of registries in each State in which the covered individual resides, and any other State in which the covered individual resided in the preceding 5 years. Access to information maintained in registries and department records also varies among States.<sup>8</sup> Generally the registries are not available to the public, but can be accessed by following each State's process for obtaining access. The Tribe should contact Child Protective Services, Department of Children and Family, Department of Human Services, or a similar agency in each relevant State for access. Third party websites may also offer lists of State contacts for child abuse registry background checks.

Approximately 30 States and the District of Columbia make information available to employers in the child care business for individuals applying to be child care or youth care providers, but such

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<sup>7</sup> For more information on State child abuse and neglect registries, see Child Welfare Information Gateway. (2014). Establishment and maintenance of central registries for child abuse reports. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau. <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/centreg/>

<sup>8</sup> See Child Welfare Information Gateway's Gateway (2013) Gateway's Disclosure of Confidential Child Abuse and Neglect Records: [https://www.childwelfare.gov/systemwide/laws\\_policies/statutes/confide.cfm](https://www.childwelfare.gov/systemwide/laws_policies/statutes/confide.cfm)

information is generally limited to whether there are substantiated or indicated reports of child maltreatment.<sup>9</sup>

#### 4. Tribal Abuse Registries

##### **How to Access:**

Tribes should contact the Tribal court and Tribal law enforcement for any Tribal court records (e.g., warrants, convictions) related to the covered individuals and, if applicable, search convictions and warrants posted on the Tribal website.

##### **What These Records Include:**

This information varies depending on the Tribe and the information maintained.

#### B. Ensuring Compliance with the NACSA Under Title IV-E

Tribes that receive funding through title IV-E and IV-B of the Social Security Act<sup>10</sup> (administered by the U.S. Department of Health and Human Services) for child welfare programs are required to license foster family homes and institutions and conduct criminal and child abuse background checks. The NACSA's requirements for background checks also apply to Tribes operating programs under title IV-E and IV-B. The NACSA and Title IV-E require child abuse and neglect registry checks and fingerprint-based checks of the national criminal information databases for individuals residing in prospective foster family homes. Both NACSA and Title IV-E disqualify an applicant if he or she or any household member was convicted of a crime that raises concerns about the family's ability to provide a safe and stable home environment for the child. However, the requirements in each law differ slightly.

The following table is intended to help Tribes operating Title IV-E and Title IV-B programs to comply with both the Federal program requirements and with the NACSA. The table recommends actions based on identifying the more stringent requirement with which to comply or, where each law has a component that is more stringent than the other, recommended actions based on a combination of the requirements. The following table focuses only on foster care placement as required under NACSA and Title IV-E .

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<sup>9</sup> Ibid.

<sup>10</sup> 42 U.S.C. 671(a)(20) (2015).

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	Title IV-E Requirement	NACSA Requirement	Recommended
Prior to approval of or placement of a child in a <i>foster home</i> , a background check must be conducted for:	Any prospective foster parent <sup>A</sup> and any other adult living in the foster home. <sup>B</sup>  For Tribes operating a kinship guardianship assistance program <sup>C</sup> : Any relative guardian and any other adult living in the home of a relative guardian.	Any individual over age 18 residing in the household in which a foster care placement will be made.	<u>All individuals over age 18 residing in a prospective foster family home.</u> <sup>A</sup>  For Tribes operating a kinship guardianship assistance program: Any relative guardian and any other adult living in the home of a relative guardian.
Prior to approval of or placement of a child in a <i>foster care institution</i> , a background check must be conducted for:	(No specific requirement except that the institution’s licensing file must contain documentation verifying that safety considerations with respect to the institution’s staff have been addressed).	Any individual over age 18 employed at the institution in which a foster care placement will be made.	<u>All individuals over age 18 residing employed at a foster care institution.</u>
When to conduct a criminal records check, including fingerprint-based checks of national crime information databases:	Before any prospective foster or adoptive parent may be approved for placement of a child, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child. <sup>D</sup>  Tribes operating a kinship guardianship assistance program: Before the relative guardian may receive kinship guardianship assistance payments on behalf of the child. <sup>E, F</sup>	Prior to approving the placement of a child (“no foster care placement shall be finally approved”) and prior to issuing a foster care license (“no foster care license shall be issued”)	Prior to approving the placement of a child <u>and prior to issuing a foster care license, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child.</u> <sup>B</sup> Tribes operating a kinship guardianship assistance program: Before the relative guardian may receive kinship guardianship assistance payments on behalf of the child. <sup>C</sup>
What <i>State</i> records to check:	Child abuse and neglect registries of the State in which a prospective parent or other adult living in the home resides or has resided in the preceding 5 years. <sup>G</sup>	Child abuse and neglect registries of State in which the covered individual resides, and any other State in which the covered individual resided in the preceding 5 years.	Child abuse and neglect registries of State in which the covered individual resides, and <u>any other State in which the covered individual resided in the preceding 5 years.</u> <sup>D</sup>
What <i>Tribal</i> records to check:	(No specific requirement.)	Any child abuse and neglect registry maintained by the Tribe.	Any child abuse and neglect registries maintained by a Tribe in whose jurisdiction a covered individual resides or has resided in the preceding 5 years.

<p>How to interpret the <i>results</i> of the background check:</p>	<p>For criminal record checks there is a permanent and a five-year prohibition on approval of a prospective foster or adoptive parent or prospective employee in a foster care institution as follows:</p> <p><b>Permanent prohibition</b> – No approval may be granted of a foster care home or a prospective foster or adoptive parent where a court of competent jurisdiction has determined the existence of a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence including rape, sexual assault, or homicide (excluding other physical assault or battery).</p> <p><b>Five-year prohibition:</b> No approval may be granted if a court of competent jurisdiction has determined one of the following felonies was committed in the past 5 years: physical assault, battery or a drug-related offense.</p> <p><b>Child abuse and neglect registry:</b> Title IV-E agencies have discretion in considering the results of the child abuse and neglect registry check and whether to approve the prospective foster or adoptive parent or other adult residing in the home.<sup>H</sup></p>	<p>NACSA prohibits a foster care placement if an adult individual who resides in a foster family home or an employee of an institution has been found by a Federal, State, or Tribal court to have committed any crime listed 42 U.S.C. 671(a)(20)(a)(i) or (ii). [See page 6, above for the list of crimes covered permanently and for a five-year period].</p>	<p>Prohibit a foster care placement if an adult individual who resides in a foster family home or an employee of an institution has been found by a Federal, State, or Tribal court to have committed any crime listed 42 U.S.C. 671(a)(20)(a)(i) or (ii), as a baseline.</p>
<p>Applicability to <i>emergency</i> placements:</p>	<p>Same provisions apply as for foster care.</p>	<p>No requirement.</p>	<p>Apply foster care background check requirements for emergency placements.</p>

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Recertification of foster family homes and institutions:	No requirement.	NACSA requires Tribes to recertify foster family homes and institutions periodically, including safety standards and background checks.	<u>Recertify foster family homes and institutions periodically, including safety standards and background checks, in compliance with NACSA.</u>
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<sup>A</sup> Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) [42 U.S.C. 671(a)(20)].

<sup>B</sup> The Child Abuse Prevention and Treatment Act (CAPTA) 42 U.S.C. 5106a(b)(2)(B)(xxii) (2010).

<sup>C</sup> The Title IV-E Guardianship Assistance Program (GAP) is a formula grant that helps States, Indian Tribes, Tribal Organizations and Tribal Consortia (hereafter “Tribes”) who opt to provide guardianship assistance payments for the care of children by relatives who have assumed legal guardianship of eligible children for whom they previously cared as foster parents. For those States and Tribes that opt to participate in the program, federal assistance may be used only to support the care of children discharged from foster care to legal guardianship who meet the eligibility requirements specified in the statute. Funds may also be used to support siblings of eligible children in certain situations as specified in the statute. Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351).

<sup>D</sup> Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248)

<sup>E</sup> 42 U.S.C. 671(a)(20)(C)

<sup>F</sup> If the IV-E agency has established an appropriate timeframe that such background checks remain valid and such timeframe has not expired for the foster parent who previously received the background checks and is now seeking to become a prospective relative guardian, the IV-E agency can consider the requirement of section 471(a)(20) of the Act met without conducting new background checks (Child Welfare Policy Manual 8.4F Q/A #13).

<sup>G</sup> 42 U.S.C. 671(a)(20)(B)

<sup>H</sup> For examples of state title IV-E agency requirements see “Background Checks for Prospective Foster, Adoptive, and Kinship Caregivers” (2015): <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/background/>

### III. Promising Practices Employed by Tribes for Emergency Placements

The NACSA does not authorize emergency placements; however, creating Tribal policies and precautions are critical to the safety of Indian children when emergency out-of-home placement is required because parents are unable to provide for the welfare of their children.

Promising practices some Tribes use include:

- Requiring all placements, emergency or otherwise, to undergo fingerprint-based background checks where authorized by law, without distinguishing the type of placement.
- Requiring persons serving as emergency placements to have a connection with the child or parents (e.g., as required in New York State).
- Securing relative placements in emergencies provides familiarity for the child during a turbulent time and promotes family preservation goals.
- Obtaining background checks of people who are potential future emergency placements where authorized by law, so that pre-checked placements are available on an emergency basis.
- Tribal licensing of individual foster parents before the need for a specific placement arises where authorized by law.
- Assigning a dedicated staff person to conduct background checks, conduct on-going site visits with placements, license and recertify placements, etc.
- Limiting emergency placement to 30 days or less.

Two additional promising practices employed by Tribes for emergency foster care placements are described below:

#### A. Emergency Shelters

During an emergency removal of a child from their home, when a relative placement or foster home is not immediately available, emergency shelters established in Tribal communities provide safe temporary placements for placement of Indian children. Either the Tribe or the State licenses each emergency shelter. Tribal staff at emergency shelters undergo background checks in compliance the Indian Child Protection and Family Violence Prevention Act if the Tribe receives funds under the Indian Self-Determination and Education Assistance Act or Tribally Controlled Schools Act of 1988. *See* 25 U.S.C. § 3207(c).

While emergency shelters are a critical resource in ensuring safety of Indian children when parents are unable to provide for their welfare, no Federal funding is currently available to establish or maintain emergency shelters.

## **B. Purpose Code X (Name-Based Criminal Records Search Followed by the Delayed Submission of Fingerprints for Emergency Placements)**

In October 2000, the National Crime Prevention and Privacy Compact (Compact) Council (Council) approved the Fingerprint Submission Requirements Rule (Rule)<sup>11</sup>, often referred to as Purpose Code X, to allow direct access to the III System for criminal history information prior to the delayed submission of fingerprints in exigent circumstances. Several States (such as Arizona, Montana, and Washington) and some Federal agencies are authorized to use the Rule to conduct preliminary name-based checks of the III System in emergency placement situations. The III name-based checks must be followed-up with a fingerprint submission within 15 calendar days from the date of the name-based check. For those States authorized to use the Rule, such checks are done through the State criminal history record repository.

In May 2015, the Council authorized the BIA to use Purpose Code X, on behalf of federally recognized Tribes, to access the III system on a delayed fingerprint submission basis when conducting criminal history record checks of residents with whom children are to be temporarily placed during exigent circumstances. The BIA's authority to utilize Purpose Code X is not intended to replace existing State laws or procedures governing such checks, but rather provide an option to those Tribes otherwise unable to obtain the criminal history information. For those federally-recognized Tribes, the BIA uses Purpose Code X to conduct the preliminary III name-based checks to provide Tribal police departments or Tribal social service agencies with 24-hour access to preliminary name-based criminal history record information within the III. The III name-based checks are only one factor used in determining the suitability of placing the child temporarily in the household. In accordance with the Council's Rule, applicant fingerprints must be submitted to the FBI within 15 calendar days from the date of the preliminary name-based check. Fingerprint submissions can be completed by any of the methods listed in Section II.A of this document.

If based on all other character investigation factors, the Tribal social services agency determines that an applicant is disqualified for emergency child placement and the child is not placed or is removed from the applicant's care, there is no expectation that fingerprints must be submitted within the specified timeframe. However, since a positive identification linking an individual to a criminal history record can only be made using fingerprints, a disqualified applicant should be given the opportunity to challenge the accuracy of the information in the record as provided in 28 CFR 50.12, by providing fingerprints even if a child placement is not made.

Federally-recognized Tribes interested in using the BIA's Purpose Code X authority must submit a request to the BIA Office of Justice Services (OJS) and include:

- The official name and address of the authorized agency requesting and receiving the CHRI.
- The method in which the follow-up fingerprints will be submitted to FBI.

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<sup>11</sup> 28 CFR part 901.

- A request for assignment of a T-ending ORI to the Tribal SSA.

The OJS then confirms the Tribe is authorized to access the CHRI and forwards the request to the FBI Compact Officer and the State CJIS Systems Officer (CSO), if applicable. If the request is approved, the FBI will assign the T-ending ORI and Z-ending ORI, if necessary. The FBI Compact Officer will provide the written approval to the OJS, and the OJS will provide a copy of the written approval to the Tribe.

#### IV. Self-Reporting by Foster Care Homes and Institutions

...Self-reporting requirements for foster care homes or institutions in which any covered individual... 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 [42 U.S.C. § 671(a)(20)(A) (i) or (ii)]; or
- (ii) is listed on [any abuse registries maintained by the Indian tribe or any child abuse and neglect registry maintained by the State in which the covered individual resides or resided in the preceding 5 years]...

NACSA § 2, codified at 25 U.S.C. § 3207(d)(5)(B).

The NACSA requires Tribes to establish self-reporting requirements for foster care homes or institutions in which any covered individual resides if the head of the household or the operator of the institution has knowledge that the covered individual committed one of the crimes listed at 42 U.S.C. § 671(a)(20)(A)(i) or (ii), or is listed on a Tribal or State child abuse and neglect registry.

Any operator of a foster care institution must require employees, as a condition of employment with the institution, to report to the operator if they are found to have committed any of the listed crimes or become listed on a Tribal or State registry.

Self-reporting requirements are typically outlined in a Placement Contract or Agreement between the social services program and foster care placement, including a requirement to report changes in the household, including if a new person age 18 or over moves into the home. Any head of the household of a foster care home should make known to covered individuals in the home that they should report to the head of the household if they are found to have committed any of the listed crimes or become listed on a Tribal or State registry.

## V. Certifying Compliance with the NACSA

The NACSA requires these Guidelines to establish procedures for Tribes to certify compliance with the NACSA. Specifically, Tribes must certify that they have established standards of placement for foster care homes and institutions. Recommended procedures for Tribes to certify compliance with the NACSA include:

- Outline the standards for foster care placement in P.L. 93-638 Contracts and Compacts/AFAs and Title IV-E Agreements regarding compliance with the Act.
- Incorporate standards for foster care placement into Tribal Codes.
- Use a checklist that verifies the individual elements of the NACSA are met prior to approving a foster care placement or issuing a foster care license.
- For each foster care home or other foster care placement, require a Tribal representative to verify compliance with the NACSA (using the checklist established above) and sign off on the verification.
- Approve the placement or license only after verifying compliance with the Act, including verification that:
  - All supporting documentation is on file;
  - The background check and registry checks were made and a favorable response to each was received;
  - Other licensing requirements (home study, safety plan, safety check on the home, medical exams, personal references, job-verification, etc.) are met; and
  - A recertification date is identified and appropriately documented.

The NACSA also requires Tribes to recertify foster family homes and institutions periodically, including safety standards and background checks. It is recommended that Tribes recertify each foster family home and institution at least annually and designate a specific individual as responsible for the recertification, with accountability for documenting and reporting the results of the recertification to another specified individual. Recommended procedures for Tribes to recertify each foster family home's and institution's compliance with the NACSA include:

- Verify the individual elements of the NACSA are met for each foster family home or institution.
- For each foster care home or other foster care placement, allow a Tribal representative to sign off and approve the placement or license only after verifying compliance with the Act, including verification that:
  - All supporting documentation is on file;
  - The background and registry checks of each individual living in the foster care home or employed by the foster care institution were made and a favorable response to each was received;
  - Other licensing requirements (home study, safety plan, safety check on the home, medical exams, personal references, job-verification, etc.) are met; and
  - A future recertification date is identified and appropriately documented.

## Appendix A

Indian Child Protection and Family Violence Prevention Act,  
As Amended by the Native American Children's Safety Act (paragraph (d))  
25 U.S.C. 3207

### §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 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 [sic] (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-

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(I) resides in the home or is employed at the institution on the date on which the procedures established under subparagraph (A) commences; <sup>1</sup> 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.

Appendix B

**Fingerprint Submission Options for Tribes  
Noncriminal Justice Background Checks for Employment and Licensing**

STATE REPOSITORY	DOJ TRIBAL ACCESS PROGRAM	FBI-APPROVED CHANNELER*	DIRECT TO FBI
<p>Agreements</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Contact CJIS TEP for State CSO contact information</li> <li><input type="checkbox"/> Contact State CSO</li> <li><input type="checkbox"/> Applicable agreements with State Repository, may include billing agreements and/or MOU</li> </ul>	<p>Agreements</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Billing Agreement with FBI</li> </ul>	<p>Agreements</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Contract with Channeler to include billing agreement</li> <li><input type="checkbox"/> Request Letter to FBI Compact Officer for approval to outsource Channeling function</li> </ul>	<p>Agreements</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Billable Memorandum of Agreement with FBI</li> </ul>
<p>Cost of Fingerprint Submission</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> \$12.00 (this fee is subject to change) + State Fee, where applicable</li> </ul>	<p>Cost of Fingerprint Submission</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> \$12.00 (this fee is subject to change)</li> </ul>	<p>Cost of Fingerprint Submission</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> \$12.00 (this fee is subject to change) + Channelers Fee (Fees vary by Channeler)</li> </ul>	<p>Cost of Fingerprint Submission</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> \$12.00 (this fee is subject to change)</li> </ul>
<p>Fingerprint Cards</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Work with State on method of collection (hard copy or livescan)</li> <li><input type="checkbox"/> Tribe orders FD-258 fingerprint cards online at FBI.gov</li> <li><input type="checkbox"/> Coordinate with State on receipt of cards from Tribe (mail/e-mail/etc.)</li> <li><input type="checkbox"/> State submits fingerprints electronically to FBI's NGI System</li> </ul>	<p>Fingerprint Cards</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> DOJ TAP Kiosk is available for electronic fingerprint submission to FBI</li> <li><input type="checkbox"/> Tribe collects prints                             <ul style="list-style-type: none"> <li><input type="checkbox"/> Fingerprints electronically collected through kiosk or</li> <li><input type="checkbox"/> Fingerprints may be obtained on an FD-258 fingerprint card and submitted electronically through the DOJ TAP kiosk</li> </ul> </li> </ul>	<p>Fingerprint Cards</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Cards provided by Channeler</li> <li><input type="checkbox"/> Work with Channeler on method of fingerprint capture (hard copy or livescan)</li> <li><input type="checkbox"/> Work with Channeler on submission process</li> <li><input type="checkbox"/> Channeler converts any hard cards received to electronic format</li> <li><input type="checkbox"/> Channeler submits electronically to FBI's NGI System</li> </ul>	<p>Fingerprint Cards</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Tribe orders FD-258 fingerprint cards online at FBI.gov</li> <li><input type="checkbox"/> Tribe collects prints (if livescan device, can take prints electronically and print onto the hard cards)</li> <li><input type="checkbox"/> Tribe mails cards directly to FBI</li> <li><input type="checkbox"/> Manual processing at the FBI – will take longer (manual in/manual out)</li> </ul>
<p>Tribe will receive CHRI results as agreed upon with State by mail/e-mail, etc.</p>	<p>Tribe will receive CHRI results via the Law Enforcement Enterprise Portal</p>	<p>Tribe will receive CHRI results via U.S. Mail, e-mail, or website (depends on Channelers process)</p> <p>CHRI must be sent to the Tribe. A Channeler may NOT send CHRI directly to a Contractor or Vendor.</p>	<p>Tribe will receive CHRI results received via U.S. Mail</p>
<p>FBI will triennially audit the State and may audit the Tribe</p> <p>State will audit the Tribe in accordance with their State audit plan</p>	<p>Tribe subject to FBI Audit</p>	<p>FBI will triennially audit the Channeler and may audit Tribe</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Tribe may audit Channeler to the Outsourcing Standard for Channelers or any contract requirements</li> </ul>	<p>Tribe subject to FBI Audit</p>

\*A Channeler is a contractor who has a direct connection with the FBI to pass fingerprint submissions and receive CHRI.

List of FBI-approved Channelers is located at:

[www.fbi.gov/services/cjis/compact-council/list-of-approved-channelers](http://www.fbi.gov/services/cjis/compact-council/list-of-approved-channelers)

Security and Management Outsourcing Standard for Channelers (Outsourcing Standard) is located at:

[www.fbi.gov/file-repository/security-and-management-control-outsourcing-standard-for-channelers-2.pdf/view](http://www.fbi.gov/file-repository/security-and-management-control-outsourcing-standard-for-channelers-2.pdf/view)

CJIS Security Policy is located at: [www.fbi.gov/services/cjis/cjis-security-policy-resource-center](http://www.fbi.gov/services/cjis/cjis-security-policy-resource-center)

Contact CJIS TEP at: [CJISTRIBALOUTREACH@FBI.GOV](mailto:CJISTRIBALOUTREACH@FBI.GOV)

Acronyms:

CJIS TEP – Criminal Justice Information Services Division Tribal Engagement Program

CSO – CJIS Systems Officer

MOU – Memorandum of Understanding

CHRI – Criminal History Record Information

TAP – Tribal Access Program