

**Draft Guidance: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



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

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Overview of NACSA

- Native American Children's Safety Act (NACSA)
 - Enacted in June 2016
 - Amends the Indian Child Protection and Family Violence Prevention Act
 - Imposes new requirements on Tribal social services agencies related to background checks and standards for foster care placements of Indian children

Overview of NACSA: Terminology

- “Foster care placement”
 - 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
 - Parental rights have not been terminated; or
 - Parental rights have been terminated but the child has not been permanently placed.

Overview of NACSA: Terminology (continued)

- “Indian child”*
 - Any child who:
 - Is a member of a federally recognized Tribe OR
 - Is eligible for membership in a federally recognized Tribe and whose parent is a member of a federally recognized Tribe.

*Source: 25 U.S.C. 3202(7), incorporating definition at 25 U.S.C. 1903(4).
- “Tribal social services”
 - The agency of an Indian Tribe that has the primary responsibility for carrying out foster care licensing or approval for the Tribe

Overview of NACSA: Terminology (continued)

- “Covered individual”
 - Any individual 18 years of age or older; and
 - Any individual who the Tribal social services agency determines is subject to a criminal records check.

Overview of NACSA: NACSA's Three Main Requirements

- Native American Children's Safety Act (NACSA) requires:
 1. Tribal social services agencies to **conduct background checks** on foster care placements ordered in Tribal court proceedings for Indian children
 2. Tribes to establish **standards for foster care placements** that include procedures for conducting background checks; and
 3. Tribes to establish **procedures for periodically recertifying** foster care homes and institutions.

Draft NACSA Guidance

- NACSA requires DOI to consult and issue guidance
 - Current version of guidance is in DRAFT
 - BIA developed with DOJ, FBI, HHS
 - Will be revised based on comments and questions received during this consultation process
- Final Guidance due to Tribes by June 3, 2018
 - Deadline imposed by NACSA
- Will be made available on BIA website
- BIA will provide training for Tribes on the Final Guidance

Draft NACSA Guidance: Goals

- Primary goal of the Guidance:
 - Help Tribes meet NACSA's requirements
- Specific goals include providing recommendations on:
 - Procedures Tribal social services agencies can use to conduct background checks of "covered individuals" residing in foster care homes or employed at foster care institutions,
 - Which Tribes may choose to incorporate into their Tribal placement standards

Draft NACSA Guidance: Goals (cont'd)

- Specific goals of the Guidance include providing recommendations on (continued):
 - Self-reporting requirements Tribes may recommend for foster care homes and institutions; and
 - Procedures Tribes may recommend for foster care homes and institutions to certify compliance with the NACSA.

Draft NACSA Guidance: Applicability to Emergency Proceedings

- NACSA does not authorize background checks for emergency foster care placements, but:
 - The Guidance notes some “promising practices” for emergency foster care placement procedures currently used by Tribes to help to make sure children are placed in safe homes in an emergency

Draft NACSA Guidance: NACSA Background Check Requirements

- NACSA requires Tribal social services to:
 - Complete a criminal records check of each “covered individual” (age 18 or older) in the foster-care home or institution; and
 - Conclude whether each “covered individual” meets the Tribe’s standards of placement (which NACSA requires the Tribe to establish) before approving any foster-care placement of an Indian child or issuing a foster-care license

Draft NACSA Guidance: NACSA Background Check Requirements (cont'd)

- NACSA requires Tribes' standards of placement to require Tribal social services to:
 - Perform criminal records checks (including fingerprint-based checks of national crime information databases);
 - Check any abuse registries maintained by the Tribe; and
 - Check any child abuse and neglect registry 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.

Draft NACSA Guidance: Background Checks for Foster-Care Placements

- Tribe may include in its standards any additional requirements (requirements more stringent than what NACSA requires):
 - If the Tribe determines them necessary and permissible within its authority
 - Such as the creation of voluntary agreements with State entities to facilitate sharing of information for performing criminal records checks.
- The Draft Guidance includes examples of what a Tribe may wish to include in its standards.

Draft NACSA Guidance: Background Checks for Foster-Care Placements (cont'd)

- What to Look for in Background Checks
 - Tribal social services agencies may not approve a foster-care placement with a covered individual who has been found by a Federal, State, or Tribal court to have a **felony conviction** for a crime:
 - *Committed at any time:* Child abuse or neglect; spousal abuse; crime against children (including child pornography); crime involving violence (including rape, sexual assault, or homicide, but not other physical assault or battery).
 - *Committed within the past 5 years:* Physical assault; battery; or drug-related offense.

Draft NACSA Guidance: How to Conduct Background Checks

- No single system captures all the information required for conducting character investigations
- Draft Guidance recommends Tribes conduct:
 1. A fingerprint-based search of the national crime information database (called the FBI's Next Generation Identification system (NGI))
 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.

Draft NACSA Guidance: How to Conduct Background Checks (cont'd)

1. National Crime Information Database (Fingerprint Check)
 - *Includes:* Criminal history records of arrests and court data throughout the U.S., maintained by the FBI, and centralized files maintained and voluntarily submitted by States and Tribes
 - *Limitation:* Includes only State and Tribal files that States and Tribes voluntarily choose to submit

Draft NACSA Guidance: How to Conduct Background Checks (cont'd)

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

- *Access:* The system may be accessed through-
 - State criminal history record repository
 - U.S. DOJ's Tribal Access Program (TAP)
 - FBI-approved Channeler
 - Directly with the FBI
- Each of these is described in detail in the Guidance

Draft NACSA Guidance: How to Conduct Background Checks (cont'd)

2. A check of the National Sex Offender Public Website (NSOPW)

- *Includes:* Information on sex offenders provided by participating States, territories, and Tribes on one national search site. Allows nationwide searches and local searches within a geographic radius.
- *Limitation:* The available search criteria are limited to what each individual jurisdiction may provide.
- *Access:* Website at www.nsopw.gov

Draft NACSA Guidance: How to Conduct Background Checks (cont'd)

3. A check of State Registries for Child Abuse and Neglect.
 - Every State has procedures for keeping records of child abuse and neglect. Most States have a central registry.
 - *Includes:* The information varies by State but usually includes the nature of harm to the child, name of the alleged perpetrator(s), and investigation findings.
 - *Limitation:* Some States may restrict access.
 - *Access:* Contact the State agency (e.g., Child Protective Services, Department of Children and Family, Department of Human Services).

Draft NACSA Guidance: How to Conduct Background Checks (cont'd)

4. A check of Tribal Registries & Records.

- *Includes:* Generally, warrants and convictions. Information available depends upon the Tribe and the information maintained.
- *Limitation:* Access to records of other Tribes may be restricted.
- *Access:* Contact Tribal court and Tribal law enforcement and, if applicable, search convictions and warrants posted on the Tribal website

Draft NACSA Guidance: Background Checks for Foster-Care Placements

- NACSA and Title IV-E Requirements
 - Title IV-E & IV-B also include requirements for conducting background checks and licensing foster-family homes
 - Tribes receiving funding through Title IV-E and Title IV-B must comply with both NACSA and the Title IV-E/IV-B requirements
 - Draft Guidance includes a table to help Tribes comply

Draft NACSA Guidance: Emergency Placements

- NACSA does not authorize emergency placements, but recognizes that Tribal laws and policies are critical to the safety of Indian children when emergency out-of-home placement is required
- Guidance lists “promising practices” for emergency placements and highlights two:
 - Emergency shelters
 - Purpose Code X

Draft NACSA Guidance: Emergency Placements (cont'd)

- Emergency Shelters
 - Safe, temporary placements when relative placements or foster homes are not immediately available
 - May be licensed by the Tribe or State
 - Tribal staff undergo background checks
 - Limitation: No Federal funding is currently available to establish or maintain emergency shelters

Draft NACSA Guidance: Emergency Placements (cont'd)

- Purpose Code X
 - Name-based criminal records search followed by the delayed submission of fingerprints for emergency placements
 - Fingerprints must be submitted within 15 calendar days
 - Authority to use Purpose Code X
 - BIA on behalf of Tribes in absence of State laws & procedures for obtaining criminal history
 - AZ, MT, and WA

Draft NACSA Guidance: Emergency Placements (cont'd)

- To participate in Purpose Code X through BIA:
 - Submit a request to BIA's Office of Justice Services (OJS)
 - Name and address of requesting agency
 - Method by which follow-up fingerprints will be submitted to FBI
 - OJS then confirms the Tribe is authorized and coordinates with FBI for approval and issuance of an ORI

Draft NACSA Guidance: Self-Reporting

- The Draft Guidance establishes self-reporting requirements for foster-care homes and institutions in which a covered individual resides.
 - Foster-care homes and institutions must report:
 - If head of the household or operator of the institution has knowledge that an adult living/working there:
 - Committed one of the listed crimes; or
 - Is listed on a Tribal or State child abuse & neglect registry
 - Any operator of an institution should require employees, as a condition of employment, to self-report
- Self-reporting requirements may be in placement contract or agreement

Draft NACSA Guidance: Certifying Compliance

- NACSA requires Tribes to certify their compliance
- Guidance recommends procedures for Tribes to use to certify, including, for example:
 - Outlining foster-care placement standards in PL 93-638 contracts/compacts and Title IV-E agreements
 - Incorporating foster-care placement standards into Tribal codes

Draft NACSA Guidance: Certifying Compliance (cont'd)

(continued)

- Using a checklist that verifies individual elements of NACSA are met prior to approving a foster-care placement or issuing a foster-care license
- Requiring a Tribal representative to verify the checklist items are met

Draft NACSA Guidance: Re-Certification

- NACSA requires Tribes to establish procedures by June 3, 2018, to recertify foster-care homes & institutions
- Guidance recommends:
 - Recertifying at least annually
 - Designating a specific individual as responsible for documenting recertification and reporting to another specific individual
 - Identifying and documenting when the next recertification review will occur

Comments

- If you have written input, please provide by 03/16/2018
 - to consultation@bia.gov
- BIA must issue final guidance by June 3, 2018

Questions?

- **Contact Information**

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