

110TH CONGRESS  
1ST SESSION

# S. 398

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.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 25, 2007

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

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## 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 2007”.

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 or volunteer who has access to chil-  
 11 dren;”; and

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

14 **SEC. 3. DEFINITIONS.**

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

18 (1) by redesignating paragraphs (6) through  
 19 (18) as paragraphs (7) through (19), respectively;

20 (2) by inserting after paragraph (5) the fol-  
 21 lowing:

22 “(6) ‘final conviction’ means the final judgment  
 23 on a verdict or finding of guilty, a plea of guilty, or  
 24 a plea of nolo contendere, but does not include a

1 final judgment that has been expunged by pardon,  
2 reversed, set aside, or otherwise rendered void;”;

3 (3) in paragraph (13) (as redesignated by para-  
4 graph (1)), by striking “that agency” and all that  
5 follows through “Indian tribe” and inserting “the  
6 Federal, State, or tribal agency”;

7 (4) in paragraph (14) (as redesignated by para-  
8 graph (1)), 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 (5) in paragraph (18) (as redesignated by para-  
15 graph (1)), by striking “and” at the end;

16 (6) in paragraph (19) (as redesignated by para-  
17 graph (1)), by striking the period at the end and in-  
18 serting “; and”; and

19 (7) by adding at the end the following:

20 “(20) ‘telemedicine’ means a telecommuni-  
21 cations link to an end user through the use of eligi-  
22 ble equipment that electronically links health profes-  
23 sionals or patients and health professionals at sepa-  
24 rate sites in order to exchange health care informa-  
25 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 final convic-  
22 tion, and provide to the Federal Bu-  
23 reau of Investigation a copy of the re-  
24 port” before the period at the end;  
25 and

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

3 “(C) MAINTENANCE OF FINAL REPORTS.—

4 The Federal Bureau of Investigation shall  
5 maintain a record of each written report sub-  
6 mitted under this subsection or subsection (b)  
7 in a manner in which the report is accessible  
8 to—

9 “(i) a local law enforcement agency  
10 that requires the information to carry out  
11 an official duty; and

12 “(ii) any agency requesting the infor-  
13 mation under section 408.

14 “(D) REPORT TO CONGRESS.—Not later  
15 than 1 year after the date of enactment of this  
16 subsection, and annually thereafter, the Direc-  
17 tor of the Federal Bureau of Investigation, in  
18 coordination with the Secretary and the Attor-  
19 ney General, shall submit to the Committees on  
20 Indian Affairs and the Judiciary of the Senate  
21 and the Committees on Natural Resources and  
22 the Judiciary of the House of Representatives a  
23 report on child abuse in Indian country during  
24 the preceding year.

1           “(E) COLLECTION OF DATA.—Not less fre-  
2           quently than once each year, the Secretary, in  
3           consultation with the Secretary of Health and  
4           Human Services, the Attorney General, the Di-  
5           rector of the Federal Bureau of Investigation,  
6           and any Indian tribe, shall—

7                   “(i) collect any information con-  
8                   cerning child abuse in Indian country (in-  
9                   cluding reports under subsection (b)), in-  
10                  cluding information relating to, during the  
11                  preceding calendar year—

12                           “(I) the number of criminal and  
13                           civil child abuse allegations and inves-  
14                           tigations in Indian country;

15                           “(II) the number of child abuse  
16                           prosecutions referred, declined, or de-  
17                           ferred in Indian country;

18                           “(III) the number of child vic-  
19                           tims who are the subject of reports of  
20                           child abuse in Indian country;

21                           “(IV) sentencing patterns of indi-  
22                           viduals convicted of child abuse in In-  
23                           dian country; and

1                   “(V) rates of recidivism with re-  
2                   spect to child abuse in Indian country;  
3                   and

4                   “(ii) to the maximum extent prac-  
5                   ticable, reduce the duplication of informa-  
6                   tion collection under clause (i).”; and

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

8                   “(e) CONFIDENTIALITY OF CHILDREN.—No local law  
9                   enforcement agency or local child protective services agen-  
10                  cy shall disclose the name of, or information concerning,  
11                  the child to anyone other than—

12                  “(1) a person who, by reason of the participa-  
13                  tion of the person in the treatment of the child or  
14                  the investigation or adjudication of the allegation,  
15                  needs to know the information in the performance of  
16                  the duties of the individual; or

17                  “(2) an officer of any other Federal, State, or  
18                  tribal agency that requires the information to carry  
19                  out the duties of the officer under section 406.

20                  “(f) REPORT.—Not later than 1 year after the date  
21                  of enactment of this subsection, and annually thereafter,  
22                  the Secretary shall submit to the Committees on Indian  
23                  Affairs and the Judiciary of the Senate and the Commit-  
24                  tees on Natural Resources and the Judiciary of the House

1 of Representatives a report on child abuse in Indian coun-  
2 try during the preceding year.

3 “(g) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated such sums as are nec-  
5 essary to carry out this section for each of fiscal years  
6 2008 through 2012.”.

7 **SEC. 5. REMOVAL OF IMPEDIMENTS TO REDUCING CHILD**  
8 **ABUSE.**

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

12 **“SEC. 405. REMOVAL OF IMPEDIMENTS TO REDUCING**  
13 **CHILD ABUSE.**

14 “(a) STUDY.—The Secretary, in consultation with  
15 the Attorney General and the Service, shall conduct a  
16 study under which the Secretary shall identify any impedi-  
17 ment to the reduction of child abuse in Indian country  
18 and on Indian reservations.

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

21 “(1) any impediment, or recent progress made  
22 with respect to removing impediments, to reporting  
23 child abuse in Indian country;

24 “(2) any impediment, or recent progress made  
25 with respect to removing impediments, to Federal,

1 State, and tribal investigations and prosecutions of  
2 allegations of child abuse in Indian country; and

3 “(3) any impediment, or recent progress made  
4 with respect to removing impediments, to the treat-  
5 ment of child abuse in Indian country.

6 “(c) REPORT.—Not later than 18 months after the  
7 date of enactment of the Indian Child Protection and  
8 Family Violence Prevention Act Amendments of 2007, the  
9 Secretary shall submit to the Committees on Indian Af-  
10 fairs and the Judiciary of the Senate, and the Committees  
11 on Natural Resources and the Judiciary of the House of  
12 Representatives, a report describing—

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

15 “(2) recommendations for legislative actions, if  
16 any, to reduce instances of child abuse in Indian  
17 country.”.

18 **SEC. 6. CONFIDENTIALITY.**

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

22 **“SEC. 406. CONFIDENTIALITY.**

23 “(a) IN GENERAL.—Notwithstanding any other pro-  
24 vision of law, any Federal, State, or tribal government  
25 agency that treats or investigates incidents of child abuse

1 may provide information and records to an officer of any  
2 other Federal, State, or tribal government agency that re-  
3 quires the information to carry out the duties of the offi-  
4 cer, in accordance with section 552a of title 5, United  
5 States Code, section 361 of the Public Health Service Act  
6 (42 U.S.C. 264), the Family Educational Rights and Pri-  
7 vacy Act of 1974 (20 U.S.C. 1232g), part C of title XI  
8 of the Social Security Act (42 U.S.C. 1320d et seq.), and  
9 other applicable Federal law.

10 “(b) TREATMENT OF INDIAN TRIBES.—For purposes  
11 of this section, an Indian tribal government shall be con-  
12 sidered to be an entity of the Federal Government.”.

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

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

17 (1) in subsection (a), by inserting “and foren-  
18 sic” after “psychological”; and

19 (2) by striking subsection (c) and inserting the  
20 following:

21 “(c) PROTECTION OF CHILD.—Any examination or  
22 interview of a child who may have been the subject of child  
23 abuse shall—

1           “(1) be conducted under such circumstances  
2           and using such safeguards as are necessary to mini-  
3           mize additional trauma to the child;

4           “(2) avoid, to the maximum extent practicable,  
5           subjecting the child to multiple interviewers during  
6           the examination and interview processes; and

7           “(3) as time permits, be conducted using advice  
8           from, or under the guidance of—

9                   “(A) a local multidisciplinary team estab-  
10                   lished under section 411; or

11                   “(B) if a local multidisciplinary team is  
12                   not established under section 411, a multidisci-  
13                   plinary team established under section 410.”.

14 **SEC. 8. CHARACTER INVESTIGATIONS.**

15           Section 408 of the Indian Child Protection and Fam-  
16           ily Violence Prevention Act (25 U.S.C. 3207) is amend-  
17           ed—

18                   (1) in subsection (a)—

19                           (A) in paragraph (1)—

20                                   (i) by inserting “, including any vol-  
21                                   untary positions,” after “authorized posi-  
22                                   tions”; and

23                                   (ii) by striking the comma at the end  
24                                   and inserting a semicolon; and

25                           (B) in paragraph (2)—

1 (i) by inserting “(including in a volun-  
 2 teer capacity)” after “considered for em-  
 3 ployment”; and

4 (ii) by striking “, and” and inserting  
 5 “; and”;

6 (2) in subsection (b), by striking “guilty to”  
 7 and all that follows and inserting the following:  
 8 “guilty to, any felony offense under Federal, State,  
 9 or tribal law, or 2 or more misdemeanor offenses  
 10 under Federal, State, or tribal law, involving—

11 “(1) a crime of violence;

12 “(2) sexual assault;

13 “(3) child abuse;

14 “(4) molestation;

15 “(5) child sexual exploitation;

16 “(6) sexual contact;

17 “(7) child neglect;

18 “(8) prostitution; or

19 “(9) another offense against a child.”; and

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

21 “(d) EFFECT ON CHILD PLACEMENT.—An Indian  
 22 tribe that submits a written statement to the applicable  
 23 State official documenting that the Indian tribe has con-  
 24 ducted a background investigation under this section for  
 25 the placement of an Indian child in a tribally-licensed or

1 tribally-approved foster care or adoptive home, or for an-  
 2 other out-of-home placement, shall be considered to have  
 3 satisfied the background investigation requirements of any  
 4 Federal or State law requiring such an investigation.”.

5 **SEC. 9. INDIAN CHILD ABUSE TREATMENT GRANT PRO-**  
 6 **GRAM.**

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

10 “(e) AUTHORIZATION OF APPROPRIATIONS.—There  
 11 are authorized to be appropriated such sums as are nec-  
 12 essary to carry out this section for each of fiscal years  
 13 2008 through 2012.”.

14 **SEC. 10. INDIAN CHILD RESOURCE AND FAMILY SERVICES**  
 15 **CENTERS.**

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

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

21 (2) in subsection (b), by striking “The Sec-  
 22 retary” and all that follows through “Human Serv-  
 23 ices” and inserting “The Secretary, the Secretary of  
 24 Health and Human Services, and the Attorney Gen-  
 25 eral”;

1 (3) in subsection (d)—

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

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

6 (4) in subsection (e)—

7 (A) in paragraph (2), by striking the  
8 comma at the end and inserting a semicolon;

9 (B) by striking paragraph (3) and insert-  
10 ing the following:

11 “(3) adolescent mental and behavioral health  
12 (including suicide prevention and treatment);”;

13 (C) in paragraph (4), by striking the pe-  
14 riod at the end and inserting “and sexual as-  
15 sault;”; and

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

17 “(5) criminal prosecution; and

18 “(6) medicine.”;

19 (5) in subsection (f)—

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

23 “(1) ESTABLISHMENT.—The Secretary, in con-  
24 sultation with the Service and the Attorney Gen-  
25 eral”;

1 (B) in the second sentence—

2 (i) by striking “Each” and inserting  
3 the following

4 “(2) MEMBERSHIP.—Each”; and

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

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

9 “(3) COMPENSATION.—Members”; and

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

12 “(4) DUTIES.—Each advisory”;

13 (6) in subsection (g)—

14 (A) by striking “(g)” and all that follows  
15 through “Indian Child Resource” and inserting  
16 the following:

17 “(g) APPLICATION OF INDIAN SELF-DETERMINA-  
18 TION AND EDUCATION ASSISTANCE ACT TO CENTERS.—

19 “(1) IN GENERAL.—Indian Child Resource”;

20 (B) in the first sentence, by striking “Act”  
21 and inserting “and Education Assistance Act  
22 (25 U.S.C. 450 et seq.)”;

23 (C) by striking the second sentence and in-  
24 serting the following:

25 “(2) CERTAIN REGIONAL OFFICES.—

1           “(A) IN GENERAL.—Except as provided in  
2           subparagraph (B), if a Center is located in a  
3           Regional Office of the Bureau that serves more  
4           than 1 Indian tribe, an application to enter into  
5           a grant, contract, or compact under the Indian  
6           Self-Determination and Education Assistance  
7           Act (25 U.S.C. 450 et seq.) to operate the Cen-  
8           ter shall contain a consent form signed by an  
9           official of each Indian tribe to be served under  
10          the grant, contract, or compact.

11          “(B) ALASKA REGION.—Notwithstanding  
12          subparagraph (A), for Centers located in the  
13          Alaska Region, an application to enter into a  
14          grant, contract, or compact described in that  
15          subparagraph shall contain a consent form  
16          signed by an official of each Indian tribe or  
17          tribal consortium that is a member of a grant,  
18          contract, or compact relating to an Indian child  
19          protection and family violence prevention pro-  
20          gram under the Indian Self-Determination and  
21          Education Assistance Act (25 U.S.C. 450 et  
22          seq.).”; and

23          (D) in the third sentence, by striking  
24          “‘This section’” and inserting the following:

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

1           (7) by striking subsection (h) and inserting the  
2 following:

3           “(h) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated such sums as are nec-  
5 essary to carry out this section for each of fiscal years  
6 2008 through 2012.”.

7 **SEC. 11. USE OF TELEMEDICINE.**

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

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

12           “(a) DEFINITION OF MEDICAL OR BEHAVIORAL  
13 HEALTH PROFESSIONAL.—In this section, the term ‘med-  
14 ical or behavioral health professional’ means an employee  
15 or volunteer of an organization that provides a service as  
16 part of a comprehensive service program that combines—

17           “(1) substance abuse (including abuse of alco-  
18 hol, drugs, inhalants, and tobacco) prevention and  
19 treatment; and

20           “(2) mental health treatment.

21           “(b) CONTRACTS AND AGREEMENTS.—The Service is  
22 authorized to enter into any contract or agreement for the  
23 use of telemedicine with a public or private university or  
24 facility, including a medical university or facility, or any  
25 private medical or behavioral health professional, with ex-

1 perience relating to pediatrics, including the diagnosis and  
2 treatment of child abuse, to assist the Service with respect  
3 to—

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

5           or

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

8           “(c) ADMINISTRATION.—In carrying out subsection  
9 (b), the Service shall, to the maximum extent prac-  
10 ticable—

11           “(1) use existing telemedicine infrastructure;

12           and

13           “(2) give priority to Service units and medical  
14 facilities operated pursuant to grants, contracts, or  
15 compacts under the Indian Self-Determination and  
16 Education Assistance Act (25 U.S.C. 450 et seq.)  
17 that are located in, or providing service to, remote  
18 areas of Indian country.

19           “(d) INFORMATION AND CONSULTATION.—On re-  
20 ceipt of a request, for purposes of this section, the Service  
21 may provide to public and private universities and facili-  
22 ties, including medical universities and facilities, and med-  
23 ical or behavioral health professionals described in sub-  
24 section (b) any information or consultation on the treat-

1 ment of Indian children who have, or may have, been sub-  
 2 ject to abuse or neglect.

3 “(e) AUTHORIZATION OF APPROPRIATIONS.—There  
 4 are authorized to be appropriated such sums as are nec-  
 5 essary to carry out this section for each of fiscal years  
 6 2008 through 2012.”.

7 **SEC. 12. CONFORMING AMENDMENTS.**

8 (a) OFFENSES COMMITTED WITHIN INDIAN COUN-  
 9 TRY.—Section 1153(a) of title 18, United States Code, is  
 10 amended by inserting “felony child abuse, felony child ne-  
 11 glect,” after “robbery,”.

12 (b) REPORTING OF CHILD ABUSE.—Section 1169 of  
 13 title 18, United States Code, is amended—

14 (1) in subsection (a)(1)—

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

17 (B) in subparagraph (D)—

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

20 (ii) by striking “worker in a group  
 21 home” and inserting “worker or volunteer  
 22 in a group home”;

23 (C) in subparagraph (E), by striking “or  
 24 psychological assistant,” and inserting “psycho-  
 25 logical or psychiatric assistant, or person em-

1 employed in the mental or behavioral health pro-  
2 fession;”;

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

5 (E) by striking subparagraph (G), and in-  
6 serting the following:

7 “(G) foster parent; or”; and

8 (F) in subparagraph (H), by striking “law  
9 enforcement officer, probation officer” and in-  
10 serting “law enforcement personnel, probation  
11 officer, criminal prosecutor”; and

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

14 “(3) ‘local child protective services agency’ has  
15 the meaning given the term in section 403 of the In-  
16 dian Child Protection and Family Violence Preven-  
17 tion Act (25 U.S.C. 3202); and

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

○