

FACTS SHEET

P.L. 101-630, Indian Child Protection and Family Violence Prevention Act:

IHS and Tribal Responsibilities Concerning Applicable Policy and Federal Guidelines

The Indian Health Service (IHS) continues to uphold the commitment to safe quality patient care, and in follow-up to the IHS Oversight and Accountability Fact sheet, the Agency is providing additional information for IHS partners' use regarding P.L. 101-630, the Indian Child Protection and Family Violence Prevention Act.

What Is Public Law 101-630?

The law establishes minimum standards for Federal employees working in IHS, including standards of character to ensure that individuals having regular contact with or control over Indian children have not been convicted of certain types of crimes. In order to implement these minimum standards of character, these regulations also address:

- (1) The efficiency standards to ensure that individuals are qualified for the positions they hold or seek.
- (2) Fitness standards to ensure childcare service employees are fit to have responsibility for the safety and well-being of children,
- (3) Suitability standards to ensure that individuals have not acted in a manner that places others at risk or raised questions about their trustworthiness

In addition, the Act requires that Tribes or Tribal organizations who receive funds under the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. 93-638, employ individuals in positions involving regular contact with or control over Indian children only if the individuals meet standards of character no less stringent than those prescribed under these regulations.

What Are the Minimum Standards of Character for Individuals Who Provide Care or Have Direct Supervision Over a Child or Children?

The section § 408(b) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3207(b)), the law reads –

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) of this section 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. Tribes must make inquiries of an applicant's criminal history to State and Tribal law enforcement for the previous 5 years of residency listed on an individual's employment application (42 CFR § 136.406(b)). If an applicant has a pending arrest, a Tribe must research the final outcome of that charge when evaluating the individual's criminal history (42 CFR § 136.406(b)). The Tribe must compare the results of these criminal history verifications to IHS's minimum character standards (42 CFR § 136.406(c)). A Tribe may determine its own standards of character; however, these standards must be no less stringent than IHS's minimum character standards (42 CFR § 136.408(c)). Tribes may not place individuals who do not meet IHS's minimum standards in a position that is in contact with Indian children (42 CFR § 136.404(b)).

What Does the Indian Child Protection and Family Violence Prevention Act Require of the IHS and Indian Tribes or Tribal Organizations Receiving Funds Under the ISDEAA?

In compliance with Section § 136.404, the IHS maintains a list of all authorized positions with duties and responsibilities that involve regular contact with or control over Indian children. All Indian Tribes or Tribal organizations receiving funds under the authority of the ISDEAA must also identify and maintain a list of positions that permit regular contact with or control over Indian children.

What Are Other Factors, In Addition to The Minimum Standards of Character That May Be Considered in Determining the Placement of An Individual in A Position That Involves Regular Contact with or Control Over Indian Children?

In compliance with Section § 136.408, IHS Federal employees may be disqualified from consideration or continuing employment if such an individual has been convicted of a sex crime, an offense involving a child victim or a drug felony, or any other crime if such conviction bears on an individual's fitness to have responsibility for the safety and well-being of children.

Tribes or Tribal organizations may, but are NOT required to, apply additional criteria in determining whether an individual is suitable for a position with duties and responsibilities that involve regular contact with or control over Indian children.

What other requirements are applicable and/or related to the background investigation requirement?

The 1990 Crime Control Act, P. L. 101-647, requires the following:

- Employment applications must contain a question asking whether the individual has ever been arrested for, or charged with, a crime involving a child and, if so, requiring an explanation of the disposition of the arrest or charge. The application must state that it is being signed under penalty of perjury with the applicable Federal punishment for perjury stated on the application.
- Each applicant must receive an FBI fingerprint background investigation by way of FBI-approved procedures.
- Any conviction for a sex crime, an offense involving a child victim, or a drug felony may be grounds for denying employment or for the dismissal of an employee.

What documentation is needed to comply with Federal and Tribal Requirements for Performing Background Investigations on Individuals in Contact with Indian Children?

Employment documentation must include a place for applicants to provide their prior 5 years of residency history.

Employment applications must include a place for applicants to provide information about criminal history records involving children.

Conduct State and Tribal law enforcement inquiries based on the 5 years of residency on each application.

Ensure that all required background investigation results and employment applications are received and assessed to verify that applicants meet the required minimum character standards.

What is an FBI Fingerprint Background Investigation Check? Who is Required to Have One?

An FBI fingerprint background investigation accesses criminal history records voluntarily provided by Federal, State, and local jurisdictions. It provides positive identification and eliminates the false positives and false negatives associated with name-based investigations, and it provides additional criminal record history that may not be maintained by the State where a Tribe's reservation is located. Any persons who will have regular contact or control over Indian children. As a precaution, anyone who is not a visitor will be fingerprinted prior to starting their employment, clinical rotation, or contract (this includes employees, contractors, students, vendors, and affiliates). The Federal Bureau of Investigation's Tribal Access Program information can be found in the Resources section of this document.

Per Section § 136.409, What Positions Require a Background Investigation and Determination of Eligibility for Employment or Retention?

For the IHS, all positions that allow an individual regular contact with or control over Indian children are subject to a background investigation and determination of eligibility for employment.

Tribes and Tribal organizations may use the list compiled by the IHS or develop their own procedures to determine within their program those positions that involve regular contact with or control over Indian children. Please contact the IHS Division of Personnel Security and Ethics at PersonnelSecurity@ihs.gov for a copy of IHS's compiled list of childcare-covered positions.

Who Conducts the Background Investigation and Prepares Determinations of Eligibility for New and Continued Employment?

In compliance with Section § 136.410, the IHS's investigative service provider is the Defense Counterintelligence and Security Agency (DCSA). DCSA conducts background investigations for all IHS Federal employees and contractors. IHS Personnel Security staff initiate, review, and adjudicate any found investigative records and background investigative products.

Indian Tribes and Tribal organizations may conduct their own background investigations, contract with private firms, or may request that a Federal or State agency conduct investigations. FBI criminal history record information may only be received or evaluated by governmental agencies, including Tribes or Tribal organizations, and may not be disseminated to private entities.

Are There Costs for Federal Background Investigative Products?

The IHS utilizes tiered background investigative products and legacy tiered background investigative products, which vary in cost annually. For 2024, the associated costs for current and legacy background investigative products can be found here: [FIN 23-01.pdf \(dcsa.mil\)](https://www.dcsa.mil/fin/23-01).

Tribes and Tribal Organizations, when they work with other organizations, may have other costs. DCSA investigations are a paid service available to federal agencies and Tribal organizations.

The Following Resources Are Available to Assist with Questions:

September 2020 Dear Tribal Leader Letter:

https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/document/s/2020_Letters/DTLL_09252020.pdf

September 2020 Tribal Health Programs: Concerns About Background Verifications for Staff Working With Indian Children Letter enclosure:

https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/document/s/2020_Letters/Enclosure_DTLL%20DTUIOLL_09252020.pdf

The Federal Bureau of Investigation's Tribal Access Program:

<https://www.justice.gov/tribal/tribal-access-program-tap>

The Division of Personnel Security and Ethics Program:

<https://www.ihs.gov/OHR/about-ohr/headquarters/>

For more information on the report, please visit:

<https://oig.hhs.gov/oas/reports/region1/12001504.pdf>

Mailing Address:

Division of Personnel Security & Ethics
Office of Human Resources
Indian Health Service
5600 Fishers Lane, Office 11E80
Mail Stop: 11E53A
Rockville, MD 20857