

Testimony of the Honorable Kirk E. Francis, Chief of the Penobscot Nation

Oversight Hearing on “Volume 1 of the Department of the Interior’s Federal Indian Boarding School Initiative Report” & Legislative Hearing to Receive Testimony on S.2907

June 22, 2022

Good afternoon Chairman Schatz, Vice Chair Murkowski and Members of the Committee. Thank you for inviting me to testify today on the issue of Indian Boarding Schools.

My name is Kirk E. Francis and I am the elected Chief of the Penobscot Nation. We are one of four federally recognized Wabanaki Nations located within the borders of the State of Maine.

I want to begin my testimony by thanking Interior Secretary Deb Haaland and the sponsors of Senate bill 2907 for elevating the issue of Indian Boarding Schools and the need to fully examine the history and impacts these institutions had and continue to have on Tribal communities. As you already know, many Tribal communities struggle to deal with the longstanding effects of intergenerational trauma. I have been in elected office for my Tribal government for 26 years, with 16 of those years serving as Chief. I first ran for office wanting to work on policy and programmatic issues, such as health care, education, law enforcement, and natural resource protection. I did not realize how much of my time would be spent listening to elders, youth and most other Tribal citizens about the issues they struggle with because of intergenerational trauma, much of which is the result of failed federal policies towards Indian Country over the past two hundred years. The Penobscot Nation has made significant progress in investments in our physical infrastructure and economic development, but we continue to struggle with addressing the impacts of intergenerational trauma.

Much of this trauma has its roots in the piece-meal federal policies that occurred between the mid-1800s until the 1970s. The United States started its relationship with Tribal nations on a government-to-government basis. In fact, many Tribal nations in the Northeast fought on the side of the Americans during the Revolutionary War. The initial Federal policy towards Tribal nations focused on treaty making, but then turned to assimilation, and then to termination. Realizing that the assimilation and termination policies were failing, President Richard Nixon in a Special Message to Congress on Indian Affairs in 1970 denounced the termination policy and announced a new Federal policy under which “the Indian future is determined by Indian acts and Indian decisions.” As President Nixon further explained, “we have turned from the question of *whether* the Federal government has a responsibility to Indians to the question of *how* that responsibility can best be furthered.” This new Federal policy of Tribal self-determination remains the Federal policy today. It is largely seen as the most successful of the Federal policies towards Indian Country.

Although self-determination is working as a policy, the Federal government failed to mitigate the harms caused to Tribal nations by the previous series of piece-meal policies that tore down Tribal communities during the previous 150 years. The Federal government merely changed its policy moving forward without making adequate investments into rebuilding the Tribal nations that were broken apart. The intergenerational trauma that many Native American people and

communities continue to struggle with today has its roots in the failed Federal policies of assimilation and termination that existed prior to the era of self-determination.

One of these failed Federal policies were the Indian Boarding Schools. As described in Volume 1 of Interior's investigative report, these schools were focused on removing Native American youth from their families and assimilating them into non-Native culture. Essentially, the goal was to eradicate the Native culture by extinguishing it in the children. As Interior's report indicates, hundreds of schools were either directly operated or funded or supported by the Federal government with the goal of assimilating Native American children. Hindsight has shown that this effort was flawed and it resulted in separating Native children from families, communities and culture. Some Native American individuals were able to successfully reconnect with their Tribal communities, but many individuals never fully assimilated and were not able to reconnect with their communities. So they lived their lives in limbo, having lost their Tribal identity but never gained any mainstream identity either. Those individuals who were able to reconnect with their communities still suffered trauma and struggled to relearn their Native identity. These boarding schools played a significant part in the rise of alcoholism, substance abuse, and mental health problems amongst Native American individuals and within our communities.

There has never been a comprehensive compilation of the history of Federal Indian Boarding Schools, their policies and practices, their locations, and their impacts on Native American individuals and communities. It is good that the Interior Department and Congress is looking to compile this information but also allow Native individuals an opportunity to share their individual and family experiences. As I will describe later, one of the main benefits to compiling this information and getting out into Tribal communities is that Native American individuals who either were directly or indirectly impacted by these schools get more educated about the facts surrounding the schools and learn that they and their families are not alone in their experience. In my experience, there is a healing aspect to understanding that you as a Native American individual were a part of a larger policy and system, and that your experience is shared with other Native American individuals.

Maine Wabanaki-State Child Welfare Truth & Reconciliation Commission

As Chief of the Penobscot Nation, I have been involved in two significant commission efforts that are similar to what is contemplated in Senate bill 2907. One was the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission. The other is the Maine Indian Tribal-State Commission. I describe my experience with each below.

The Maine Wabanaki-State Child Welfare Truth & Reconciliation Commission was a temporary commission intended to investigate and compile information about the child-welfare system in Maine as it affected Native people, create opportunities for learning and healing, and develop recommendations for improving the child-welfare practices within the State. The effort was grass roots driven by Tribal and State child-welfare workers who agreed that the existing system was flawed. Their efforts began in 2008, the 5-person Commission was seated in early 2013, and it concluded its investigation and released its report in June 2015. The Commission traveled the State, going into communities, and recorded interviews of more than 150 people, 95 from Native

Americans and 64 from non-Native people. From those interviews and independent research, the Commission developed its report.

The Governor and Chiefs of the Wabanaki Nations each nominated individuals to serve on the Commission, and consensus was reached on who would serve on the Commission. The governments authorized the Commission to investigate whether or not the removal of Wabanaki children from their communities has continued to be disproportionate to non-Native children and to make recommendations that promote individual, relational, systemic and cultural reconciliation. The State legislature was not involved in the creation of the Commission, but the Secretary of State Matthew Dunlap served on the Commission. It was decided that no Wabanaki people would serve on the Commission. This decision had mixed reviews by participants, but the goal was to have Commissioners who were unbiased so that participants could trust the process was objective.

Overall, the Commission was a success. Soon after the report was released, productive dialogue took place between the Wabanaki people and State officials to make fundamental changes to the child-welfare system in the State. The most fundamental change was to ensure that there is full participation by every Wabanaki government in the decision-making process impacting any Wabanaki child who found themselves in the State child-welfare system. More importantly, the relationship between the Wabanaki governments and people with the State improved. The Commission process allowed for an opportunity for both sides to get educated about the issues, share their experiences and perspectives, and better understand each other. Although painful at times, the process resulted in an improved dialogue and respect on child-welfare issues between the State and Wabanaki nations, and shared accountability moving forward to make the best decisions for Wabanaki children. As the Commission's report noted, some State workers learned "to see not only the individual Wabanaki child but to recognize that the child was connected to a larger, collective culture."

What I think made the Commission successful was: (1) the Tribal and State workers who work on child-welfare issues wanted to make change; (2) there was buy-in from the Governor and Wabanaki governments; (3) the Commission's focus was narrowly tailored to one topic; and (4) the Commission focused its work on compiling factual information about the child-welfare system but allowed the voices of those impacted by the system to be heard and recorded. The Commission did a good job of describing its work as a conversation versus an investigation that placed blame on any person or entity.

One of the indirect effects of the Commission was that its work re-opened wounds for many people. And, while many found it healing to finally be able to share their experience and trauma, the Commission process itself was traumatic for some. The Penobscot Nation found it important to have resources, including counselors, on the ground during the Commission process, but also afterwards.

The Maine Indian Tribal-State Commission

The other Commission I have experienced is the Maine Indian Tribal-State Commission, which is an inter-governmental entity created by the Maine Implementing Act of 1980, which is the State law that implements the Federal Maine Indian Claims Settlement Act. This Commission is

comprised of 13 members: six appointed by the State, two by the Houlton Band of Maliseet Indians, two by the Passamaquoddy Tribe, two by the Penobscot Nation, and the Chair of the Commission is selected by the other 12 members.

The primary purpose of this Commission is to continually review the effectiveness of the settlement act and the social, economic, and legal relationship between the State of Maine and the Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and the Penobscot Nation. Additionally, the Commission is charged with making recommendations about the acquisition of land to be included in Indian Territory, communicate rules for fishing in certain ponds, rivers and streams adjacent to or within Indian Territory, and conduct studies about fish and wildlife management policies on non-Indian lands. This Commission is permanent and does not expire.

Unfortunately, the Maine Indian Tribal-State Commission has not been as effective in improving the relationship between the Wabanaki Nations and State. This is not the fault of the individual members of the Commission, but more about the structure of the Commission. At times, the State has failed to fill its six spots on the Commission, which impairs the ability of the Commission to get its work done. Additionally, the Commission has conducted some thorough studies and made concrete recommendations for changes in State-Tribal policies, but very few actually get implemented. Individual members of the Commission get frustrated with the structure of the Commission and lack of authority to implement its findings. And, the Wabanaki Nations also get frustrated with the inability to modernize the settlement act that governs our relationship with the State. Although well-intended, the Commission has not been able to meet its purpose.

Comments on S.2907, the *Truth and Healing Commission on Indian Boarding School Policies Act*

Based on my experiences with other commissions, I offer the following comments on Senate bill 2907 for the Committee to consider as you move this bill forward:

- I absolutely believe that a Commission focused on Indian Boarding Schools is needed. There is significant value that can be achieved by having a commission that focuses on compiling factual information and experiences of those impacted by these schools and policies. Additionally, there has not been any real effort to mitigate the harms caused by these schools, and that needs to be done so that our Tribal communities can continue to progress.
- The language of S.2907 should be reviewed to make sure that it encompasses all of the schools identified in volume 1 of Interior's report. The Interior Department used four criteria in identifying whether a school was a Federal Indian boarding school, which included whether the institution: (1) provided on-site housing or overnight lodging; (2) was described in records as providing formal academic or vocational training and instruction; (3) was described in records as receiving Federal government funds or other support; and (4) was operational before 1969. The language of S.2907 seems narrower and only includes schools that were directly operated by the Federal government or churches. Interior's report includes schools that were operated by states and which

received Federal funds or support. I recommend that a definition for “Indian Boarding School” be added to S.2907 that mirrors the definition used by the Interior Department.

- The members of the Truth and Healing Commission on Indian Boarding School Policies are all appointed by the Federal government, either by the President or Congress. This does not allow for maximum buy in from Indian Country for the work of the Commission. It is important that there be trust in the Commission’s membership in order for there to be trust in the Commission’s work. One change that could improve the bill is to have the President and/or Congress make their selections from individuals nominated by national and regional Tribal organizations, such as the United South and Eastern Tribes.
- Section 5(b)(5)(B) of the bill describes how vacancies on the Commission will be filled, but does not provide for a timeframe in which to fill such vacancies. I recommend that language be added that any vacancy be filled within 120 days.
- Section 5(c) of the bill says that the initial meeting of the Commission shall occur “as soon as practicable.” I recommend that language be added to indicate that the initial meeting shall occur “as soon as practicable *once a majority of Commission members have been appointed.*” Although Section 5(b)(4) indicates that Congress and the President shall appoint their members no later than 120 days after the date of enactment of the Act, there is nothing that enforces this provision. I have seen other federal commissions and committees not be able to begin their work because 1 or 2 members were still waiting to be appointed. Given the short timeframe for the Commission to get its work done, it would be best for it to be able to begin operations once a quorum of its members, which is a majority, have been appointed.
- The timeframe for the Commission’s work seems short. This Federal Commission has approximately 2.5 years to conduct their research, hold hearings, and draft their initial report. Based on my experience in Maine, this seems too short a time to conduct these activities at a national level. I recommend that the Commission’s timeframe be extended by at least one year.
- The bill contains no requirement that the Commission travel to each region of Indian Country to hear from people. During the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission process in Maine, individuals found it valuable that the Commission came to their communities to hear directly from them. I recommend that S.2907 be amended to require that the Commission travel to each Bureau of Indian Affairs region to take testimonies from individuals.
- Concerns were expressed by some Members of the House of Representatives about the power of the Commission to issue subpoenas. I understand the concerns, but I do believe there needs to be some requirement that any entity, including state governments and churches, who operated boarding schools and received Federal funding or support must make any relevant documentation available to the Commission. Maybe an alternative option is for the Commission to request the Committee on Indian Affairs to issue any subpoenas.

- Lastly, there are no next steps for what happens to the report that the Commission develops. S.2907 identifies which Federal entities must receive the report, but provides no steps after that. I recommend that the bill include language that requires the Secretaries of Education, Interior and Health and Human Services conduct consultation with tribal nations about the findings and recommendations in the report, and that the Committee on Indian Affairs conduct a hearing on the report. There needs to be provisions in the bill that ensure that the conversation continues after the report is completed.

Thank you for allowing me to provide testimony on this important matter.