

**Testimony to the Senate Committee on Indian Affairs
Governor Doug Burgum, State of North Dakota
Wednesday, March 20, 2019
James Henry Gymnasium
United Tribes Technical College
3315 University Drive, Bismarck, ND 58504
Senator John Hoeven, Chairman**

Chairman Hoeven and Committee Members of the Senate Committee on Indian Affairs,

Welcome to our beautiful state, and thank you for the opportunity to testify on an ever-important topic in our State and the Tribal Nations with whom we share geography: "To Protect and Serve: Joint Law Enforcement Efforts in Building Safe Tribal Communities and Stopping Dangerous Drugs from Entering Indian Country."

Through the course of meeting with tribal leadership from every Native American tribe headquartered in the state – the Mandan-Hidatsa-Arikara (MHA) Nation in New Town, the Turtle Mountain Band of Chippewa Indians in Belcourt, the Standing Rock Sioux Tribe in Fort Yates and the Spirit Lake Nation in St. Michael – as well as the Sisseton Wahpeton Oyate, our administration continues to identify areas of opportunity for government-to-government collaboration between the State of North Dakota and Tribal Nations. This partnership, based on good-faith engagement, consultation, listening, learning, understanding and mutual respect, continues to be one of the five strategic initiatives for our administration.

Within this ongoing dialogue, our cabinet agencies have launched collaborative efforts to assist those North Dakotans who are dual citizens as enrolled members of their respective Federally Recognized Tribes with issues related to public safety. It is my strong belief that by establishing trusting relationships, sharing resources and identifying strengths and needs across federal, state, local and tribal jurisdictions, we can build safe communities, ensure stable and highly effective law enforcement and promote joint efforts to enhance Tribal-State mutual aid agreements and drug task forces.

Together, we also can address the issues our Bureau of Indian Affairs (BIA) police officers face in North Dakota due to a lack of major resources, staffing and training facilities, as well as the epidemic of missing and murdered indigenous peoples and the repeal of outdated laws regarding criminal jurisdiction in Indian Country.

In keeping with the spirit of the Tribal Partnership initiative, various cabinet agencies have been cooperating to establish Tribal-State mutual aid law enforcement agreements. Some of the first of their kind were created as Tribal-County mutual aid law enforcement agreements. For example, McLean County, which shares a significant portion of land with MHA Nation, entered an agreement with MHA for both jurisdictions and their law enforcement to assist one another in specific cases where time was of the essence and public safety was at stake, such as hot pursuit, detainment and extradition. It also fostered better communication when navigating the complicated waters of criminal jurisdiction in Indian Country. Officers were able to more quickly respond and better

determine the enrollment status of those who had committed a crime or were in the process of doing so, which made for clearer lines of due process and making accurate decisions about who had jurisdiction.

In July 2018, the North Dakota Indian Affairs Commission (NDIAC) and North Dakota Highway Patrol (the Patrol) began monthly meetings to explore this issue at a statewide level, and potential mutual aid agreements between Tribes and the Patrol to better and more quickly serve the citizens of North Dakota. These agencies began focusing on language for potential Memorandums of Understanding (MOU's) and Memorandums of Agreement (MOA's) between Tribal Nations and the Patrol for cross-deputization, hot pursuit, detainment or other avenues to improve public safety.

The two agencies identified potential legal flaws within North Dakota Century Code (NDCC), and found that BIA police officers did not exist under the definition of "Federal Agents" under NDCC §29-06-05.2. After discussions with BIA police officers, this issue was identified as a liability concern for BIA police officers, as well as a trust concern between the BIA and their fellow law enforcement officers around the State. Without the protection of being identified as a Federal Agent under state law, BIA police officers could not cross from trust to fee land without creating liability risk. To other law enforcement officers, the BIA officers were viewed as unwilling to assist fellow law enforcement officers. In fact, BIA police officers continually put their lives, liability, and job at risk in order to protect and serve not only the citizens of North Dakota but also their fellow law enforcement officers, regardless of identification or jurisdiction.

At the beginning of the 66th North Dakota Legislative Session, HB 1234 was introduced with the support of both the Highway Patrol and NDIAC. The bill recognized "Bureau of Indian Affairs police" and "federal law enforcement officers" as "Federal Agents" under North Dakota Century Code. HB 1234 passed the House of Representatives and is currently awaiting a conference committee hearing in the Senate. We anticipate the bill will pass.

Turning to today's topic, it is the initiative of the NDIAC, with its partners, the North Dakota Highway Patrol, North Dakota Bureau of Criminal Investigation (BCI), the FBI, county and local police, and BIA and Tribal police officers, to begin Drug Task Force efforts.

The Turtle Mountain Drug Task Force, the first of its kind, was initiated mid-year in 2018. This cross-jurisdictional approach includes resource sharing; with the assistance of the FBI's Safe Trails Program, certain officers may be cross-deputized as federal agents. This program will allow these officers to work both on and off Trust lands with no issues of liability or jurisdiction, focusing on the large amounts of drugs travelling on and off reservation.

Although the Turtle Mountain Drug Task Force is still in its infancy, it brings together law enforcement from Rolette, Bottineau and Pierce counties, Turtle Mountain BIA police and Tribal officers, as well as BCI, FBI, and other agencies. With this work, we anticipate additional agreements to authorize cross-jurisdictional work and the recognition of felony warrants both on trust and fee land. The goal is to significantly reduce drug trade in this high-trafficked area. Separately, this task force will address behavioral health, addiction and longstanding trauma experienced by those living in the Turtle Mountains, to end the shame and stigma of addiction – a goal First Lady Kathryn Burgum has adopted as her platform – and make real progress in giving hope to those affected by the disease.

In order for these efforts to succeed, our Tribal Nations and the State of North Dakota must support the BIA police officers who reside and work within the State, protecting and serving its diverse citizens. There is a shortage of BIA officers nationally; the Tribal Nations in North Dakota are currently operating at between 40 percent and 50 percent of their authorized staff. At the NDIAC Strengthening Government to Government Partnerships and Relationships Conference, a law enforcement panel was tasked with discussing these issues. The panel shared their experiences resulting from inadequate staffing numbers. One officer discussed waiting more than two hours for backup to arrive and assist him. The same officer said that when dealing with individuals who are or might be in the process of committing a crime, he regularly pretends to be in conversation with another officer, to give the appearance that law enforcement reinforcements are on the way. We ask the Department of Justice and Department of Interior to assist with this shortage by authorizing additional BIA officers in North Dakota.

Our BIA police officers are sometimes viewed as transient, staying six months or less in a location. Turnover hinders consistency in law enforcement. Every officer who is re-stationed within a short period of time results in a lack of ownership and follow through on critical cases. This is especially important in our missing and murdered indigenous people cases, where time is of the essence.

One way to address this problem is by creating a premier BIA and Tribal police officer training facility in North Dakota. With the support of the U.S. Department of Justice and the U.S. Department of Interior, we believe our Camp Grafton training facility located near the Spirit Lake Tribe is an ideal location for a law enforcement training facility. It may require an agreement with the Federal Government to approve and certify such a program. We believe such a BIA training facility will produce a talented and robust pool of much-needed BIA and Tribal police officers trained at the highest level.

Currently the central training facility for BIA law enforcement is in Artesia, New Mexico. Failure rates are currently around 50 percent for those who attend this facility. It is a culturally predominant fact that the success of Tribal members is heightened when they are closer to their homes, friends, family and culturally important ties, such as their spiritual practices. Camp Grafton offers amenities readily available such as housing, meals, classroom space, gun ranges, driving ranges, etc. Nearby, and often used at Camp Grafton, the Lake Region Law Enforcement Academy is utilized for other law enforcement officers and provides initial training to entities including the Fargo, Grand Forks and Minot police departments and even the MHA Nation. Preliminary discussions with the administration at this facility indicates that incorporating the BIA curriculum into the existing programs would not be difficult. Similarly, the Tribal Colleges in North Dakota could incorporate some or all of the academic curriculum as a course of study. A Department of Justice-approved law enforcement training facility in tandem with BIA training could serve not only the Tribes within the geography of North Dakota, but also Montana, Wyoming, South Dakota, Minnesota and Wisconsin, to name a few.

A regional law enforcement training center located at Camp Grafton and the Lake Region Law Enforcement Academy could be a beacon of hope for those who want to work in a field to protect the lives of others, particularly the lives of some of our most vulnerable citizens. It would create a workforce much in demand, with the chance that Tribes with training monies from the Federal Government (particularly Public Law 638 training monies) could be used toward continuing to improve the facilities of Camp Grafton. In addition, Tribal Colleges may also be interested in

participating in this way, playing a crucial role in receiving grant monies and forwarding recruits to this type of training facility.

This proposal is also a good stopping point to reflect on an ongoing epidemic across the United States and Indian Country – missing and murdered indigenous peoples. This epidemic continues, for reasons we still have not entirely identified. With the lack of judicial and law enforcement resources in Indian Country, this epidemic is seemingly growing. In the last year, North Dakota has had several cases involving prominent missing and murdered indigenous people, including the deaths of Savanna Greywind and Olivia Lone Bear. In the latter case, the absence of an organized law enforcement framework across multiple jurisdictions was painfully evident. The NDAIC was eventually asked to moderate and coordinate multi-jurisdictional law enforcement efforts, but not until long after the crucial first several hours and days of the case. These efforts resulted in a training session in New Town, N.D., where a national advocacy group provided a curriculum for the community to aid in search efforts in cases like these. We believe this type of curriculum could exist at a training facility such as the one we have proposed at Camp Grafton.

Training and educational resources for these types of cases are the foundation for our support for the federal legislation known as Savanna’s Act, which unanimously passed in the U.S. Senate. This bill requires the Department of Justice to update the online data entry format for federal databases relevant to cases of missing and murdered Native Americans to include a new data field for users to input the victim's tribal enrollment information or affiliation. In addition, this bill requires that DOJ must:

- make standardized law enforcement and justice protocols that serve as guidelines for law enforcement agencies with respect to missing and murdered Native Americans,
- develop protocols to investigate those cases that are guided by the standardized protocols,
- meet certain requirements to consult with Indian tribes, and
- provide tribes and law enforcement agencies with training and technical assistance relating to the development and implementation of the law enforcement and justice protocols.
- Federal law enforcement agencies that investigate and prosecute crimes related to missing and murdered Native Americans also must modify their law enforcement and justice protocols to comply with the standardized protocols.

Though I have provided separate testimony on the support to repeal 60 Statute 229, an antiquated law giving the state jurisdiction over criminal matters on the Spirit Lake Nation, I want to close out my testimony by again highlighting this important endeavor. The Spirit Lake Tribe has gone on record to formally request the repeal of 60 Stat. 229, an Act that previously conferred criminal jurisdiction over reservation misdemeanor crimes to the State of North Dakota. We request support in repealing this outdated and unused law through passage of a law like S. 2788, which was introduced in the 115th Congress.

With the great strides that the Spirit Lake Nation has made in the past 70-plus years, there is no need for the State of North Dakota to prosecute crimes occurring on the reservation beyond what is permitted by federal laws generally applicable to Indian Country as a whole.

We request support to formally repeal 60 Stat. 229, thereby supporting Spirit Lake’s efforts to move forward with criminal justice system enhancements while preventing unnecessary interference with Tribal sovereignty by the State of North Dakota. This is an important step to reinforce existing

current federal policy aimed at fostering Tribal self-determination. It is also an important step in establishing continued goodwill between the State of North Dakota and one of the Tribal Nations it shares geography with. Repealing this outdated law will foster future collaboration that respects each of the sovereign's ability to exercise and enforce public safety.

In conclusion, I would like to thank this Committee again for your time, for visiting our beautiful State, and for taking into consideration the testimony I have provided today. The Tribal Nations with whom we share geography are each important bastions of historical cultures, showing strength, perseverance and resilience. Each has a beautiful history, rich in importance to the history of North Dakota. Their enrolled members, being citizens of North Dakota and citizens of the United States, deserve safe homes and communities. Healthy, vibrant communities will allow all jurisdictions to reach their fullest potential, with safety and justice consistent with all other lands in this Nation.

Thank you again, Chairman Hoeven and Members of the Senate Committee on Indian Affairs.
