

**S. 1870, S. 1953, AND S. 1942**

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**HEARING**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS**

**UNITED STATES SENATE**

**ONE HUNDRED FIFTEENTH CONGRESS**

FIRST SESSION

—————  
OCTOBER 25, 2017  
—————

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## **S. 1870, S. 1953, AND S. 1942**

**WEDNESDAY, OCTOBER 25, 2017**

U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:40 p.m. in room 628, Dirksen Senate Office Building, Hon. John Hoeven, Chairman of the Committee, presiding.

### **OPENING STATEMENT OF HON. JOHN HOEVEN, U.S. SENATOR FROM NORTH DAKOTA**

The CHAIRMAN. I will call this legislative hearing to order.

Today, the Committee will examine three bills: S. 1870, the SURVIVE Act, which stands for Securing Urgent Resources Vital to Indian Victim Empowerment Act; S. 1953, the Tribal and Law Order Act Reauthorization and Amendments Act of 2017; and S. 1942, Savanna's Act.

On September 27, 2017, I introduced S. 1870, the Securing Urgent Resources Vital to Indian Victim Empowerment Act, also known as the SURVIVE Act. Senators Barrasso, McCain, Daines, Cortez Masto, Franken, Heitkamp, and Tester have joined me as original co-sponsors. This bill will create a tribal grant program within the Department of Justice's Office for Victims of Crime to improve public safety and strengthen victim services in Indian Country.

Existing data shows that tribal communities experience some of the highest victimization rates in the Country. For example, a recent National Institute of Justice report indicated that 49 percent of Native women and 19.9 percent, almost 20 percent of Native men, require victim services.

Those basic crime victim services are generally not available to tribes. In fact, under the Crime Victims Fund annual cap of \$3 billion, tribes only receive 0.7 of 1 percent of the funding through the States, despite the high victimization rates.

The SURVIVE Act will help fix that. It would authorize a 5 percent set-aside of that annual cap for Indian tribes, which would equate to \$150 million a year to tribes.

The SURVIVE Act would provide more flexibility for tribes. The types of services and capacity building authorized would include emergency shelters, medical care, counseling, legal assistance and related services, and child and elder abuse programs.

In addition, the SURVIVE Act would allow the services to be more tailor-made for tribal communities. Through the SURVIVE

Act, tribes can better identify and craft the victim of crime services and resources through a negotiated rule-making with the Department of Justice.

On October 5, 2017, Senators Barrasso, McCain, and I introduced S. 1953, the Tribal Law and Order Act Reauthorization and Amendments Act of 2017. This bill would reauthorize key tribal public safety programs and provide other key improvements for justice in Indian Country, particularly for Indian youth.

This bill is based on feedback received from a number of hearings, roundtables and listening sessions held with tribes. Many tribal recommendations are included in this bill as well as those from the Bureau of Indian Affairs, the Department of Justice, and other tribal public safety advocates. For example, the Department of Justice began implementing the Tribal Access Program, TAP, to the various criminal data bases as required by the Tribal Law and Order Act.

This important program, however, has to have funds in order to keep operating. The bill would authorize the Attorney General to use available and obligated department funds for that purpose. In addition, this bill includes recommendations developed by tribes in 2008 to address numerous concerns regarding juvenile justice for Indian youth.

These provisions are approaches to collaboration and partnership among the Federal, State and tribal governments to reduce recidivism among Indian youth. The bill also addresses many other needs including human trafficking, public defense, trespass, and agency accountability.

On October 5, 2017, Senator Heitkamp introduced S. 1942, Savanna's Act. The co-sponsors are Senators Franken, Heinrich, Merkley, Tester, and Warren. The bill, S. 1942, is intended to improve the response of addressing missing and murdered Native women by improving access to Federal criminal databases, requiring data collection, and directing the Attorney General to review, revise, and develop law enforcement and justice protocols for investigations.

The CHAIRMAN. I will turn at this point to Senator Heitkamp so that she can provide comments.

**STATEMENT OF HON. HEIDI HEITKAMP,  
U.S. SENATOR FROM NORTH DAKOTA**

Senator HEITKAMP. Thank you, Chairman Hoeven and Vice Chairman Udall for holding this very important hearing today on not just Savanna's Act but all of these bills that are critical to providing and securing justice for Indian people, particularly in Indian Country. I am encouraged that today's hearing comes just three weeks after my bill was introduced and I hope we can continue this momentum as we move to get this bill through the Committee and up to the full Senate for a vote.

I would also like to welcome Chairman Flute from my home area, from the Sisseton-Wahpeton Sioux Tribe and Carmen O'Leary, who is a wonderful advocate and has been so instrumental in providing feedback when we were drafting the bill.

I very much appreciate your support for what we are trying to accomplish with Savanna's Act. I also want to thank Savanna's

family who kindly agreed to allow us to use her name and to honor her in this way by naming the bill after her. The bill was named after Savanna Greywind, a 22-year-old member of the Spirit Lake Tribe, who was abducted in August and murdered in North Dakota while eight months pregnant. While Savanna's tragic death was heard around the world, thousands of indigenous women are murdered or disappear every year, with many of those cases being ignored or forgotten.

In 2016, 5,700 cases of missing Native women were reported to the National Crime Information Center. I just want to say that, in one year only, over 5,700 cases of missing Native women. The actual number is likely much larger due to chronic under reporting. In addition, homicide is the third leading cause of death of Native Indian and Alaska Native women between the ages of 10 and 24.

Nearly everyone in Indian Country in my State, and I think really across Indian Country, knows someone who has gone missing or, in fact, knows someone is has been murdered. In fact, in the last year, in a tribal population of a little over 5,000 residents in Indian Country, there were five homicides involving women. I can tell you that the numbers are staggering. When someone can sit down with some friends on Standing Rock Reservation and within a short period of time come up with the names of 25 people, 25 women who have gone missing or murdered, that is simply not acceptable.

To better protect Native women, we must start raising awareness about the epidemic of missing and murdered Native women to bring this terrible problem out of the shadows and then find solutions. Native women living on reservations and across the Nation should not have to live in fear. It is our job to do everything we can to ensure their communities and our communities are safe and that Native women receive the resources they need.

I believe Savanna's Act is a good starting point in addressing this crisis. It incorporates several recommendations from the National Congress of American Indians, the United Tribes of North Dakota and the National Indigenous Women's Resource Center, and of course, numerous other advocates.

Mr. Chairman, I want to ask that a number of letters of support I have received be entered in the record at this time. We expect we will receive more and would like the opportunity to make sure they are in the record.

The CHAIRMAN. Without objection.

Senator HEITKAMP. Thank you, Mr. Chairman.

I want to say that I look forward to working with the Department of the Interior and the Department of Justice and other stakeholders on any technical amendments we can make or other good ideas that people have as we move forward with this bill.

I long ago learned a valuable lesson about problem solving. You can never solve a problem you will not admit you have. We have a problem in this Country, a problem of missing and murdered indigenous women that has gone on far too long without any national response.

We owe a unique and specific burden to Native American women. In many cases, we have a trust obligation and in many cases in my State, the only law enforcement presence against major crimes is the Federal law enforcement presence. This is not a State issue

looking for a Federal solution. This is our problem. This is a national problem. We need to bring national attention to it and bring all hands on deck.

Mr. Chairman, again, I want to thank you for holding this hearing. I want to thank the Vice Chairman. I want to thank all the people here co-sponsoring this.

I know we can send a message of hope to all the crime victims out there, all the families who have wondered far too long where is the help, where is the concern for my family member? We can make that statement today in this Committee. We can make that statement by moving this bill forward.

I want to thank you so much. I want to thank my two great friends who were so instrumental in bringing this to fruition and to introduction.

Thank you, Mr. Chairman.

The CHAIRMAN. Vice Chairman Udall.

**STATEMENT OF HON. TOM UDALL,  
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you, Chairman Hoeven, for holding today's important hearing. Thank you, Senator Heitkamp for your passionate statement.

This is a hearing on these three important bills that promote improvements to public safety in Indian Country. For years, this Committee has heard testimony from tribes across Indian Country detailing the critical need for public safety and victim resources in Native communities. The Federal law enforcement agencies have also testified in support of additional funding for personnel to help keep Indian Country safe.

Just last month, Chairman Hoeven and I co-hosted a briefing by the National Indigenous Women's Resource Center to discuss the Department of Justice's study on violence against American Indian and Alaska Native women and men. The briefing exposed alarming statistics and revealed the critical need to raise awareness and access to justice for Native women who suffer from the second highest homicide rate in the U.S. and whose disappearances or murders are connected to crimes of domestic violence, sexual assault and sex trafficking.

The bills we are considering here today address these very same issues: law enforcement resources, victim services and public safety in Indian Country. Chairman Hoeven's S. 1870, the SURVIVE Act, amends the Victims of Crime Act to authorize a 5 percent tribal set-aside for victim assistance programs. This set aside will move tribes to a more equal playing field with States on accessing Federal victim assistance funds. S. 1953, TLOA II, builds on tribal law enforcement and criminal justice reforms created by the Tribal Law and Order Act in 2010.

Both of the Chairman's bills are a step in the right direction. I look forward to working on them with him and my Committee colleagues. Additionally, Senator Heitkamp's bill, S. 1941, Savanna's Act, looks at the Federal response to missing and murdered Indian women. It would promote more accurate data collection missing persons in Indian Country and enhance coordination between Federal, State and tribal law enforcement agencies.



Many of the members of this Committee supported the designation of May 5 as the National Day of Awareness for Missing and Murdered Indigenous Women. I applaud Senator Heitkamp's efforts to move beyond awareness and combat this vicious problem. I look forward to working with her on this important bill.

I also look forward to the continued focus of this Committee on these important public safety and Native women's issues. Today's bills put forward good ideas but many tribal public safety issues remain unaddressed. One of those issues is that tribes need the full authority to combat violent crimes like sexual assault. That is why last week I joined Senators Franken and Murkowski to introduce the Justice for Native Survivors of Sexual Violence Act, S. 1986.

The other major public safety topic we have yet to consider this year is the implementation of special jurisdiction restored to tribes in the Violence Against Women Act of 2013. Over the last five years, tribes have compiled a series of VAWA lessons learned. They have made clear that certain steps need to be taken for the intent of VAWA 2013 to be fully realized in tribal communities. I am working with several colleagues on this Committee to review that feedback and put together legislation to fix these gaps that leave tribal officers and Native youth vulnerable.

I will end by saying how encouraged I am by this Committee's bipartisan commitment to advancing tribal public safety.

Mr. Chairman, thank you again for holding this hearing. Thank you to our witnesses for joining us today.

The CHAIRMAN. Senator Franken.

**STATEMENT OF HON. AL FRANKEN,  
U.S. SENATOR FROM MINNESOTA**

Senator FRANKEN. Thank you, Chairman Hoeven and Vice Chairman Udall for holding this important hearing today.

Thank you to our witnesses for your testimonies. I will keep my remarks brief in order to get to the testimony.

I am happy to see two bills I have co-sponsored being considered today: Senator Heitkamp's Savanna's Act, which helps address the crisis of missing indigenous women, some of whom have been murdered; and also Senator Hoeven's SURVIVE Act which aims to improve public safety in tribal communities and strengthens resources for Indian victims of crime.

I want to thank the Vice Chairman for bringing up the Justice for Native Survivors of Sexual Violence Act which I introduced with Senator Murkowski and the Vice Chairman. An alarming number of American Indians face sexual violence in their lifetime. It is disproportionately at the hands of non-Indians. These criminals often go unprosecuted, unpunished and are free to commit more crimes.

This is an epidemic that must be addressed. One of the most important steps we can take is to restore tribes' authority to hold offenders accountable for these heinous acts.

This legislation will help tribes address sexual violence in their communities in a meaningful way. I look forward to working with my colleagues on the Indian Affairs Committee to move this legislation forward.

Thank you again, Chairman Hoeven and Vice Chairman Udall and all our witnesses today. I look forward to hearing your testimonies.

The CHAIRMAN. Senator Daines.

**STATEMENT OF HON. STEVE DAINES,  
U.S. SENATOR FROM MONTANA**

Senator DAINES. Thank you, Mr. Chairman and Ranking Member Udall.

Native American communities are home to much beauty in places like Montana that are vibrant, indigenous cultures but they also tragically face more than their fair share of challenges, especially when it comes to public safety. Montana reservations continue to see rampant violent crime and law enforcement catastrophes.

Let me share two instances. One, just this last summer, we saw a meth-fueled triple homicide on the Crow Reservation. In another incident, there was a woman from the Fort Peck Reservation who was recently sentenced to 20 years in prison for the murder of a baby she had been caring for.

The Billings Gazette reports “In the murder case, prosecutors said that Janelle Red Dog, forty-three, abused 13-month-old Kenzley Olson, used methamphetamine while the child was unconscious and when the girl stopped breathing, she put her body in a duffle bag and threw it in the trashcan. Red Dog pleaded guilty in May to second degree murder after acknowledging she hit Kenzley twice in an attempt to ‘quiet her.’” These are just a couple of the incidents that have been reported.

Meanwhile, Montana tribes lack the law enforcement personnel they need to keep their lands and people safe and to protect those who are most vulnerable. On top of that, detention facilities in these communities remain overcrowded making it easier for those who are a threat to society to remain on the streets. We must put a stop to these trends and do all we can to foster safe and thriving Native American communities.

Again, I want to thank the Chairman and the Vice Chairman for holding this hearing. I look forward to today’s discussion.

The CHAIRMAN. Senator Murkowski.

**STATEMENT OF HON. LISA MURKOWSKI,  
U.S. SENATOR FROM ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman.

I want to thank Senator Heitkamp for putting a face to the unfortunately far too many victims, those Native women, indigenous women, who are murdered or taken away, never to be heard from again. You have named this law Savanna’s law. I was there on the Floor with you when you spoke of Savanna’s story and the story of at least six other women in Alaska. One of the faces is Sophie Sergie. We remember the circumstances surrounding her murder which, at this time two decades later, the individual who killed her has still not been found and brought to justice. I appreciate the fight that you are leading.

Mr. Chairman, I would ask to be added as a co-sponsor not only to Senator Heitkamp’s legislation but to the two other bills before

this Committee this afternoon, the effort that you have led with the SURVIVE Act as well as the Tribal Law and Order Reauthorization and Amendments. I think everything we can do within this Committee to deal with the staggering statistics that all of us share, unfortunately in my tenure on the Committee, I think this has gone on 15 years, these statistics as they relate to domestic violence, sexual assault, child sexual assault, murder, youth suicide, and suicide continue to mount.

The effort that we must make to help address at the Federal level, working with our tribes, is something that I join my colleagues in the good work but know that we have an awful lot to be done to even make a dent in things.

Thank you for the leadership of the many of you and count me on as a co-sponsor, please.

The CHAIRMAN. Thank you, Senator. Without objection.

Are there other opening statements?

[No audible response.]

The CHAIRMAN. At this point, we will proceed to our witnesses. They are: The Honorable R. Trent Shores, U.S. Attorney for the Northern District of Oklahoma, U.S. Department of Justice, and I will call on Senator Lankford in just a minute for that introduction; and Mr. Bryan Rice, Director, Bureau of Indian Affairs, U.S. Department of the Interior; Washington, D.C.

The Honorable Dave Flute, Chairman, Sisseton Wahpeton Oyate of the Lake Traverse Reservation, Agency Village, South Dakota is also here. Although when Senator Heitkamp earlier referred to you as coming from her home area, Dave, I figured you were from Barney. It is good to have you here.

We also have The Honorable Joel Boyd, Colville Business Councilman, Confederated Tribes of the Colville Reservation and Ms. Carmen O'Leary, Director, Native Women's Society of the Great Plains, Eagle Butte, South Dakota. Welcome to you all.

With that, I will turn to Senator Lankford.

**STATEMENT OF HON. JAMES LANKFORD,  
U.S. SENATOR FROM OKLAHOMA**

Senator LANKFORD. Thank you, Mr. Chairman.

I do want to be able to introduce Trent Shores to the Committee today. In June, Trent was confirmed to serve as the U.S. Attorney for the Northern District of Oklahoma. He is a citizen of the Choctaw Nation and previously served as the Deputy Director of the Department of Justice's Office of Tribal Justice here in Washington, D.C. In that position, he addressed a diverse array of criminal and civil legal issues facing American Indians in Indian Country.

He has also represented the United States at the UN in Geneva where he negotiated the UN Declaration of Rights for Indigenous People.

What is probably most important to him today is that one year and about 30 minutes ago today, he got married. From someone who has been married 25 years, do not spend your one year anniversary to the minute testifying before a hearing, as important as these hearings are. I don't know whether to be able to say welcome to the Committee or you may now kiss your bride but we are glad you are here either way.

Thank you, Trent.

The CHAIRMAN. That was an outstanding introduction.

Is your bride here?

Mr. SHORES. She is here.

The CHAIRMAN. Would you be willing to introduce her?

Mr. SHORES. I absolutely would. It would be my honor.

May I introduce to the Committee my wife, Caitlyn Diane Shores.

The CHAIRMAN. Thanks so much for being here, Caitlyn. We appreciate it. Congratulations to you both.

You may proceed.

**STATEMENT OF HON. R. TRENT SHORES, U.S. ATTORNEY,  
NORTHERN DISTRICT OF OKLAHOMA, U.S. DEPARTMENT OF  
JUSTICE**

Mr. SHORES. Thank you, Chairman Hoeven, Vice Chairman Udall and members of the Committee, thank you for the opportunity to testify before you today about three very important bills pertaining to important justice issues in Indian Country: S. 1870, S. 1953 and S. 1942. It is truly my honor to be here, not only as a United States Attorney representing the Justice Department, but as an Oklahoman and as a citizen of the Choctaw Nation of Oklahoma.

The three bills we are here to discuss today address some of the biggest threats to public safety in Native communities. Violent crime and substance abuse occurs at higher rates in Indian Country than anywhere else in the United States. This is unacceptable.

There are not enough resources to cover all of the needs of law enforcement and victim service providers in Indian Country. Too many correctional facilities in Indian Country are overcrowded or substandard such that they cannot even provide sight and sound separation between adult and juvenile detainees.

Furthermore, the need for treatment services is widespread and urgent. Like many areas of our Country, Indian Country is not immune to the opioid epidemic. We must improve our services and programs for Native juveniles involved in the justice system. We need better law enforcement tools and techniques to respond to cases of missing and murdered Native peoples, especially Native women.

As the United States Attorney in the Northern District of Oklahoma, and throughout my years of experience working on tribal justice issues, I have seen and heard from tribal leaders firsthand, law enforcement officials, social service providers, and victims about the challenges that exist on-the-ground in Native communities.

In Oklahoma, we have 39 federally-recognized tribes; 14 of those are in my district, the Northern District of Oklahoma. I am blessed to have a great working relationship with those 14 tribes. We have large tribes like the Cherokee Nation and Muscogee Creek Nation and smaller tribes such as the Delaware, the Miami, or the Pawnee. We prosecute in the NDOK a diverse array of violent crimes and encounter too many victims who do not have the resources they so desperately need.

I can tell you that as a Federal prosecutor, I have stood next to a hospital bed of the domestic violence victim while she recounted the horrific details of her abuse. I remember learning in one instance that her boyfriend had a history of domestic violence and that multiple women had sought protective orders against him. I remember when she told us she did not wish to testify against him or cooperate with the prosecution because she was afraid of the repercussions.

While in that case we were able to successfully prosecute that offender, I will tell you that far too often in domestic violence cases prosecuted by tribal, State or Federal law enforcement officials, they are unsuccessful because of those types of witness and evidentiary problems. In these and similar moments when I was a prosecutor, it was crucial that I had with me a tribal law enforcement agent, a Federal law enforcement agent and a victim witness service provider of some sort to ensure that I was not only meeting the needs of a prosecution but also the needs of that victim.

I recall in 2008, I sat on the floor of a double-wide trailer in rural Oklahoma with a BIA investigator and a Cherokee Nation marshal. We tried to build rapport with a 12-year-old little girl who had been repeatedly raped by her father. The victim had been so traumatized and so victimized that she communicated by adopting the characteristics of horses. That is, she whinnied, she snorted and she stamped her feet.

After months of hard work by the prosecution team and the victim witness coordinator, we were able to prepare her for trial. She testified successfully along with two of her friends, a 13-year-old and another 14-year-old Native girl who bravely testified in front of that jury and helped us to convict her father who is now serving life imprisonment in a Federal penitentiary.

Members of the Committee, I see so many cases like these. We require the resources to be successful and investigate those cases properly. The SURVIVE Act addresses a long time issue in Indian Country, the lack of these kinds of resources.

The importance of providing effective services to victims of crime cannot be overstated. From any angle, humanitarian, law enforcement or community relations, it is both right and it is necessary.

The Tribal Law and Order Act of 2010 has been good for Indian Country and good for prosecutors in Indian Country. Our review of the reauthorization bill is ongoing. While we do not yet have a formal position to offer today, we applaud the efforts to compel greater improvements in law enforcement, especially data sharing and looking at justice services for Native American and Alaska Native children.

We are particularly heartened that you intend to extend the Bureau of Prisons pilot project and include support for the TAP Program which will help us to expand that opportunity to a number of other tribes. Each of the bills that we are discussing today proposes new methods and addresses major threats to public safety. Savanna's Act addresses a particularly tragic set of cases that I have seen, missing and murdered individuals, often women, in Indian Country.

The Justice Department supports the goals of this bill and the effort to take on this dark and tragic issue. We have identified

some technical issues in the course of our review and look forward to working with you to address those.

In conclusion, Mr. Chairman, I see that I am out of time. May I briefly conclude?

The CHAIRMAN. Please.

Mr. SHORES. Thank you.

We have made great progress working together. I know we have a ways to go, speaking to you from the on-the-ground perspective, to ensure that we reach our mutual goal, achieving long-lasting justice in Indian Country. We appreciate the efforts of the Committee to ensure that legislation affecting Native communities puts Tribal, State, Federal and local partners working together in a posture to properly and effectively respond to those needs.

Thank you for the opportunity to testify before you today. I look forward to shortly answering some of your questions.

[The prepared statement of Mr. Shores follows:]

PREPARED STATEMENT OF HON. R. TRENT SHORES, U.S. ATTORNEY, NORTHERN DISTRICT OF OKLAHOMA, U.S. DEPARTMENT OF JUSTICE

Chairman Hoeven, Vice-Chairman Udall, and Members of the Committee:

Thank you for the opportunity to testify before you today about three important bills pertaining to critical justice issues in Indian Country: S. 1870, Securing Urgent Resources Vital to Indian Victim Empowerment Act 2017; S. 1953, Reauthorization of the Tribal and Law Order Act of 2010; and S. 1942, "Savanna's Act." It is truly an honor to be here, not only as a United States Attorney representing the Justice Department, but also as an Oklahoman and as a member of the Choctaw Nation of Oklahoma. I began my legal career at the Department's Office of Tribal Justice, meeting with tribal leaders from across the Country and even helping to draft testimony for officials who testified before this Committee. Fifteen years later, I am an experienced career prosecutor who has seen firsthand the very real challenges that these bills seek to address. As I reviewed the content of these bills, I am confident that we can—and will—work together to improve public safety in Native communities. It is our duty to do so as we seek to uphold our federal trust responsibility.

The three bills address some of the biggest threats to public safety in Native communities. Violent crime and substance abuse occurs at higher rates in Indian country than anywhere else in the United States. That is unacceptable. There are not enough resources to cover all of the needs of law enforcement and victim service providers working in and around Indian country. Too many correctional facilities in Indian country are overcrowded or substandard such that they cannot maintain sight and sound separation between adult and juvenile detainees. Furthermore, the need for treatment services is widespread and urgent. Like many areas of our Country, Indian communities have been plagued by the scourge of the opioid epidemic. We must improve our services and programs for Native juveniles involved in the justice system, and we need better law enforcement tools and techniques to respond to cases of missing and murdered Native peoples, especially Native women.

As the United States Attorney in the Northern District of Oklahoma, and throughout my years of experience working on tribal justice issues, I have seen and heard from tribal leaders, law enforcement, social service providers, and victims about the challenges that exist on-the-ground in Native communities. There are 39 federally recognized tribes in Oklahoma, and 14 of those are in my District. We have large tribes like the Cherokee Nation and Muscogee (Creek) Nation and smaller tribes such as the Pawnee, Miami, or Delaware Tribes. We prosecute a diverse array of violent crimes and encounter too many victims who do not have the resources they so desperately need.

As a federal prosecutor, I have stood next to a hospital bed while a victim of domestic violence recounted the horrific details of how her lip was busted, her head concussed, her tooth knocked out, her arm broken, and her eye blackened. I listened to her cry as she explained that her boyfriend had flown into a fit of rage. I remember learning that the boyfriend had a history of domestic violence and that multiple women had sought protective orders against him. And I remember the disappointment when the victim notified us that she did not want to testify for fear of repercussions. While we were still able to successfully prosecute the boyfriend in this case, far too often tribal, state, and federal prosecutions of domestic violence offend-

ers are unsuccessful because of witness and evidentiary problems. In this and similar moments, it was crucial that I had with me federal and tribal law enforcement agents and a victim-witness specialist to ensure that we met the needs of the prosecution and the victim. Multi-jurisdictional and multi-disciplinary teams are important in these types of cases, just as they also are in sexual assault and child sexual assault prosecutions.

In 2008, I sat on the floor of a doublewide trailer in rural Oklahoma with a BIA investigator and Cherokee Nation Marshal as we tried to build rapport with a twelve-year-old girl who had been repeatedly raped by her father for a period of years. The victim had been so victimized that she communicated by adopting the characteristics of horses, that is, she whinnied, snorted, and stamped her feet. You see, the horses in the field behind her house were the only thing in her life that had not hurt her. They were her friends. After months of intense work with our prosecution team and counselors, that same little girl—and two of her friends who had also been raped by her father—bravely testified in front of a jury and in front of her father. He was found guilty and is now spending life in a federal penitentiary.

Members of the Committee, there are many more cases like these—domestic violence, sexual assaults, child abuse—that require resources to be successfully investigated and prosecuted, and to help give a voice to victims. These bills seek to provide some of those critical resources and I thank you.

Thanks to the ongoing efforts of this Committee, federal agencies, and the Tribes, we are making progress in improving public safety in Native communities. Since the passage of the Tribal Law and Order Act of 2010 we are making progress in ensuring that Tribes are able to access law enforcement databases, which is critical to meeting public safety needs. We have expanded funding and training opportunities, established more productive protocols based on our government-to-government relationship with the Tribes, and have sought to be more clearly accountable for our efforts.

In the Northern District of Oklahoma, I am blessed to have a great relationship with the fourteen federally recognized tribes. My Tribal Liaison, Shannon Bears Cozzoni, regularly travels to Indian Country where, together with other federal prosecutors, she provides a variety of training to tribal law enforcement officials to help them obtain Special Law Enforcement Commissions to enforce federal law in Indian Country. As a former tribal liaison myself, I can assure you this position is crucial for United States Attorney's Offices and there are no more dedicated advocates for justice in Indian Country. The funding of training programs for tribal law enforcement through District-focused initiatives and the National Advocacy Center serves to improve the investigative skills of law enforcement, social service providers, and prosecutors working in Indian Country. Similarly, the creation of the Native American Issues Coordinator at the Executive Office for United States Attorneys and the formal establishment of the Office of Tribal Justice has given United States Attorneys with Indian Country in their Districts an ever-present voice in the halls of the Justice Department in DC even when we are not physically present. The Tribal Law and Order Act of 2010 has been good for Indian Country and good for those of us working to ensure justice in Indian country.

Each bill proposes new methods and refined approaches to addressing major threats to public safety. Savanna's Act addresses a tragic set of cases: missing and murdered individuals, often women, in Indian country. The Department of Justice supports the goals of this bill and the effort to take on this dark and tragic issue. We have identified some technical issues in the course of our review. For example, Section 1 of the bill references the Automated Integrated Fingerprint Identification System, which has been replaced with the Next Generation Identification System. We welcome the opportunity to work with your staffs to assist in making some technical adjustments.

The SURVIVE Act addresses a long-time issue in Indian country: a lack of resources to support the level of victim services warranted by the levels of violent crime in Indian country. The importance of providing effective services to victims of crime cannot be overstated. From any angle—humanitarian, law enforcement, community relations—it is both right and necessary. A number of the Department of Justice comments on an earlier version of this Act were incorporated into the current bill, which we recognize and appreciate. We note that the Act includes a consultation requirement. In fact, the Department, through the Office for Victims of Crime, has already begun making plans for formal consultations and listening sessions with tribes, with the first listening session having occurred in Milwaukee on October 18, 2017. Our review of this bill is ongoing, and welcome discussion with your staffs as we make progress towards a formal Administration response.

The Tribal Law and Order Act of 2010 was a significant and extremely positive piece of legislation. As a result of that legislation, the Department of Justice is mak-

ing significant progress on improving public safety in Indian country. This Committee has received previous testimony from this Department on the many ways that the 2010 Tribal Law and Order Act altered and improved the way that we work in Indian country and with our federal partners and we agree with the Committee's efforts to do more. Our review of this bill is also ongoing, so while we do not yet have a formal position to offer we do applaud efforts to compel greater improvements in law enforcement, data sharing, and justice for Native American and Alaska Native children. We are particularly heartened that you intend to extend the Bureau of Prisons pilot project and included support for our Tribal Access Program, which will help us expand that opportunity to more Tribes.

In our review, we noted a recurring effort to improve data collection and information sharing. The Department is unequivocally in favor of efforts to improve collection of and access to data whenever we can do so without harming victim confidentiality or jeopardizing an investigation. We are working internally to find immediate opportunities for improvement. And we will continue to work with our partner agencies, with Tribes, and with your staffs on data collection and information sharing issues.

The Department is actively engaged in efforts to address the specific challenges described in the bills and is committed to working with Congress, other federal agencies, and Tribes to more effectively address them. We seek, whenever possible, to expand Tribes' opportunities for funding, training, and technical assistance. Our partnerships with Tribes and with other agencies active in Indian country are an integral part of our daily work, which we continually review to ensure that our work is productive and focused on the needs of the Tribes.

While we have further to go, we are far ahead of many nations in recognizing and protecting the rights of native peoples. Around the world, indigenous peoples are marginalized, exploited, or threatened with death—denied basic human rights, women abused, indigenous cultures destroyed, languages lost. With your continued leadership, the United States can lead by example to promote and protect the inherent rights of indigenous people. Recently, missing and murdered indigenous women was a topic of discussion during a June meeting of the Attorneys General for the U.S., Canada, Mexico, United Kingdom, New Zealand and Australia. In that meeting, Attorney General Sessions voiced support for the creation of a working group that would allow us to expand our partnerships in addressing this grievous issue.

As indicated earlier, the Department of Justice fully supports the goals of these three bills. The bills under discussion today are clearly intended to spur further progress, specifically in support of law enforcement, in providing effective services to victims of crime, and in shedding light on the tragic number of missing and murdered individuals in Indian country. The Department's review of the bills is ongoing; some offices have already reached out to discuss some of the technical aspects of the bills, and we welcome the opportunity to continue working with your staffs to refine language.

We have made great progress, but we know we have a ways to go before we reach our shared goal of achieving lasting public safety in Indian country. We appreciate the efforts by this Committee to ensure that legislation affecting Native communities puts Federal, State, and Tribal agencies in the best possible position to overcome barriers to public safety. Thank you again for the opportunity to appear before you today. Thank you also for the opportunity to share with you some perspective from the United States Attorney's Office in the Northern District of Oklahoma. I am happy to answer any questions you may have.

The CHAIRMAN. Thank you, Mr. Shores.  
Mr. RICE.

**STATEMENT OF BRYAN RICE, DIRECTOR, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR**

Mr. RICE. Good afternoon, Chairman Hoeven, Vice Chairman Udall and members of the Committee. Thank you for the opportunity to provide testimony on the bills before you today.

My name is Bryan Rice. I am the Director of the Bureau of Indian Affairs in the Department of the Interior. I began this leadership journey a week ago Monday. I am eager to tackle all the issues facing Indian Country, as well as lead the Bureau into becoming the service delivery agency that we all expect it to be.



Mr. Chairman, my background is in managing and leading programs serving Indian communities, specifically through natural resource and wildland fire programs. That has been my background, but this experience aligns closely with serving people in those communities through economic development, job creation, as well as the emergency management functions that support many of the law and order activities that we have across Indian Country today which is why we are here.

At the Department of the Interior, we are working hard to serve the American people. Right now, several of our nominees for leadership positions are waiting to be confirmed in the Senate. It is hampering our ability to do the peoples' work.

Having the department's full team confirmed and in place will help us better address the major issues our Nation faces today. Staffing the executive branch is the joint responsibility of the President and the Senate. We hope the Senate will live up to its end of the bargain as we look forward to our leaders moving through the pipeline and into the department.

Regarding today's hearing, since original passage of the Tribal Law and Order Act in 2010, it has helped to address significant public safety challenges throughout Indian Country. The department supports reauthorization of S. 1953 and is looking forward to working with the bill's sponsor and this Committee to ensure that we are building on the early successes of this bill's implementation.

Some of those include overall improved communication and collaboration between Federal, State, local and tribal law enforcement; the streamlining of the special Law Enforcement Commission process which allows for cross deputization with other law enforcement agencies; and improved coordination of the mental health and substance abuse services across all agencies aimed at decreasing recidivism.

To date, the BIA has made progress in the area of tribal law and order, yet we are continually looking to improve. We have identified additional areas where we still need to improve. I have included those in the written testimony. Focusing on many of these areas will enable the BIA to protect lives, prevent crimes, support tribal justice systems and ultimately make communities safer.

The Tribal Law and Order Act included increased data and reporting requirements which helps the BIA and other agencies better understand where challenges exist. For example, the Annual Unmet Needs Report highlights the need for additional public safety resources across Indian Country. Coordination between the BIA Office of Justice Services and the Department of Justice in tracking crimes has also allowed the Bureau of Indian Affairs to develop a new reporting tool for tribes to submit crimes collected under the Uniform Crime Report.

I would like to thank the members of this Committee for your continued and unwavering support for TLOA. Through previous authorizations of the Act, the BIA has been able to improve execution of our mission such as putting more resources on the ground.

For example, since January of this year, the BIA Office of Justice Services has filled nearly 50 law enforcement and corrections positions with several dozen more in the pipeline. These boots on the ground are critical for us to carry out the mission as well as to sup-

port the tribes in carrying out their mission as well. This amount of resources is an overall improvement of our service to Indian Country.

I would like to thank the Committee for your work and support in another area, improving the state of affairs in detention centers. As we heard earlier, this is a difficult topic. The intent is not to increase incarceration but we must ensure that those who enter the system are appropriately cared for. The process of ensuring safety and security of inmates, as well as providing adequate bed space, is an important component of the tradeoffs in managing programs and ensuring the most value is gained in these constrained budget environments.

These examples highlight the strong partnership that is critical between the Legislative and Executive Branches to ensure Indian Country is receiving the attention it deserves. I am looking forward to doing my part in continuing that partnership to do the best we can to serve Indian Country.

Thus far, TLOA has served as a valuable road map, supporting significant steps toward the goal of improving safety across Indian Country and our support of this reauthorization will help Indian communities receive, where needed, public safety attention from BIA and our partners.

Thank you again for the invitation to testify and I look forward to working with this Committee on issues today as well as issues in the future. I will be happy to answer any questions. Thank you.

[The prepared statement of Mr. Rice follows:]

PREPARED STATEMENT OF BRYAN RICE, DIRECTOR, BUREAU OF INDIAN AFFAIRS, U.S.  
DEPARTMENT OF THE INTERIOR

Good afternoon Chairman Hoeven, Vice-Chairman Udall, and members of the Committee. My name is Bryan Rice and I am the Director of the Bureau of Indian Affairs (BIA) at the Department of the Interior (Department). Thank you for the opportunity to provide testimony before this Committee on S. 1953, the Tribal Law and Order Reauthorization and Amendments Act (TLORA) of 2017.

The passage of the Tribal Law and Order Act (TLOA) in 2010 brought about many important changes in addressing public safety in Indian Country. Through our experiences in implementing TLOA, we have identified areas that still require additional attention. The Department believes S. 1953 is a critical start to this important conversation and supports the goals of the bill. We would like to work with the sponsor to further clarify a number of provisions to further strengthen the legislation.

A significant focus of TLOA was to address challenges related to reporting and data collection. These challenges are present across multiple sectors, but are particularly problematic in the context of criminal justice, in which Federal, state, tribal, and local governments share responsibilities. It is important to continue efforts to build accurate data and provide Congress, the public, and, most importantly, the tribes, with the information needed to identify and analyze the criminal justice needs in Indian Country. Section 103 of S. 1953 would assist in that effort by providing for enhanced sharing of Federal data with tribes.

As the nation moves toward evidence-based policy making, there has been increased focus on the quality of information the Department and other agencies are required to collect and report back to Congress. While the legislation includes numerous reporting requirements for agencies, we would welcome the opportunity to meet with the sponsor to discuss and determine how the Department could best meet the reporting requirements stipulated in a timely manner. We would like to engage with the bill's sponsor about our current capacity to analyze complex data sets and what we would need to meet the reporting requirements set forth by this bill.

S. 1953 recognizes that public safety in Indian Country is an issue that requires a multidisciplinary approach. In particular, Section 102 of this bill asks the Depart-

ment specifically to work with the Department of Health and Human Services and the Department of Justice to integrate and coordinate law enforcement, public safety, and substance abuse and mental health programs. The inclusion of alternatives to detention in the bill can play an important role in breaking the cycle of recidivism, as many Indian Country offenders are engaging in criminal activity due to untreated mental health and alcohol and substance abuse issues. Collaboration with other agencies may provide new pathways for individuals to get the help they need in order to break recidivism cycles, while simultaneously overcoming the fragmentation and siloing of programs across agencies that often impedes efforts by creating service gaps. The Department stands ready to work with the bill sponsors to further explore whether interdepartmental cooperative efforts and program consolidation can help meet the goal of reducing recidivism.

Tribal courts are an essential component for the delivery of justice services in tribal communities. Section 107 reauthorizes tribal court training programs, which are critical to supporting tribes as they build their justice services capacity. Strengthening criminal justice capacity will be important as tribes potentially seek to utilize the provisions in the TLOA to reassume concurrent federal-tribal jurisdiction in Public Law 280 states, or to exercise the special domestic violence criminal jurisdiction provision in the Violence Against Women Reauthorization Act of 2013.

In many parts of the country, the BIA's Office of Justice Services (OJS) does not have enough bed space to house tribal inmates, requiring contracts with local and county facilities to meet the need. This facility shortage creates additional resource challenges, including increased transportation costs and further stretching already thin officer patrol coverage. Section 102(c), Memorandum of Agreement, can provide OJS additional flexibility to address the incarceration needs currently facing Indian Country.

TLOA's Indian Law and Order Commission devoted an entire chapter to intergovernmental cooperation, noting that a number of tribal governments have seen success through partnerships with local counties and state agencies using cross-deputization agreements and memoranda of understanding. The Department believes that encouraging tribes and state and local law enforcement agencies to pool their resources and work together will ultimately lead to more comprehensive law enforcement coverage and safer communities.

The Department is also interested in working with the sponsor to address additional technical changes to TLOA that are not currently reflected in the legislation. Currently, Section 211 of TLOA provides for BIA-OJS to develop an annual report of unmet staffing needs of the law enforcement, corrections, and tribal court programs. The Department is concerned with the proposal to withhold funding in the event the reports currently required to Congress are delayed. All funding for law enforcement within the BIA-OJS is essential and withholding such funding could negatively impact the BIA's delivery of public safety needs to tribes and Indian Country. While there have been delays in providing this report in the past, the Department is committed to working to provide accurate and relevant data to the Congress consistent with the TLOA timeframes. The Department will also work with the Committee to further refine the annual reporting requirements.

Section 231(a)(4)(A) of TLOA requires that requests for a background check made by an Indian Tribe that has contracted or entered into a compact for law enforcement or corrections services, must be completed by OJS no later than 60 days after the date it receives the request. As the Office of Personnel Management (OPM) has the responsibility for completing background checks for the federal government, we recommend tribal background investigations be reassigned to OPM. If background checks are not reassigned to OPM, we request that the 60-day requirement be changed to 120 days, which would allow more time for completion.

Currently, Federal Tort Claims Act (FTCA) coverage is frequently declined for intentional torts committed by tribal law enforcement officers carrying out self-determination contracts or compacts unless the officers (a) have a special law enforcement commission (SLEC) under 25 U.S.C. § 2804(a)(3)(A)(i) and (b) are enforcing federal law at the time of the activities from which the claims arose. We believe this interpretation is under-inclusive based upon statutory construction, congressional intent, and recent Supreme Court precedent, *Millbrook v. United States*, 133 S. Ct. 1441 (2013), and that it results in declination of FTCA coverage to tribal officers that Congress intended to be provided with the "full protection and coverage" of the FTCA.

Contracted or compacted tribal officers provide services that normally would be provided by the BIA; thus, tribal officers should have the same treatment and protection as Federal officers. We would like to work with the Committee to provide much needed clarification to the legal status of tribal officers without SLECs and

to make certain that tribal law enforcement officers are treated equitably when they are carrying out the functions or services contracted from the BIA.

**Conclusion**

The Department of the Interior looks forward to working with the bill sponsor and this Committee on S. 1953, the Tribal Law and Order Reauthorization Act. By making TLOA stronger, we will make significant steps toward improving law and order in Indian country.

Thank you for the opportunity to testify today. I look forward to answering your questions.

The CHAIRMAN. Thank you, Mr. Rice.

Again, Chairman Flute, thank you very much for being here. We appreciate it. It is good to see you. We welcome your testimony.

**STATEMENT OF HON. DAVE FLUTE, CHAIRMAN, SISSETON WAHPETON OYATE OF THE LAKE TRAVERSE RESERVATION**

Mr. FLUTE. Chairman Hoeven, if I could, please, I would like to speak my language for just a little bit, with your permission.

[Greeting in native tongue.]

Mr. FLUTE. I greet each and every one of you with a handshake from my heart. I am hoping the testimony and the words that I am about to share with this great Committee enhance your understanding of the problems we face in the Great Plains Region.

Chairman Hoeven, Vice Chairman Udall and members of the Committee, I want to thank you for allowing me to testify today in regard to these two important pieces of legislation, first, in securing urgent resources vital to Indian victims' empowerment.

The Sisseton-Wahpeton Sioux Tribe strongly supports the Act and the legislation being presented. We strongly support the 5 percent set-aside in the SURVIVE Act. This will help tribes like mine and those disadvantage tribes in the Great Plains region that do not have the resources that other tribes have across the United States.

I say this respectfully. I say this very humbly. Many of our tribes in the Great Plains region are not percap tribes. I don't want to be misunderstood by our congressional leadership, the BIA or anybody working towards enhancing and passing these laws. We have some tribes out there that are disadvantaged with resources.

The 5 percent set-aside would be a great contribution to the treaty tribes in the Great Plains region and those tribes in other regions that have the problems we have. With that, we give full support to the SURVIVE Act. We thank the Chairman for presenting this piece of legislation.

Reauthorization of the Tribal Law and Order Act, I appreciate the attorney at the end, Mr. Shores, for your comments. Concerning reauthorization of TLOA, I want to hit on something that is really important to tribes right now.

Our detention facilities are being decommissioned. In TLOA I, we see there was \$35 million that was supposed to be added in this piece of legislation. I would like to respectfully request seeing what detention facilities have been constructed or what is going on with those monies.

A tribe like mine, we are a VAWA and we are a TLOA tribe. I appreciate the Chairman mentioning the Tribal Access Program. We are one of the pilot tribes. We are contributing the needed data

to the NCIC. There was a gap in VAWA and TAP helped fill that gap with being able to collect that data and being able to share that data with other tribes and NCIC so we can track these criminals and people perpetrating our Indian women and being violent criminals in our Indian communities.

With TLOA, without an operative justice center, we are hamstrung in law enforcement efforts. We have domestic violence, drug offenders, child neglect, and drunk drivers, but we have become a catch and release tribe. That is happening throughout Indian Country.

I understand that the BIA has rules, regulations and standards they need to adhere to. We do not hate on the BIA for that, but we need to be very diligent on both sides that when we are closing down these detention facilities, there is also the real life. I am giving you real life examples where we have caught methamphetamine distributors and drunk drivers and because our memoranda of understanding with our local counties, those jail facilities are full. They are turning away the criminals our tribal law enforcement is detaining. Those are the understandings we have.

We respectfully ask that there funding come with these packages. As there is the 5 percent set-aside in the SURVIVE Act, we respectfully ask that we fund the Tribal Law and Order Act II so that tribes have the abilities being closed down, their detention facilities being closed down. We need the long term fix, members of the Committee.

We appreciate the leadership you have given us, especially Senator Heitkamp as well for your advocacy on Native American women and children.

In closing, Mr. Chairman, I would like to share two real quick stories of recent real life examples.

A six-year-old kid went to the public school with a loaded meth needle. A loaded meth needle is liquid meth. We are seeing the opioid use and methamphetamine grown on the reservation and not just the reservation, it is happening in both northeast South Dakota and southeast North Dakota. We are seeing it on the rise.

We appreciate this Committee's leadership in giving attention to tribal public safety. Our tribal law enforcement was called because the mother was a tribal member. We apprehended the mother. We did a legal search on the house and we found more liquid meth needles in this house. We followed the process as far as we could and she is back on the street again because we don't have a detention facility to hold this individual.

There are more stories out there. I appreciate the attorney's testimony on the kids he is seeing, victims of crime. We have kids that are going to be socially challenged and physically challenged because of their under-developed limbs and under-developed brains. It is a serious issue that is ubiquitous across this Nation.

It is not a surprise that there is an opioid crisis out there and a methamphetamine crisis, but heroin is on the rise. In our great State of North Dakota, Mr. Chairman, I do have a sliver up there, part of the reservation, so we do acknowledge that.

We had a FedEx package. What upsets me is my reservation was targeted by a FedEx package. It was our canine unit, purchased with the tribal dollars that we have because we know we are lim-

ited in resources, that hit on a FedEx package that had methamphetamine and heroin. How does that get through the system?

I am very appreciative of the mobile enforcement teams and the corrective action support teams that BIA has had to offer so that our tribal law enforcement can expand in those different types of training. We respectfully ask that these two bills be funded with the monies.

Mr. Chairman, thank you very much.

[The prepared statement of Mr. Flute follows:]

PREPARED STATEMENT OF HON. DAVE FLUTE, CHAIRMAN, SISSETON WAHPETON  
OYATE OF THE LAKE TRAVERSE RESERVATION

### **I. Introduction**

Good morning, Chairman Hoeven, Vice Chairman Udall and Members of the Committee and Honored Guests. My name is David Flute. I serve as the Chairman of the Sisseton-Wahpeton Tribe (SWST) of the Lake Traverse Indian Reservation in North and South Dakota.

I am pleased to testify at this important hearing in support of S. 1870, the Securing Urgent Resources Vital to Indian Victim Empowerment Act of 2017, also referred to as the SURVIVE Act, S. 1953, the Reauthorization of the Tribal Law and Order Act (TLOA) of 2010, and S. 1942, a bill to direct the Attorney General to review, revise and develop law enforcement and justice protocols appropriate to address missing and murdered Indians.

For the past decade, we had been working to replace our old detention facility with a multipurpose Community Justice and Rehabilitation Center (Tribal Justice Center), designed to provide a comprehensive, all-inclusive approach that will also address the pressing behavioral health needs of our tribal members. Over \$1.2 million has been expended on this endeavor.

The funding and construction of our Tribal Justice Center is our highest and most important priority. We thank you for all of your efforts to increase Department of Justice (DOJ) funding for Indian country through the proposed Senate FY 2018 seven percent (7 percent) DOJ Office of Justice Programs (OJP) tribal set-aside and five percent (5 percent) DOJ Crime Victims Fund tribal set-aside. We especially appreciate your inclusion of report language, which recommends that DOJ should give consideration for funding “detention facilities, including outdated detention facilities that are unfit for detention purposes and beyond rehabilitation. . .”.

And, we want to thank your staff for their excellent work and consistent consultation with our tribal leadership. We are working to have our Tribal Justice Center site shovel-ready, so when FY 2018 CJS and Interior Appropriations Bills are enacted into law, we are prepared to move forward immediately.

South Dakota Governor Dugaard recognized our need for Federal assistance. On August 21, 2017, he wrote to the South Dakota congressional delegation:

If Congress can provide funding assistance, from the BIA and/or DOJ, to the Sisseton-Wahpeton Sioux Tribe for its Justice Center, the public safety of the Sisseton-Wahpeton Sioux Tribe and the surrounding area of northeast South Dakota and southeast North Dakota will be enhanced.

The Governor wrote his letter after his visit to our Sisseton-Wahpeton community, which included a review of the detention facility.

On October 3, 2017, North Dakota Governor Burgum wrote to the North Dakota congressional delegation:

We support the Sisseton-Wahpeton Sioux Tribe’s efforts to build the new Justice Center and commend your work to assist the Tribe in securing funding. Your success in promoting construction of the new Sisseton-Wahpeton Justice Center will enhance regional law enforcement, criminal justice and the safety of our citizens.

As our testimony will demonstrate, securing the funding for the construction of our Community Justice and Rehabilitation Center will allow us to more fully exercise our inherent sovereignty to provide public safety and wellness services for our tribal members. Moreover, having our Justice Center facility fully operational will allow us to be more fully prepared and equipped to implement S. 1870, S. 1953, and S. 1942. Our testimony will address these points as well.

## II. The Sisseton-Wahpeton Sioux Tribe

As Native Americans, respect for our Native Nations, treaty rights, and Indian lands is important because our rights to Native self-governance on our Reservation homeland are the essence of Freedom and Liberty for us. We agree with the Framers of the Declaration of Independence that:

We hold these truths to be self-evident, that all men [and women] are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. . . .<sup>1</sup>

Through our treaties, we formed an alliance with the United States, and our Treaty acknowledges the original, natural rights to Life, Liberty and Self-Government that the Creator endowed our People with from time immemorial.

From the time prior to recorded history, our people's original homelands have been in Minnesota, North and South Dakota. The Sisseton-Wahpeton Sioux Tribe is signatory to the 1851 Treaty with the Sisseton-Wahpeton Bands of Dakota Sioux (Traverse des Sioux). During the Dakota Conflict of 1862, the Sisseton-Wahpeton Sioux Tribe assisted the United States by rescuing white residents of our 1851 reservation and rescuing hostages and captives.

We just celebrated the 150th Anniversary of our 1867 Lake Traverse Treaty with the United States. The 1867 Treaty continues our “friendly relations with the Government and people of the United States.” Our Treaty also recognizes our people's right to self-government and to adopt “laws for the security of life and property,” to promote the “advancement of civilization” and promote “prosperity” among our people. More than two decades prior to North and South Dakota statehood, the 1867 Lake Traverse Treaty set aside the Lake Traverse Reservation as our “permanent reservation” homeland:

Beginning at the head of Lake Travers[e], and thence along the treaty-line of the treaty of 1851 to Kampeska Lake; thence in a direct line to Reipan or the northeast point of the Coteau des Prairie[s], and thence passing north of Skunk Lake, on the most direct line to the foot of Lake Traverse, and thence along the treaty-line of 1851 to the place of beginning.

Under the Allotment Policy, significant tribal lands were sold as surplus lands against our wishes, but under the modern Indian Self-Determination Policy, Congress affirmed our efforts to recover that portion of our homelands, and treats our recovered Indian trust lands as “on-reservation” acquisitions within the original boundaries of the Lake Traverse Reservation. Public Law 93–491 (1974).

Among the Sisseton-Wahpeton Sioux Tribe, we have maintained our treaty alliance with the United States, and we are rightfully proud of our volunteer service to the United States through the military. Woodrow Wilson Keeble, one of our most respected tribal members, served in World War II and in Korea, and President George W. Bush posthumously awarded him the Congressional Medal of Honor. My own grandfather served in the 101st Airborne Division in Bastogne during the Battle of the Bulge in World War II. I served during the War in Afghanistan.

## III. The Lake Traverse Reservation

The Lake Traverse Reservation is located in the Northeastern part of South Dakota and the southeastern corner of North Dakota. The Reservation boundaries extend across seven counties, two in North Dakota and five in South Dakota. The Dakota Magic Casino in Hankinson, North Dakota on our tribal reservation lands has been a major success and tourism destination for the Sisseton-Wahpeton Sioux Tribe, with over 750,000 visits per year and with some customers visiting 4 or 5 times, we estimate that more than 150,000 people visit our facility annually. We operate Dakota Winds Golf Course, a hotel, restaurant, buffet and lounge at our North Dakota Resort. We employ 425 people in Hankinson, 55 percent of our employees are tribal members and 45 percent are non-members from nearby towns. We also have two tribal housing areas near our Casino and Resort in Hankinson.

Our Dakota Sioux Casino is located just north of Watertown, South Dakota and we employ 202 people, 58 percent of our employees are tribal members (or Indians from others tribes) and 42 percent are non-members from nearby towns. We also

<sup>1</sup>At the time of the formation of the Constitution, the Continental Congress pledged in the Northwest Ordinance of 1787: The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress.. President Washington and the first Congress ratified the Northwest Ordinance on August 7, 1789.

operate a convenience store and service station, buffalo herd, fuel company, extruded film factory, and we recently opened a grocery store, so we are working hard to create jobs and develop our economy.

Our Tribal Headquarters is located in Agency Village, South Dakota. We have more than 14,000 tribal members and approximately 8,000 live on or near our Lake Traverse Reservation in North and South Dakota. SWST is a Treaty Tribe that provides essential governmental services to our tribal members and others residing, working, visiting and traveling through the Lake Traverse Indian Reservation in northeast South Dakota and southeast North Dakota.

#### **IV. Drug and Alcohol Abuse, Violent Crime and Juvenile Dependency**

The FBI UCR Crime Report (Sept. 25, 2017) finds that: Violent Crime in the United States increased for the second straight year in 2016—overall violent crime increased by 4.1 percent. The report shows increases over 2015 in all four offenses in the violent crime category: murder, rape, robbery, and aggravated assault. Murder has the largest growth at 8.6 percent. The 2016 Nationwide Crime Rate 386.3 per 100,000, the South Dakota Crime Rate was 418.4 per 100,000 and the North Dakota Crime Rate was 251.2 per 100,000.

*South Dakota State 2016 Crime Reports* include a 12.5 percent increase in drug crime, although overall some of the most violent crime was down. South Dakota Attorney General Marty Jackley said, “Right now there’s a meth epidemic across the Nation. . . It affects the Reservations as well as the State when the methamphetamine come into the State from across the Southern borders.. We need to do everything that we can to spread the message to the youth and do everything we can for prevention and treatment.” Bridget Bennett, KSFY TV, Reservation Crime Would Nearly Double SD Crime Stats (March 20, 2017). In August 2016, tribal law enforcement responded to a home birth on the Lake Traverse Reservation, and the full term baby was born dead with a high level to the drugs in its system.

KSFY News Reports explain that if Reservation crimes were included in state totals, the number of reported murders in South Dakota would nearly double. The FBI, U.S. Attorneys and tribal law enforcement have jurisdiction over Indian reservation crime. “The number of cases and number of users of methamphetamines has been rising on Indian reservations across the state. The increase in drug activity is correlating to an increase in the violent crime. Specifically, we’ve seen an increase in violent crime incidents in all of the Indian reservations throughout the state,” said Matt Moore, FBI Supervisory Senior Resident Agent for Sioux Falls.

South Dakota law enforcement made 7,200 drug arrests in 2015, nearly double the number made in 2005. Aggravated assault and robbery cases also doubled over the same ten-year period. According to Sioux Falls Police Chief Matt Burns, “The public’s appetite for high-grade marijuana and methamphetamine has fostered a more violent drug culture in which buyers and sellers are more likely to arm themselves.” *See Is South Dakota more violent than it’s ever been?* Sioux Falls Argus Leader, January 13, 2017. The Sioux Falls 2013 drug “rip” murder of Jordan LeBeau, 19, who was armed, by two Watertown teenagers is one of the more high profile murders in the past few years. Watertown is located less than 10 miles from the Sisseton-Wahpeton Sioux Tribe’s Lake Traverse Reservation.

*North Dakota Crime Statistics:* North Dakota faces significant drug crime challenges as well, including on our Indian reservations. In 2015, North Dakota suffered a 9.8 percent increase in per capita crime, which was the largest per capita crime increase in 5 years and the most homicides in decades. Based on FBI reports:

That included a 9.5 percent increase in crimes against persons such as murder, rape and assaults, and a 14 percent percent increase in crimes against property such as burglary, robbery and motor vehicle theft. The number of crimes against society—among them drug violations and weapons violations—increased by 11.1 percent.

“North Dakota in all is a different community. We’re not Minneapolis, but we’re not the North Dakota of 25, 30 years ago where you can leave your doors unlocked and you know everybody.” Bismarck Police Chief Dan Donlin told the Bismarck Tribune. Thankfully in 2016, North Dakota had a 1.1 percent decrease in crime, with gains made in decreased drunk driving.

At Sisseton-Wahpeton, we have seen continuing serious increase in drug related crime and violence. That is consistent with the overall pattern of North and South Dakota, except we have not had a reduction in drunk driving.

We have been working together with Federal, state and local law enforcement to fight drug crime and violent crime. These law enforcement agencies along with the FBI, state DCI, the Tribal CI, and federal, state and tribal prosecutors are developing strategies to target the drug distributors who have figured out the jurisdic-



tional complexities between the Tribe and the State, and we are working collaboratively cover any jurisdictional gaps.

Due to the drug and alcohol abuse problems affecting our Reservation, our tribal police made about 1400 arrests on the Lake Traverse Reservation in North and South Dakota last year. Much of the drug use also involves or stems from opioid abuse. In recent years, SWST youth and adults on our Reservation have been suffering with chemical dependency, drug and alcohol abuse, and violent crime resulting in the key incarceration figures:

- Substance abuse offenses & criminal offenses account for approx. 75 percent of all adult arrests, of which 15 percent exhibit highly repetitive substance abuse and criminal behavior. This group uses a disproportionate amount of justice (and potentially other) system resources.
- About 80 percent of all juveniles charged with a substance abuse offense, often accompanied by a curfew violation. This pattern shows a lack of parental supervision and clearly underscores a need to address these offenses in the context of families and family networks.

SWST has identified Behavioral Health, including addressing chemical dependency, mental health, adolescent treatment, detox, transitional care, inpatient/outpatient services for adult and youth, as our top community health and wellness priority. We currently lack sufficient facilities and services to adequately address these health care needs. We had a 1974 building for law enforcement services, which the BIA closed and decommissioned in December 2016 due to operational and other deficiencies.

The BIA's closure of our jail has left us with little recourse against drunk driving, drug crimes and domestic abuse. When Governor Daugaard came to visit us, my assistant observed two drunk drivers travelling our roads together and called on the police, so our Chief of Police was not able to attend our law enforcement meeting with the Governor. Our tribal police have had to send home domestic violence abusers and recently, we had a 7 year-old bring a syringe to school, which his mother used for methamphetamines. We had to let the mother back on the streets until her trial because we have no place to detain her. Our incidents of drug related crime problems are serious. The BIA suggested contracting with nearby county detention facilities, but the counties are overwhelmed and have no room for our offenders. So, under the BIA's law enforcement plan, we are left with a "catch and release" system. The BIA's approach to our detention center is an accident waiting to happen.

#### **V. FY 2018 SENATE CJS APPROPRIATIONS/INTERIOR APPROPRIATIONS BILLS**

The Sisseton-Wahpeton Sioux Tribe appreciates the efforts that the Senate has made to enhance Tribal Detention Facility/Justice Center funding. A reference was included in the FY 2018 CJS Senate Bill that establishes a 7 percent set-aside for Indian tribes in OJP funding and a 5 percent set aside for Indian tribes from the Crime Victim Fund. The Senate Report has language concerning tribal justice centers:

*Flexible Tribal Assistance.*—The Committee recommends funding tribal grant programs by permitting 7 percent of discretionary grant and reimbursement program funds, a total of \$110,705,000 made available to the OJP and COPS, to be used for tribal criminal justice assistance, and continues to strongly support efforts to help tribes improve the capacity of their criminal justice systems. The OJP is expected to consult closely with tribal stakeholders in determining how tribal assistance funds will be awarded for detention facilities, including outdated detention facilities that are unfit for detention purposes and beyond rehabilitation. . . .

We face some remaining hurdles. First, in our discussions with Justice Department staff, we have been informed that the use of the term recommends does not guarantee action by the Department, so perhaps Congress should use the term directs or incorporate the directive in the bill language. Second, the Justice Department is planning a nationwide consultation with tribal stakeholders, and there is no requirement to coordinate with the BIA, which has established a list to assist Indian tribes with replacement of detention facilities that they have closed—we believe that Congress should require OJP to coordinate with BIA on funding of detention facilities. Third, there is no set amount of funding for the Tribal Detention Facilities which is important to identify given that our proposed Justice Center planned by EKM&P—A DOJ Contractor—calls for a \$32 Million facility.

The BIA found \$5 Million from year end FY 2017 funds for the Hopi Tribe Detention Facility—which has about 7,000 tribal members resident on the Reservation. So, now the BIA list of Indian tribes with closed facilities is in order of priority:

1. Blackfeet Tribe of Montana;
2. Sisseton-Wahpeton Sioux Tribe of North and South Dakota; and

We understand that the BIA also recently closed the Tribal Detention Center of the Mescalero Apache Tribe of New Mexico. And, there are likely other tribal detention facilities facing the same fate.

The BIA promised to find the Sisseton-Wahpeton Sioux Tribe \$2 Million to \$3 Million in year-end funds when it closed our facility in December 2016, but later withdrew its promise. The Hopi Tribe was waiting for two years before it received funding, so according to that timeline, we would be waiting for four more years BIA funding because the Blackfeet Tribe is ahead of us.

Accordingly, we are seeking support from our Senators to renew Senator Rounds' amendment to the FY 2017 CJS Appropriations Bill to the effect that \$25 Million should be directed toward detention facilities:

Of the funds that are made available in this Act for the Office of Justice Programs to be used for tribal criminal justice assistance, OJP is directed to use up to \$35 million to replace outdated detention facilities located on Indian lands, which have been determined by the United States to be unfit for detention purposes and are beyond rehabilitation. OJP shall give priority to Indian tribes (or intertribal consortia) that have had detention facilities closed by the BIA and await replacement or repair, who serve 2,500 or more tribal members and demonstrate readiness and preparedness for construction.

Because we need funding for Adult Detention and Juvenile Detention, which must be sight and sound separated under BIA regulations, we believe that there should be a complimentary fund at BIA to assist in the construction of Tribal Justice Centers. So we ask for the Committee to support an amendment to the FY 2018 Interior Appropriations Bill to the effect that:

- \$15 Million should be appropriated through Interior Facilities Construction for Tribal Detention Facilities for Indian tribes (or intertribal governmental consortia) serving 2,500 tribal members whose detention facilities have been closed by the BIA and the BIA should provide priority for construction ready projects in areas of Indian country under Title 18 USC 1152 and 1153 Federal criminal jurisdiction; provided that no funds shall be used by the BIA to close BIA or Tribal Detention Facilities unless the BIA has a plan developed in consultation with the affected Indian tribe to remediate, repair or replace the facility to be closed so that tribal communities are not left without public safety facilities.

This Justice—Interior coordination will assist us in building the Adult and Juvenile Detention Center wings of our Sisseton-Wahpeton Sioux Justice Center.

## **VI. Support for Passage of S. 1870, The Survive Act**

For several years, the President's Budget has recommended a 5 percent Set-Aside for Indian Tribes from the Crime Victims Fund due to the high level of violent crime victimization among American Indians and Alaska Natives and the unique Federal law enforcement authority for areas including North and South Dakota, Montana, New Mexico and Arizona, which are under the Indian Major Crimes Act, 18 USC sec. 1152, and the Indian Country Crimes Act, 18 USC sec. 1153. President Trump's FY 2018 budget recommended a 5 percent Set-Aside for Indian Tribes from the Crime Victims Fund.

In prior years, only 0.5 percent of the Crime Victims Fund has been expended on Indian country. The lack of funding for victims' services and mental health contributes to the suffering of crime victims and their families, including astronomically high rates of suicide in Indian country. "Violence including intentional injuries, homicide and suicide, accounts for 75 percent of deaths of AI/AN youth ages twelve to twenty." *Center for Native American Youth at the Aspen Institute*. The CVF 5 percent tribal set-aside is necessary and justified. The National Task Force to End Domestic and Sexual Violence, a coalition representing thousands of local and national organizations addressing violent crime victimizations, supports the funding level for tribal governments included in the Senate CJS bill.

In the House of Representatives, the full Appropriations Committee accepted the Cole-McCollum Amendment providing for a 5 percent Set-Aside for Indian Tribes from the Crime Victims Fund. Yet, when the Bill was under consideration by the Full House, Chairman Goodlatte, House Judiciary Committee objected to the 5 per-

cent Set-Aside for Indian Tribes from the Crime Victims Fund because it was “authorizing” on an Appropriations Bill.

The Survive Act provides the necessary authorization to overcome Chairman Goodlatte’s opposition to the Senate 5 percent Set-Aside for Indian Tribes from the Crime Victims Fund. Moreover, the Survive Act acknowledges the high rate of violent crime victimization among American Indians and Alaska Natives, the Federal trust responsibility and the unique Federal law enforcement responsibility for areas of Indian country under Federal and tribal jurisdiction.

Our Sisseton-Wahpeton people, who are victimized by violent crime, suffer post-traumatic stress akin to what some military veterans have suffered. We suffer high rates of suicide as a result, and Crime Victim Funding for counseling and support services is essential to address Indian crime victimization issues, including Human Trafficking. Furthermore, once we have access to a reliable source of funding through the 5 percent CVF tribal set aside, these resources will help augment and enhance the crime victim support services that will be provided at our Community Justice and Rehabilitation Center.

#### **VII. Support For Passage of S. 1953, Reauthorization of TLOA**

More than two decades ago, the Justice Department undertook an Indian Law Enforcement Improvement Effort, with the establishment of tribal liaison positions, increased FBI agents for Indian country, increased Assistant U.S. Attorneys and later, Special Assistant U.S. Attorneys (cross-designated tribal attorneys) to assist with the prosecution of Indian country crime. In 1997–2,000, the Justice Department undertook the President’s Indian Country Law Enforcement Improvement Initiative, which increased OJP, COPS, VAWA and other DOJ funding for Indian Country Law Enforcement. At the time the initiative was undertaken, Congress did not enact comprehensive Indian country authorizing legislation and provided simply that funding was available to “state, local and tribal governments.” Accordingly, through Attorney General consultations in 2009–10, the Justice Department heard from Indian nations and tribes about the very pressing need for legislation, which resulted in the enactment of the Tribal Law and Order Act in 2010. According to the Justice Department’s 2011 Report on Tribal Justice Centers:

Sections 211 and 244 of the Tribal Law and Order Act (TLOA) direct the Department of Justice (DOJ) and the Department of the Interior (DOI) to create “a long-term plan to address incarceration in Indian country.” Pub. L. No. 111–211 (July 29, 2010).

After consultation with Indian tribes, Justice Department issued: “The Long Term Plan to Build and Enhance Tribal Justice Systems (Tribal Justice Plan).” The Report explains that DOJ will undertake to promote detention construction and services in cooperation with Interior and tribal governments. The mid-term plan was as follows:

- The Work Group will develop and enhance collaborative strategies to increase the accessibility of federal funding and resources for Tribal Nations in the areas of alternatives, detention, and reentry.
- The Work Group will explore options and potential resources to promote comprehensive programming for detention facilities. Strong multi-disciplinary collaboration is necessary to leverage resources for good detention programming. Federal agencies can play a leadership role in supporting the collaboration at the tribal level, given the range of roles on the federal, tribal, state and local levels.
- The Work Group should identify existing funding, training and technical assistance that supports detention and reentry, and make it available in a central location online.
- DOI and DOJ will enhance their current coordination and planning efforts related to funding new construction, to maximize success of these projects.

Despite this strategy for improved Tribal Detention resources, under the sequester system, the Justice Department resources have been limited to repairing existing facilities in recent years. Congress should enhance DOJ coordination with the BIA, which continues to close existing Tribal Detention facilities for non-compliance with BIA Detention Standards with no plan for replacement.

The Tribal Law and Order Act authorized the Justice Department’s Tribal Law Enforcement Programs for five years, and the authorizations expired in 2015. For the purposes of our Detention Center, the reauthorization of the DOJ Detention Program is important:

TRIBAL JAILS PROGRAM.

(a) IN GENERAL.—Section 20109 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13709) is amended by striking subsection (a) and inserting the following:

“(a) RESERVATION OF FUNDS.—Notwithstanding any other provision of this part, of amounts made available to the Attorney General to carry out programs relating to offender incarceration, the Attorney General shall reserve \$35,000,000 for each of fiscal years 2011 through 2015 to carry out this section.”

(b) REGIONAL DETENTION CENTERS.—

(1) IN GENERAL.—Section 20109 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13709) is amended by striking subsection (b) and inserting the following:

“(b) GRANTS TO INDIAN TRIBES .—

“(1) IN GENERAL .—From the amounts reserved under subsection (a), the Attorney General shall provide grants—

“(A) to Indian tribes for purposes of—

“(i) construction and maintenance of jails on Indian land for the incarceration of offenders subject to tribal jurisdiction;

“(ii) entering into contracts with private entities to increase the efficiency of the construction of tribal jails; and

“(iii) developing and implementing alternatives to incarceration in tribal jails;

“(B) to Indian tribes for the construction of tribal justice centers that combine tribal police, courts, and corrections services to address violations of tribal civil and criminal laws;

“(C) to consortia of Indian tribes for purposes of constructing and operating regional detention centers on Indian land for long-term incarceration of offenders subject to tribal jurisdiction, as the applicable consortium determines to be appropriate.

“(2) PRIORITY OF FUNDING.—in providing grants under this subsection, the Attorney General shall take into consideration applicable—

“(A) reservation crime rates;

“(B) annual tribal court convictions; and

“(C) bed space needs.

“(3) FEDERAL SHARE .—Because of the Federal nature and responsibility for providing public safety on Indian land, the Federal share of the cost of any activity carried out using a grant under this subsection shall be 100 percent.”

The effort to enhance Juvenile Justice programs in TLOA is important because it recognizes and enforces the need for both the Federal and Tribal Governments to work together to help our American Indian youth to succeed.

Furthermore, the Sisseton-Wahpeton Sioux Tribe believes that when Congress reauthorizes TLOA, Congress should establish an Indian Law Enforcement Improvement Commission composed of the Justice Department, Interior and Indian tribes to enhance the effectiveness and coordination of Indian law enforcement, as follows:

- The Department of Justice shall cooperate with the Department of the Interior in providing comprehensive law enforcement services to assist Indian tribes to ensure public safety, maintain law and order, and administer justice in Indian country, including detention facilities; and
- The Secretary of the Interior and the Attorney General shall establish a Joint Indian Country Justice Commission composed of the Department of the Interior Assistant Secretary for Indian Affairs, Assistant Secretary Policy, Management and Budget, Director BIA and Director BIA Law Enforcement, the Deputy Attorney General, Associate Attorney General and the Director of the Office of Tribal Justice, US DOJ, a Representative each from the FBI and the DEA, and Tribal Law Enforcement Representatives to Coordinate Tribal Law Enforcement Operations, Implement Strategies to Fight Crime and Promote Public Safety, to Develop Strategies Concerning Indian Country Public Safety, Law Enforcement and the Administration of Justice; the Commission should be intergovernmental in nature and shall not be subject to FACA;

Moreover, the TLOA Reauthorization should include a demonstration project modeled upon Public Law 102-477 for Indian tribes under Federal and Tribal Law Enforcement Jurisdiction, as follows:

- Indian tribes with 2,500 tribal members or more (and intertribal consortia serving 2,500 Indians or more) may submit comprehensive plans for public safety, law enforcement and the administration of justice and such comprehensive law enforcement plans shall be jointly funded by Interior and Justice and ad-

ministered by Interior under Public Law 93–638 with unified reporting to both agencies and a unified program audit;

- After consultation with the Secretary of the Interior and the Indian Country Law Enforcement Improvement Commission, the Attorney General may waive administrative, statutory and regulatory provisions when such waivers are deemed necessary to promote Indian Self-Determination and public safety, effective Indian country law enforcement, and efficient administration of justice in Indian country, provided that overall public safety, law enforcement and criminal justice program goals shall be maintained and a report shall be provided annually to Congress concerning the necessary waiver of administrative, statutory and regulatory requirements.

Such a pilot project has been shown to be practical and effective under Public Law 102–477 (Labor—Interior Employment Training Programs), and Indian tribes under Federal and tribal law enforcement jurisdiction need more basic assistance for law enforcement than is currently provided by grants.

We appreciate the leadership of Chairman Hoeven, Vice Chairman Udall and the members of the Senate Committee on Indian Affairs on these important issues. We support the enactment of the TLOA reauthorization with our requested additions. For the Sisseton-Wahpeton Sioux Tribe, and other Tribes where the BIA has closed their Tribal Jails, we cannot emphasize enough how important a Tribal Justice Center/Detention Center is to maintain basic public safety.

#### **VIII. Support For Passage of S. 1942, To Address Missing and Murdered Indians**

North Dakota and the North Dakota Indian community just underwent a terrible tragedy with the murder of Savanna Greywind, whose baby was torn from her womb by a deranged couple living in a neighboring apartment. Savanna was a nursing assistant at a nearby senior care facility. Moreover, recently three of our teenage tribal member girls were subject to human trafficking. As is so often the case with missing and abducted Native women, information sharing is essential. In order to protect Native women, we must find them as soon as possible. S. 1942 provides the more focus and priority for cases involving missing and exploited Native women. Specifically, the bill further requires the Departments of Justice and Interior to coordinate efforts to establish protocols to investigate missing and murdered Native Americans. Protocols shall be developed in consultation with Indian tribes, the FBI, DOI, BIA, and IHS. DOJ must also annually report to the Senate Committee on Indian Affairs and the House and Senate Judiciary Committees on the known statistics on missing and murdered Indian women in the U.S. and related information. Accordingly, the Sisseton-Wahpeton Sioux Tribe fully supports the enactment of this legislation to safeguard Native women.

#### **IX. Conclusion**

In closing, I want to thank the Committee for the opportunity to testify on behalf of the Sisseton-Wahpeton Sioux Tribe regarding our tribal law enforcement, public safety and related wellness priorities in expressing our support for S. 1870, the Securing Urgent Resources Vital to Indian Victim Empowerment Act of 2017, S. 1953, the Reauthorization of the Tribal Law and Order Act of 2010, and S. 1942, a bill to direct the Attorney General to review, revise and develop law enforcement and justice protocols appropriate to address missing and murdered Indians.

We are challenged by the rise in drug crimes and attendant violence. Our top priority of securing funding for our Tribal Justice and Detention Center, will be the key vehicle to empower our Tribe with the infrastructure, tools and capacity to implement and participate in these key legislative measures when enacted into law. Please help us restore safety to our community. Wopida.

The CHAIRMAN. Thank you, Chairman Flute. I agree with you.  
Councilman Boyd.

#### **STATEMENT OF HON. JOEL BOYD, COLVILLE BUSINESS COUNCILMAN, CONFEDERATED TRIBES OF THE COLVILLE RESERVATION**

Mr. BOYD. Good afternoon, Chairman Hoeven, Vice Chairman Udall and members of the Committee.

My name is Joel Boyd. I am a member of the Colville Business Council, the governing body of the Colville Confederated Tribes. I

also serve as Colville Chair for the Law and Justice Committee which oversees the tribal courts as well as law enforcement.

I appreciate this opportunity to testify today on S. 1953, which would amend the Tribal Law and Order Act and S. 1870, the SURVIVE Act. The Colville Tribes supports both bills and urges the Committee to approve them quickly. I would like to briefly summarize how the Colville Tribes would benefit from both bills, particularly in the area of juvenile justice.

The Colville Reservation is located in north central Washington State and covers approximately 2,275 square miles. The reservation is slightly larger than the State of Delaware. The tribe has nearly 9,500 enrolled members and is one of the largest Indian tribes in the Pacific Northwest.

Although we are sparsely populated, the Colville Reservation generates a high demand for police services. BIA funding limitations have meant that the tribe has a ratio of 2.3 officers per 1,000 residents. This lack of funding translates into response times that are often greater than two hours for calls to the more remote areas.

The Colville Tribe would benefit from several provisions in the Tribal Law and Order Act amendments. The legislation would require the Federal Government to develop a process for notifying tribes when a tribal member youth comes in contact with Federal, State or local juvenile justice systems.

In the State of Washington, local and State governments handle juvenile cases involving tribal youth. Counties do not consistently report to the Colville Tribes when a tribal member enters the juvenile justice system.

One of the counties on the reservation, Ferry County, operates a divergent program for juveniles. The Colville Tribe is often able to provide supplemental community resources and services that would enhance that program and make it more likely to succeed. This type of notification is common sense practice and will ensure proper coordination for our youth to receive the services and attention they need.

S. 1953 also requires the Federal Government to consult with Indian tribes on several issues, including traditional justice systems. The CCT has established a traditional justice system called the Peacemaker Circle.

The Peacemaker Circle is a group composed of tribal elders with knowledge of the tribe's customs and traditions that assist in resolving disputes. For some time, the tribe has been interested in utilizing the Peacemaker Circle for criminal matters involving tribal member juveniles. We believe having Federal agencies directly involved in facilitating discussions with State and local governments would assist in making this a reality.

The Colville Tribe also supports S. 1870, the SURVIVE Act. The SURVIVE Act would create tribal grant programs within the Department of Justice's Office for Victims of Crime and require 5 percent allocation from that fund to be provided to Indian tribes. Resources for Indian victims of crime have traditionally been very limited. The SURVIVE Act is an enormous step toward addressing this gap by providing a reliable source of funding for Indian victims that does not depend upon appropriations.

In conclusion, the Colville Tribe strongly supports the Tribal Law and Order Act amendments and the SURVIVE Act.

If I may, I would like to take this time to share a brief story on why this is so personal to me. While I was going to college, I worked as a youth camp counselor in my hometown. We had a range of kids from 7 years old to 14 that would come in.

It is a little tough when you build this bond with these kids and see them every day in the community and then you see them as they grow up. Some of them start to get into the court systems to where they are breaking the law, drinking and doing drugs at a young age. They are sent to county jail but we will see that same kid back the next week doing the same things he was doing before.

It is really tough for me because those are my little buddies which is what I called them when I worked with them. Some of these kids are becoming young adults now. When I see them in stores or anything, it affects me a lot.

That is one thing that with TLOA, we can address, getting more of a bridge between county and tribal courts so that we can work on matters and get the kids into treatment and get them the help they need rather than sending them through a juvenile system and not hearing anything on what their accomplishments can be.

Thank you. I am happy to answer any questions the Committee may have at this time.

[The prepared statement of Mr. Boyd follows:]

PREPARED STATEMENT OF HON. JOEL BOYD, COLVILLE BUSINESS COUNCILMAN,  
CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

Good afternoon Chairman Hoeven, Vice Chairman Udall, and members of the Committee. My name is Joel Boyd, and I am a member of the Colville Business Council, the governing body of the Confederated Tribes of the Colville Reservation ("Colville Tribes" or the "CCT"). I serve as the Chair of the Colville Business Council's Law and Justice Committee, which oversees law enforcement and tribal courts on the Colville Reservation.

I appreciate this opportunity to testify today on S. 1953, which would amend the Tribal Law and Order Act of 2010 (TLOA), and S. 1870, the SURVIVE Act. The Colville Tribes supports both S. 1953 (the "TLOA Amendments") and the SURVIVE Act and urges the Committee to approve them quickly. My testimony will focus on how the Colville Tribes and similarly situated Indian tribes would benefit from both bills, particularly in the area of juvenile justice.

I would like to commend the members of the Committee and the Committee staff for their support for and continued work on the TLOA. The Colville Tribes testified twice before this Committee when the TLOA was first pending in Congress in 2009 and 2010, and we are grateful for the Committee's willingness to again consider our views.

**Law Enforcement on the Colville Reservation**

Located in north-central Washington State, the Colville Indian Reservation encompasses approximately 2,275 square miles, and covers a geographic area slightly larger than the state of Delaware. Although now considered a single Indian tribe, the Confederated Tribes is, as the name states, a confederation of 12 aboriginal tribes and bands from across eastern Washington. The Colville Tribes has nearly 9,500 enrolled members, making it one of the largest Indian tribes in the Pacific Northwest. About half of the Tribe's members live on or near the Colville Reservation. Most of the Colville Reservation is rural timberland and rangeland, and most residents live in one of four communities on the Reservation: Nespelem, Omak, Keller, and Inchelium.

Like many other Indian tribes, the Colville Tribes is hampered by insufficient funding, insufficient legal authority to fully punish offenders, and the reluctance of federal authorities to investigate and prosecute violent crimes that occur on the Colville Reservation. Although sparsely populated, the Colville Reservation generates a high demand for police services. The CCT has contracted law enforcement

services from the Bureau of Indian Affairs (BIA) pursuant to the *Indian Self-Determination and Education Assistance Act*. BIA funding limitations have meant that the CCT has a ratio of 2.3 officers per 1,000 residents. This lack of funding for law enforcement personnel translates into response times that often exceed two hours for calls to the more remote areas of the Reservation.

**The TLOA Amendments (S. 1953)**

The Colville Tribes would benefit from several provisions in the TLOA Amendments. Most notably, section 203 of the bill would require the federal government to develop a means for notifying tribes when a tribal member youth comes in contact with federal, state, or other local juvenile justice systems.

In 1953, Congress enacted Public Law 83-280 which authorized several states, including the state of Washington, to exercise authority over certain criminal and civil matters on Indian reservations in the state. By default, local government courts administer detention and probation services, and the state of Washington administers commitment and aftercare services for juvenile matters that occur on-reservation.

The Colville Reservation covers portions of both Ferry and Okanogan counties, and those counties handle juvenile criminal cases. These counties do not consistently report to the CCT when Colville tribal members enter their juvenile justice systems. The section 203 requirement that Indian tribes be notified when tribal member juveniles enter local government systems would be a key first step for ensuring proper coordination for our youth to receive the services and attention that they need.

For example, Ferry County operates a diversion program for juveniles in its system in cooperation with local school districts. The Colville Tribes is often able to provide supplemental community resources and services that would increase the likelihood that a diversion program would succeed with our youth. Notifying Indian tribes when their tribal youth has entered a state or local juvenile system is a common-sense practice that should have been implemented long ago.

Section 203 also requires the federal government to consult with Indian tribes not less than bi-annually on several issues, including the means by which traditional or cultural tribal programs may serve or be developed as promising or evidence-based programs. The CCT has established a traditional justice system called the "Peacemaker Circle," which is a group composed of tribal elders with knowledge of the CCT's customs and traditions that facilitates discussion and assists in resolving disputes. The CCT has been interested in utilizing the Peacemaker Circle for criminal matters involving tribal member juveniles for some time. The CCT believes that having federal agencies directly involved in facilitating these discussions would assist in making this a reality.

Also, section 102 of the TLOA Amendments would require the Departments of the Interior, Health and Human Services, and Justice to consult with Indian country and submit a report to Congress on transferring federal funding from different federal agencies and administering the funds under a single plan. The CCT hopes that this report would provide an important record to assist in addressing some of the challenges the CCT police department faces in providing quality policing services for juveniles.

The CCT has been a training ground for many law enforcement officers. Because of budget limitations, the salaries of and benefits for CCT officers are not as competitive as local government jurisdictions. Once our officers have completed their basic training and field training hours, they often move on to other police departments and leave the CCT lacking in capacity, such as forensic interviewing. Coordinating federal resources from different agencies would allow the CCT to maximize funding and resources to fill these gaps.

Finally, the CCT suggests an addition to the reporting requirements in section 101 of the TLOA amendments. In the past, the BIA has been less than forthcoming on how it allocates increases in law enforcement funding. In prior years, the CCT discovered instances where Indian tribes with little violent crime and no staffing need were allocated increases from additional appropriations or carryover funds. To ensure transparency in these allocation decisions, the CCT recommends that language be included that requires the BIA to disclose the methodologies or criteria it uses to allocate funding increases or carryover.

**The SURVIVE Act (S. 1870)**

The SURVIVE Act would create a tribal grant program within the Department of Justice's Office for Victims of Crime and require a five percent allocation from the Crime Victims Fund (CVF) be provided to Indian tribes. The CVF is funded by fines and penalties paid by convicted federal offenders and does not require congressional appropriations. Indian tribes or tribal organizations would be eligible to



apply, and the grant funds could be used for a wide range of services for victims of crime—from counseling services for victims to training. The SURVIVE Act would establish a five percent set aside—approximately \$150 million annually—of the CVF for these grants.

The Colville Tribes strongly supports the SURVIVE Act. Resources for Indian victims of crime have traditionally been extraordinarily limited. The SURVIVE Act is an enormous step toward addressing this gap by providing a reliable source of funding for Indian victims that is not subject to annual appropriations.

The Colville Tribes strongly supports the TLOA Amendments and the SURVIVE Act. At this time, I would be happy to answer any questions the Committee may have.

The CHAIRMAN. Thank you, Councilman Boyd.  
Director O’Leary, thank you for being here.

**STATEMENT OF CARMEN O’LEARY, EXECUTIVE DIRECTOR,  
NATIVE WOMEN’S SOCIETY OF THE GREAT PLAINS**

Ms. O’LEARY. Good afternoon.

On behalf of the Native Women’s Society, I want to thank you all for the invitation to present testimony on these important Senate bills.

First, I want to say each bill is of extreme importance to the everyday safety of Native women and the ability of our Indian tribes to protect Native women. These bills remove certain barriers and increase the ability of Indian tribes to respond to these crimes and provide new options for Federal law enforcement agencies to respond to violence against Native women. Given the time restrictions, I am going to limit my oral comments to certain key provisions.

I do want to begin by saying the crisis we face in the levels of violence committed against Native women is well documented. I believe one of the Senators already talked about the National Institute of Justice report published in 2016 which highlighted that more than four in five Native women have been victims of violence. I think the percentage was 84.3 percent and that will happen in their lifetime.

The violence committed against these women included sexual and physical violence, stalking and psychological abuse. I have provided many of those statistics in my written testimony.

Going on to talk about the SURVIVE Act, for over ten years now the National Congress of American Indians Task Force, advocates and tribal leaders have requested creation of a permanent, dedicated funding stream under the Victims of Crime Act. The concerns of the NCAI Task Force are based on the following information from the U.S. Justice Department.

When we look at the years between 2011 and 2014, programs that served American Indians and Alaska Natives survivors of violence crimes received less than .5 of the Crime Victim Fund annually. In 2013, more than 60 percent of the States with Indian tribes did not make a single subgrant. As a result, Native communities and survivors of violent crimes received little assistance.

With the high rates of violence against Native women, Indian tribes and tribal programs need the necessary resources to provide basic services such as safe shelter, rape crisis services and advocacy for Native women who, on many tribal reservations, have no services.

In addition, Native women need immediate and long term counseling and medical services due to multiple victimizations committed against them by a single or multiple abusers. Sadly, for those families traumatized by having a missing or murdered relative, they often need assistance with transporting their loved one home and burial.

It is a travesty of justice that Indian tribes with the highest rates of victimization do not have direct access to dedicated tribal funding streams under VOCA. S. 1870 would address this long-standing injustice by directing that 5 percent of the total annual outlays from the Crime Victims Fund be provided to Indian tribes.

Concerning S. 1942, to organize and respond to an injustice, it must first be acknowledged and understood. The Native Women's Society of the Great Plains has worked for the last five years to increase awareness of this issue. We have supported community justice walks, we have a Facebook page dedicated to missing and murdered Native women and we honor Native women who have been murdered by creation of miniature traditional dresses. There are so many women who have gone missing or have been murdered. It is truly a crisis facing Indian tribes.

In October 2016, the National Congress of American Indians passed a resolution to address the crisis of missing and murdered Native women and girls by the Federal Government with agencies included, but not limited to, the Department of Justice, Interior, Health and Human Services to review, revise and create law enforcement and justice protocols appropriate to the disappearance of Native women and girls, including interjurisdictional issues, to provide victims services to the families and community members of the disappeared and murdered women such as counseling for their children, burial assistance, community walks, healing ceremonies, also coordination of efforts across the departments to increase the response to the disappearance of murdered Native women and girls and coordinating efforts in consultation with Indian tribes to increase the response of State governments where appropriate to cases of disappearance or murder of Native girls and women. These were fundamental steps toward responding to the crisis we face on a daily basis in lost lives.

S. 1942 addresses necessary steps in responding to the crisis we face as Native women who continue to go missing and are murdered. This year the Senate passed a resolution declaring May 5 as the National Day of Awareness for Missing and Murdered Native Women.

Thank you for your support for the National Day of Awareness. The first National Day of Awareness reached millions of people across the United States and the world through social media platforms. The public call for increased awareness is indicative of the extent of the reality that Native women go missing on a daily basis often without any response by law enforcement.

I support the changes S. 1942 would make and also would like to suggest inclusion of a field hearing on missing and murdered Native women to allow tribal communities the opportunity to share their losses and recommendations of how to improve the Justice responses to cases of missing and murdered Native women.

The Tribal Law and Order Act is a historic bill. Advocates celebrated that because we recognize the need to create that reform in American Indian tribes. The most significant change would be restoring the authority of Indian tribes to sentence offenders for more than a maximum of one year per crime.

TLOA has many other important provisions. I would like to address several. I know I am out of time. I have put that in my written testimony.

Again, thank you.

[The prepared statement of Ms. O'Leary follows:]

PREPARED STATEMENT OF CARMEN O'LEARY, EXECUTIVE DIRECTOR, NATIVE WOMEN'S SOCIETY OF THE GREAT PLAINS

Good Afternoon Senators, On behalf of the Native Women's Society of the Great Plains I would like to thank you for the invitation to present testimony on these important Senate bills. First I want to say each bill is of extreme importance to the everyday safety of Native women and the ability of Indian tribes to protect women. These Senate bills remove certain barriers and increase the ability of Indian tribes to respond to these crimes and provide new options for Federal law enforcement agencies to respond to violence against Native women. Given the time restrictions of today's hearing I will limit my oral comments to certain key provision.

I do want to begin however saying that the crisis we face in the levels of violence committed against Native women is well documented. In 2016, the National Institute of Justice published a report that again highlights that more than 4 in 5 American Indian and Alaska Native women (84.3 percent) have experienced violence in their lifetime. The violence committed against these women included sexual and physical violence, stalking, and psychological abuse. The NIJ reports

- 56.1 percent experienced sexual violence
- 55.5 percent experienced physical violence by an intimate partner
- 48.4 percent experienced stalking, and
- 66.4 percent experienced psychological aggression by an intimate partner <sup>1</sup>

**S. 1870 Securing Urgent Resources Vital To Indian Victim Empowerment Act—Creation of a Tribal Dedicated Funding Stream Under the Victim of Crime Act**

For over 10 years, the National Congress of American Indians Task Force, advocates, and tribal leaders have requested the creation of a permanent dedicated funding stream under the Victim's of Crime Act. The concerns of the NCAI Task Force are based on the following information from the United States Department of Justice:

- Between the years of 2011–2014, programs that served American Indians/Alaska Native survivors of violent crimes, received less than 0.5 percent of the CVF annually.
- In 2013, more than 60 percent of states with Indian tribes did not make a single sub grant. As a result, Native communities and survivors of violent crimes, received little assistance.

With the high rates of violence against Native women Indian tribes and tribal programs need the necessary resources to provide basic services such as safe shelter, rape crisis services, and advocacy for Native women who on many tribal reservations have no services. In addition, Native women need immediate and long term counseling and medical services due to the multiple victimizations committed against them by a single or multiple abusers. And sadly for those families traumatized by having a missing or murdered relative they often need assistance with transporting their loved one home and with burial. It is a travesty of justice that Indian tribes with the highest rates of victimization do not have direct access, a dedicated tribal funding stream, under the Victim of Crime Act.

Senate Bill 1870 will address this longstanding injustice by directing that five percent of the total annual outlays from the Crime Victims Fund (CVF) be provided to Indian tribes.

<sup>1</sup>National Institute of Justice, 2106

### **S. 1942 A Bill To Direct the Attorney General To Review Revise and Develop Protocols on Missing and Murdered Indians**

To organize and respond to an injustice, it must be first be acknowledged and understood. The Native Women's Society of the Great Plains has worked for the last five years to increase awareness of this issue. We have supported community justice walks, have a FaceBook page dedicated to missing and murdered Native women, and honor Native women who have been murdered by creation of miniature traditional dresses. There are so many women who have gone missing or have been murdered it is truly a crisis facing Indian tribes.

I have antidotal information but no hard and fast statistics but do want to share one story, that of Vicki Eagleman of Lower Brule SD. Her story is one that has been repeated too many times. The family reports her missing and no one investigates, her mom knew when she did not come home that night something was wrong. Her family initiated the searches on their own and found her body 7 miles from her home. No one has been brought to justice to this day.

In October of 2016, the National Congress of American Indians (NCAI) passed a resolution to address the crisis of missing and murdered Native women and girls by the federal government, with agencies including but not limited to the Departments of Justice, Interior, and Health and Human Services, including actions such as:

- To review, revise, and create law enforcement and justice protocols appropriate to the disappearance of Native women and girls, including inter-jurisdictional issues; and
- To provide increased victim services to the families and community members of the disappeared or murdered Native woman such as counseling for the children of the disappeared, burial assistance, and community walks and healing ceremonies; and
- Coordination of efforts across federal departments to increase the response to the disappearance or murder of Native women and girls; and
- Coordinate efforts in consultation with Indian tribes' efforts to increase the response of state governments, where appropriate, to cases of disappearance or murder of Native women or girls.

These were fundamental steps toward responding to the crisis we face on a daily basis in lost lives. S. 1942 addresses necessary steps in responding to the crisis we face as Native women continue to go missing and are murdered. This year the Senate passed a resolution declaring May 5th, 2017 as a National Day of Awareness for Missing and Murdered Native Women. I thank you for your support for the National Day of Awareness and can say the first national day of awareness reached millions of people across the United States and the world through social media platforms.<sup>2</sup> This public call for increased awareness is indicative of the extent of the reality that Native women go missing on a daily basis often without any response by law enforcement. I support the changes S. 1942 will make and would also like to suggest inclusion of field hearings on missing and murdered Native women to allow tribal communities the opportunity to share their losses and recommendations of how to improve the justice response to cases of missing and murdered Native women.

#### *S. 1953 Reauthorization of the Tribal Law Order Act of 2010*

The Tribal Law and Order Act (TLOA) was a historic bill we as advocates celebrated because we recognized the need to create law enforcement reform for American Indian tribes. The most significant change being restoring the authority of Indian tribes to sentence offenders for more than a maximum of one year per crime. TLOA also has many other important provisions and I would like to address several.

**Federal Accountability.** TLOA, Section 201 of the Tribal Law and Order Act of 2010 requires U.S. Attorneys to coordinate with tribal justice officials on the use of evidence when declining to prosecute or refer a reservation crime. Sharing of this type of information is critical to keeping Indian women safe. Tribal officials need to be notified when a U.S. Attorney declines to prosecute sexual assault and domestic violence cases so that, in the case of an Indian defendant, a tribal prosecution may proceed, or in all other cases, tribes can at least notify the victim of the status of the case so that the victim may take the necessary steps for protection. I recommend U.S. Attorneys do more to increase coordination and reporting duties with tribal justice officials under the TLOA.

<sup>2</sup>Social media impressions related to the national day numbered approximately 8.5 million. Source: <http://keyhole.co>.

**Enhanced Tribal Sentencing Authority.** Section 304 of the TLOA grants tribal courts the ability to sentence offenders for up to 3 years' imprisonment for any one offense under tribal criminal law if certain protections are provided. This is a significant improvement, although this maximum sentence still falls short of the average sentence of 4 years for rape in other jurisdictions. Indian tribes must have the capacity to house the offender in detention facilities that meet federal standards; otherwise, the enhanced sentencing power is meaningless. It is very important the Bureau of Prisons Pilot Project is reauthorized.

**Prisoner Release and Reentry.** Section 601 of the TLOA requires the U.S. Bureau of Prisons to notify tribal justice officials when a sex offender is released from federal custody into Indian country. It is absolutely essential that tribal justice officials are notified of prisoner release and reentry on Indian lands, regardless of the process by which this occurs. Proper implementation of this provision is critical to the safety of Indian women.

These are just some of the provisions within the TLOA that will help protect the safety of Native women.

Again, I thank you for the opportunity to testify on these important Senate Bills.

The CHAIRMAN. Thank you, Ms. O'Leary. Thank you to all the witnesses for being here.

We will now proceed with five minute rounds of questioning.

I would ask of each of you the following. My question is right now under the Crimes Victim Fund, less than \$30 million a year out of \$3 billion goes to help on reservations. If we are able to pass the SURVIVE Act, that would increase to \$150 million a year. In your opinion, is that important and can it make a real difference in Indian Country? I would ask that question of each one of you, starting with Mr. Shores.

Mr. SHORES. Thank you, Mr. Chairman.

Of course that is important. As we talk about whether it is a legal obligation under the trust responsibility or a moral obligation to address the needs of victims in Indian Country, when we look at the President's fiscal year 2018 budget request, it does include a 5 percent set-aside for OVC. The department is supportive of that. That is one way, I think, that we can certainly ensure there are the opportunities to improve resources and access to those resources for Native American victims.

The CHAIRMAN. Mr. Rice.

Mr. RICE. Thank you, Mr. Chairman.

Absolutely, I would echo my colleague's comments. I look at it also from the perspective that the Bureau of Indian Affairs provides services directly to Native American communities and also through support of self-governance, self-determination, compacts and contracts.

In looking at how we affect the future with any kind of support coming our way, we are having a broader conversation about what that looks like, how do we get the right tools, the right funds in the right place to have the most impact? Historically, the spread of funding applications usually will have impact. If we can get it to a priority area or priority areas, I think we can have a broader impact on the services we are providing.

The CHAIRMAN. Chairman Flute, to your outstanding testimony, I think we are making real progress in terms of funding for the Law Enforcement Center which comes out of Interior, EPA. Our challenge is operating and maintenance type funding which actually comes out of criminal justice science.

Mr. FLUTE. Mr. Chairman, I say this with the support of my tribal council that the Sisseton Wahpeton Sioux Tribe might be in a

little better situation to provide O&M costs from the revenues we generate. Unfortunately, our need is getting the funds for the detention facility.

The CHAIRMAN. To make the point, I think we are honing in on those dollars. You have been a real champion on it.

Mr. FLUTE. Thank you. I appreciate that, Mr. Chairman.

I say this because I am a member of the Great Plains Tribal Chairman Association. I serve at the pleasure of the United Tribes of North Dakota as chairman of the board. Our tribal enrollments are growing in the tribes. With increased tribal enrollment comes increased challenges and crimes because of the disadvantages that we have. This would help a great deal.

We would also ask that there be continuing authorization so that, as tribes, we don't have to come back and ask for this again. We definitely appreciate your leadership.

The CHAIRMAN. That is the reason for the authorization so it would be a continuing authorization.

Mr. FLUTE. Thank you.

The CHAIRMAN. Councilman Boyd.

Mr. BOYD. Can you explain the question one more time?

The CHAIRMAN. I pointed out that right now less than \$30 million a year comes from the Crime Victims Fund to Indian Country, less than \$30 million. The SURVIVE Act would increase that to \$150 million. Is that important to you? Do you need those resources? How would you use them?

Mr. BOYD. Yes, it would be important. Now the CCT has not gone to the State for any kind of CVF funds just because we have not had good luck in the past, you could say, with that, with little outcome.

The CHAIRMAN. It has gotten to the point where you weren't even applying for it because you were not getting it?

Mr. BOYD. Exactly.

The CHAIRMAN. I think that makes the point very dramatically, that we need to provide more funding.

Mr. BOYD. Yes, sir.

The CHAIRMAN. Ms. O'Leary.

Ms. O'LEARY. With all due respect, it is the season for Halloween, so I am going to use that for an example.

If the first 50 kids show up at the door and you give them all the candy, then ask them to pass it out to the other kids, you know how successful that is, right? I think that gives you a good example of why we need to have the resources to provide services for Native people with Native people because that is where the resources will then go.

I cannot stress to you, Senators, how important it is to have safe space for victims of crime when they are fleeing violence. It is the difference between getting it to stop and not stopping it.

You have all heard about the lack of law enforcement and accountability to offenders. If they are not going to be picked up and held accountable, we are going to do catch and release, you know what happens to a fish when you catch and release, it gets bigger and better at what it does, right?

There are some things to think about in what is happening in our communities. There is just so much we can do with this kind

of money. We can create that safe space, provide more counseling, and we will have burial help.

Please note that many times the women and children coming into the shelters and programs that I serve, this is not a onetime thing. It is often happening over a lifetime. That is why we are getting the horrendous problems we have.

Not to leave out the offenders, we need that money and services that could come through the Tribal Law and Order Act too. Maybe we are not talking enough about some of those services too. I think this would be money well spent.

The CHAIRMAN. It flows right on. That is a great point. That is the other side of the coin, the prevention, the enforcement and the coordination among the law enforcement agencies. That is a great point. Thank you.

Vice Chairman Udall.

Senator UDALL. Thank you, Mr. Chairman.

Just recently, I received a statutorily required report that was due in 2012, five years late. In order to exercise this Committee's oversight authority, we must receive timely reporting of information on Indian programs from Federal agencies. S. 1953 looks to address this same issue by withholding administrative funding from the Department of the Interior and the Department of Justice agencies that fail to submit required reports by the legislative deadline.

Mr. Rice, in your testimony, you express that withholding such funding could negatively impact the BIA's delivery of public safety needs to tribes in Indian Country. Could you elaborate on how this could impact tribes?

Mr. RICE. Absolutely. Thank you, Senator.

When I first stepped into this role, I started asking the questions to the Law Enforcement Program about those reports, saying, why is it late, what has happened and is it something we can fix? What I came to learn is that the reports were being developed was based on the timing of the money that went with it. If the funding was two-year funding, report development began two years afterward.

The first round of this, rewinding the clock to 2010, folks were not prepared to develop the report, the process, the vetting of the report. All those pieces were new and people had to develop it, a step forward.

Fast forward to today, the trend that I am seeing in talking with staff is that the way the information is being collected, the way the report is going to be developed is moving faster. It does not mean it is as fast as it should be, absolutely not. We need to move quicker.

The problem or the challenge that I see with carving out administrative funds is that the administrative overhead within the Bureau of Indian Affairs is very lean, so the focus of the Law Enforcement Program, Office of Justice Services, is boots on the ground.

It is having those patrol officers, having the correctional staff, the dispatchers, all the people actually providing those services with a small overhead that is doing oversight for all the other programs. If we have to carve off administrative dollars, it is going to have a direct correlation to those boots on the ground. That is the

area that will take some time to actually figure out what that impact will be. On the surface, I think the impact would be severe.

Senator UDALL. And on the tribes.

Mr. RICE. Absolutely.

Senator UDALL. U.S. Attorney Shores, if the required reports under S. 1953 were not submitted on time, what impact would withholding administrative funds from your department have on its ability to keep tribal public safety programs running?

Mr. SHORES. Senator, thank you for the question.

Certainly, I want you to know that I agree that accountability is an important part of the relationship the Justice Department has not only to this Committee but to the tribes and the trust responsibility we have to them. The collection of that data and the ability to ensure it is correct and accurate is an important part of that.

I know that the Justice Department has circulated TLOA II and that particular language. We are currently reviewing internal feedback on that. It is my understanding that DOJ is settling on a formal position on that particular clause within TLOA. We would look forward to the opportunity to address that in an agency response following this hearing.

Senator UDALL. Do you agree with Mr. Rice's testimony?

Mr. SHORES. Certainly in the regard that it is important that we gather the information so that we can understand where needs are or as we look at the metrics.

Senator UDALL. He said withholding would hurt the tribes. Do you agree with that?

Mr. SHORES. Those discussions are ongoing. I believe the Department of the Interior perhaps has, at this point, a better idea of how their boots on the ground resources could be impacted by that withholding.

However, the Justice Department's responsibility through a various assortment of grants, I would have to consult with my colleagues at the Office of Justice Programs. I would expect that withholding of funds, common sense would tell me, could be detrimental to our ability to fulfill our trust responsibility to Indian tribes.

I would like the opportunity to speak with my colleagues at the Justice Department and address that more fully.

Senator UDALL. Thank you very much. We look forward to a timely answer from you on this particular issue, okay?

Mr. SHORES. Yes, sir.

Senator UDALL. What suggestions would either of you provide to the Committee to increase reporting accountability for Federal agencies in a way that does not negatively impact tribes, as suggested earlier? What would you suggest?

Mr. RICE. Mr. Vice Chairman, one of the areas we have been talking about is the timing of the reporting. As I stated earlier, the two-year funding cycle creates this long gap. We all move very quickly now with data in all aspects of our lives.

If we had data that was captured yearly as opposed to two years, it would change the baseline we would be operating off of and how we relate that to previous years. That might be one aspect or one way we could go about actually capturing data quickly.

Ultimately, we would love to have it in real time. We are not at that point yet. A quicker cycle would be a better option.



Senator UDALL. U.S. Attorney Shores, do you have any thoughts on that or do you want to include that in your reply to us?

Mr. SHORES. I do not have any additional insight other than those provided by my colleague. I would welcome the chance to include that in my report once I have spoken with the individuals at the Office of Tribal Justice, the Office of Justice Programs and also the Executive Office of U.S. Attorneys.

As you mentioned, there was the Native American Issues Coordinator position that was included. That individual works with the U.S. Attorneys to help collect some of that data. I would like to speak with him as well.

Senator UDALL. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Daines.

Senator DAINES. Thank you, Mr. Chairman.

Mr. Shores, as you know, Montana's Fort Peck tribes utilize the Tribal Access Program, TAP, which provides tribes access to national crime information for both civil and criminal purposes. What benefits has Fort Peck or other tribes gained from TAP?

Mr. SHORES. Senator, this is a great question because TAP is a program which I think addresses what is the coin of the realm these days. That is information and access to information.

There is no reason that tribes should be behind the eight ball when it comes to accessing information. The benefits that we see on the ground for tribal law enforcement are safety, not just public safety for the communities they serve, but safety for the tribal law enforcement officer who, for example, pulls over a vehicle. They do not know if that individual who they are engaging may be a fugitive, a wanted felon or have a history of violence. We see it in the ability to track sex offenders, to ensure that Indian Country does not become some safe haven for sex offenders.

Senator DAINES. Mr. Shores, on integration of data, I want to make sure I am clear. If a law enforcement official pulls over a vehicle, is he getting that off the license plate match or off the driver's license?

Mr. SHORES. I am unsure. I believe the way the TAP Program works is it is a multifaceted interface where they could get it through fingerprints or, I believe, information on a license.

Senator DAINES. It is a separate issue but it actually does relate to allowing law enforcement to have better visibility of who is in that vehicle. If you are in hot pursuit and find out that the person in that vehicle is a known violent offender, it might change the way law enforcement engages the vehicle prior to putting that law enforcement official in closer contact. Once they get the driver's license, they are twelve inches away from the driver.

Mr. SHORES. Absolutely. There is inherent danger for every police officer when they approach a vehicle on every traffic stop.

Senator DAINES. Although it may seem routine. That was something I wanted to follow up separately with you. I did not mean to interrupt you but I did. I will let you keep going but that is something I would like to follow up with you to see what we can do to get law enforcement better information and tools before they actually get in close proximity to the vehicle.

Mr. SHORES. I can tell you I was speaking with officials from the Office of Tribal Justice earlier today and they shared with me an anecdote from Fort Peck. Earlier this year when they set up the TAP Program, the first individual they put into the system actually came back as a registered sex offender. It turned out when they entered his information, he had an outstanding warrant. He was immediately taken into custody and able to be turned over to the probation office. That is information that, without TAP, the officials on the ground would not have had. Yes, sir, it is very beneficial.

Senator DAINES. I want to shift for a moment to talk about the Two Rivers detention facility. Secretary Zinke recently received a letter from the Chief Justice of the Crow Tribe, Leroy Not Afraid detailing the inhumane conditions and illegal overcrowding that Crow and Northern Cheyenne tribal members are currently subject to in detention facilities in Montana as well as Wyoming.

The BIA is applying for a contract to reopen the Two Rivers Detention Facility in Hardin which is expected to help alleviate some of that overcrowding. Mr. Rice, what is the status of that lease application?

Mr. RICE. Senator, thank you for that.

The Two Rivers facility is very important. It is right there in Hardin in the middle of the Crow Reservation in Montana. During the interim while the lease is being worked on, all of our folks that need bed space are being sent to Lama Deer. They are even being sent to other areas. We see it as a critical thing that needs to get done.

The lease is on its last review out of the Bureau to be sent to GSA. There was an expectation that will be fast tracked and moved through.

Senator DAINES. The question I am getting from all the folks back home is when do you think it will reopen?

Mr. RICE. The target we are shooting for is 90 days.

Senator DAINES. Ninety days from now?

Mr. RICE. Correct.

Senator DAINES. That would be January 2018?

Mr. RICE. Correct. We would be happy to quickly follow up with you as the process unfolds.

Senator DAINES. Thank you. There are a lot of eyes watching us. I appreciate your help on that, especially the folks in Big Horn County.

Mr. RICE. Absolutely.

Senator DAINES. Judge Not Afraid's letter also states "the BIA has continuously failed to deliver Crow inmates to court for arraignments, hearings and trials." Has BIA confirmed that is the case?

Mr. RICE. We have found in talking with my senior staff that we have four instances that happened earlier this year in the January, February timeframe. It was all due to icy road conditions and poor driving conditions which, as you well know, across Montana if you have to get going on the highway and it is one of those cold days in the winter, you are going pretty slow.

Senator DAINES. I do. Let me just state this. That does conflict with what I am hearing from the Crow tribal judge, what he has on file. I would like your commitment to work with us and the

Crow tribal judiciary to reconcile that. Obviously, there is another set of information and facts, to find out why they were missed, as well as your commitment to provide me with your course of action to reschedule any missed dates after you have done so. May I have your commitment to do that with us?

Mr. RICE. Absolutely.

Senator DAINES. Thank you. When would be a reasonable amount of time to expect that?

Mr. RICE. Two weeks.

Senator DAINES. Great. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Heitkamp.

Senator HEITKAMP. Thank you, Mr. Chairman.

U.S. Attorney Shores, in the last 20 years, how many reported homicides have there been in Indian Country in the United States of America?

Mr. SHORES. I do not have that information in front of me today, Senator.

Senator HEITKAMP. Okay. In the last 20 years, how many prosecutions have there been of murders and homicides in Indian Country?

Mr. SHORES. As a Federal prosecutor who has prosecuted some of those, I would say to you countless but I do not have that number in front of me today.

Senator HEITKAMP. Do you think the Department of Justice could give me that number?

Mr. SHORES. I do not know, Senator, but I certainly would follow up and inquire whether our Bureau of Justice Statistics has that information.

Senator HEITKAMP. I think it is important to know what your clearance rate is. How many of these cases have actually been investigated and either determined to have a suspect or have some form of prosecution.

I am not picking on you. I am just saying this is the frustration we have. If I asked you how many reports of missing women reported either to tribal police or the Department of Justice, how many of those reports are currently under investigation, I do not think you could give me that number either.

I think if I asked you how many pending investigations are there of drug crimes in this Country the FBI is involved in, I bet you they could give me that number. I bet you they could give me the clearance rate of the drug prosecutions they have made globally. You keep these numbers. I have seen these numbers. I have been the Attorney General of North Dakota.

I am not picking on you. I am just trying to make the point that this is invisible. It does not seem to be given the level of gravitas that it has to. In North Dakota, we just went through an initiated measure that enacted something called Marsy's Law, something that is happening across the Country, giving crime victims even greater rights.

We also have had many, many jurisdictions implement Amber Alerts. I did a meeting on Amber Alerts in North Dakota. Many, many tribes from across the region and across the Country came and not one had an Amber Alert system, not one.

They had no way if someone went missing. In fact, my crime victim advocates say, we rely on Facebook. We rely on Facebook to notify each other on what is happening with these crimes.

The Department of Justice has a unique obligation in my State, unique because major crimes are prosecuted by the FBI. I am not picking on you. I have talked to Director Wray about this. I browbeat Director Comey for a number of years on this issue.

I can pass all the laws and we can get all the sponsorships but if we do not have a commitment from the Department of Justice and the Department of the Interior to make this a high priority, we are not going to be successful. We are not.

I am pleading for these crime victims and their families that they should know where these cases are. They should know that someone is still looking for a loved one. They should know that someone is still looking for a perpetrator. They do not and there is nowhere to turn.

This is a situation that would be intolerable if it were happening in Bismarck, North Dakota. Yet, we kind of shrug our shoulders. We have kind of a joke on this side. We say what happens in the Indian Affairs Committee stays in the Indian Affairs Committee.

We all in this Committee understand the challenges and understand the statistics but we walk outside the door and it seems to evaporate from any kind of consciousness.

I want to thank you for your hard work. I know how hard it is to prosecute these crimes. I know how hard it is to work with victims. I want to applaud Senator Hoeven for what he is doing to try to bring more victims services.

You will agree me, won't you, U.S. Attorney Shores, that if you have good, solid crime victim advocates and people working with crime victims, it will increase your rate of prosecution and success in prosecution?

Mr. SHORES. Senator, first, let me say, I thank you for your passion on these issues. As a career prosecutor, this is near and dear to my heart as someone who has worked in and around Indian Country.

What you said at the end, yes, when we have a multidisciplinary team, even a multijurisdictional team. For example, in Oklahoma where we have a patchwork jurisdiction system, it is important that we have social services, law enforcement, State, local and tribal folks at the table.

If we have those conversations, we can provide a more holistic response to a particular need. We can determine whether the best place to proceed is in tribal court, Federal court or no court at all and look at other alternative rehabilitative mechanisms.

I do want to say, if you leave here with nothing else today, I want you to know that the prosecutors who work in the Justice Department and prosecute crimes in Indian Country, especially the men and women who serve as tribal liaisons, many of us who have personal ties to Indian Country, you will find no more passionate a group of career prosecutors to pursue these issues.

I commit to you that as a U.S. Attorney in the Northern District of Oklahoma, I will strive to have the voice of Indian Country heard in the halls of the Department of Justice. I can tell you in my relations speaking with the leadership of the Justice Depart-

ment, this is an issue that is important. It is consistent with what Attorney General Sessions has mandated with regard to U.S. Attorneys taking a leadership role in reducing violent crime. That is exactly what Indian Country needs, a focus on the reduction of violent crimes.

Thank you for the opportunity to respond. Thank you for bringing attention to this issue.

Senator HEITKAMP. Thank you so much for your comments. I look forward to working with you and the Department of Justice as we move forward with this bill.

Mr. SHORES. Thank you.

The CHAIRMAN. Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

I really appreciate what you are advancing with the SURVIVE Act. As we think about the types of victim assistance, it is the financing and resourcing side but also the physical, whether it is the domestic violence shelters, the medical care, and the services that come with them.

I just want to paint a picture of what I reckon with, with so many of my constituents. In the Yukon Kuskokwim region, the largest community there, the hub community, is Bethel. Bethel has 4,000-some people.

They have a shelter there, a women's shelter, in Bethel. The Bethel region serves 56 different villages spread out over an area of 59,000 square miles. I have one women's shelter spread over 59,000 square miles. Emmonak to the north does have a very small facility.

There are no roads. There is not a road in this region for these 56 villages. Quinhagak is 70 miles away. Quinhagak is an average village in the region that has between 700 and 800 people. It is a \$340 round trip ticket from Quinhagak to get to Bethel.

If a woman is a victim of domestic violence needs to flee or get out, there is no other way. There is no shelter. Much of the resources that the shelter has do not go for a nice facility; it goes for a plane ticket to get that woman from Quinhagak to Bethel to get to safety.

I recognize that we have so much work to do when it comes to victim assistance but I just wanted to make sure that on the record, we understand. It is not just Alaska. I know in South Dakota and Montana, we have big, wide open spaces. You all have more roads but it still is difficult to access these resources. Knowing these are issues we are going to be working on together, I appreciate that.

Director Rice, I want to raise an issue I have been working on for a while. This is the problem with distribution of Justice funds to PL-280 States of which Alaska is one. In 2016, we were successful in getting \$10 million in tribal court funding for PL-280 States for the first time. I have been fighting for this for years.

In 2017, the proposal cut the funding. We restored it in the fiscal year 2017 omnibus. Once again, the budget proposal for 2018 proposes to cut the funding. We are going to work to restore that funding. It will stay in there.

I want your commitment. This is just the right thing to do to expand the tribal court funding into the PL-280 States. For the well being of Alaska Natives and American Indians, we need to do this.

I want your commitment, first of all, to work with me on distributing the fiscal year 2017 funds as quickly as possible and also your commitment to work with me as we move forward to ensure these funds continue to be made available.

Mr. RICE. I commit to both, Senator. Thank you.

Senator MURKOWSKI. Thank you. We need it, as you know.

I also want to bring up the issue of prevention. As important as all of this assistance is when we speak of the victims, I think we all want to be in that place where we have no more victims, where we do not need the shelters because our women and families are safe.

How we deal with prevention is important. I know these bills do address certain aspects of it. We have a program in Alaska, the Towhee Program. It is a community-based approach to support child welfare, family stability, and strengthening tribal communities.

I think it is a step in the right direction. We have seen some positive outcomes here but again, this is one of the initiatives that was decreased in the Administration's proposed budget. Again, I am working to address that.

We are also focusing on some other areas, investing in substance abuse prevention, mental and behavioral health options and, of course, tribal courts. Again, focusing on prevention, I think is something I would like to make sure we are committed to.

Quickly, do you, Mr. Rice, have prevention incorporated into the programs at BIA? Mr. Boyd, you mentioned in your comments the need for prevention on the front end. Can you speak to that real quickly?

Mr. RICE. In terms of prevention, especially in Alaska, I think the Bureau of Indian Affairs region has a fairly small regional office in terms of actual direct services. We have all the compacts and funding agreements to all the tribes and villages. Those programs are fairly linear in terms of program content, output, and outcome.

I think the area that would be helpful to work together on is looking at all of the other partners in Alaska and how we actually work together. As you said, the expensive round trip ticket anywhere up and down the Kuskokwim, those dollars could be spent better if we can leverage resources across agencies. That is where we get the greatest value. I think having the conversation around prevention is part of that.

Senator MURKOWSKI. Mr. Boyd, did you want to add anything to the discussion?

Mr. BOYD. No, basically just to reiterate that with prevention, right now it is where it is and I cannot really further discuss what possible outcome we can add on to it.

Senator MURKOWSKI. Thank you all for your testimony.

Thank you, Mr. Chairman and Mr. Vice Chairman.

The CHAIRMAN. Just a couple questions to finish up and I will see if any of the other members have remaining questions as well.

Mr. Shores, talk for a moment about under TLOA we have the requirement that DOJ, Interior and HHS develop a coordinated plan to address crime on the reservation. Talk about that and how you think it can be effective, including tracking data as Senator Heitkamp discussed with you, something we are all pushing for.

Mr. SHORES. Since I joined the Justice Department in 2003, these are issues we have been addressing. The general rule we have in the Northern District of Oklahoma is that a collaborative approach is a good approach.

The more opportunity to offer services and be responsive to not just the needs of the investigation but, as I said earlier, the needs of the victims and the needs of the communities we serve is important.

If you have a multidisciplinary team, that can be for a specific case or that can be through a task force-like approach so that you are addressing problems on a more holistic level. That includes getting out, not just when you are responding to a crime, but specifically includes prevention as we have discussed, getting out into the communities we serve whether it is talking with children or social service providers to give them some of the knowledge and tools they need to know when to engage Federal agencies that can provide and supplement what resources they have. I think that is key.

With regard to data collection, depending on the type of crime, it certainly can be challenging. I have prosecuted a number of human trafficking crimes as a Federal prosecutor. By its very nature, victims do not come forward. It is challenging sometimes to track those numbers where we suspect or we know the problem is worse than we are able to calculate. I think taking a task force and collaborative approach is a good approach.

The CHAIRMAN. Mr. Rice, the BIA is required to complete background checks for tribal law enforcement and corrections personnel. The timeline for that is 60 days. Why are you not able to meet that timeline? What needs to be done to address it?

Mr. RICE. The timeline ends up being part of the movement of the information between the Department of the Interior and the Office of Personnel Management which is the agency responsible for actually carrying out those particular background investigations.

We get our end of the bargain done. It goes over to OPM with thousands of government-wide background investigations underway and it takes longer than the 60 days to do it. I think our discussions have been that we could do it quicker within the Department of the Interior, actually using some of the HR processes to move those packages along.

I think there is opportunity to improve that, but as it stands, in partnership with OPM, it takes longer than the 60 days.

The CHAIRMAN. Thank you.

Chairman UDALL.

Senator UDALL. Thank you, Chairman Hoeven.

Chairman Flute, your tribe is one of the first five tribes to exercise the special domestic violence criminal jurisdiction restored to tribes by Congress in 2013. I want to commend you, Mr. Chairman, for your tribe's leadership in this area.

Mr. FLUTE. Thank you.

Senator UDALL. Could you tell us a bit about your tribe's experience with implementing the 2013 special jurisdiction?

Mr. FLUTE. Is this in regard to VAWA?

Senator UDALL. VAWA, yes, the special jurisdiction.

Mr. FLUTE. We did the one gap. That was not having that tribal access program. That did fill that gap in being able to share that information.

Senator UDALL. Tell me a bit more about that?

Mr. FLUTE. About the TAP?

Senator UDALL. Yes, the gap you are talking about.

Mr. FLUTE. The gap was when we had people coming into our tribal Nation, whether they are being caught on the streets or an offender of domestic violence, being able to get access from NCIC to see what type of offenses they have had throughout the Nation.

I do want to hit on that with VAWA we need to expand. We are able to get the calls and we are going to apprehend individuals, but when they are destructive and destroying property and other things like child abuse and neglect, we are not able to enforce tribal jurisdiction on those non-tribal members which VAWA is and does.

My tribe had seven cases where four have pled guilty; two, I believe, are pending; and one absconded. We would like to see VAWA expanded to be able to enforce tribal jurisdiction over non-tribal members.

Senator UDALL. Mr. Chairman, has your justice system encountered any problems with domestic violence offenders attacking or assaulting officers during the exercise of this special jurisdiction?

Mr. FLUTE. We have not heard of any physical violence towards those officers; verbal aggression, verbal comments, but nothing physical though.

Senator UDALL. To my understanding, that is a gap in terms of the special jurisdiction and the way it works. Ms. O'Leary, is that correct?

Ms. O'LEARY. Yes, I have heard that from other tribes. The tribes need jurisdiction across the board but as far as VAWA goes, all of the auxiliary crimes that happen, they absolutely have to have that because the only limited scope right now is that crime where he hits the partner who is a tribal member.

There are all kinds of things that go around that too. If he damages a car, there is no jurisdiction over that. If he assaults the officer arresting him, there is no jurisdiction. If he assaults his children, which is over 50 to 60 percent of the cases, there is no jurisdiction over that.

I do not enjoy the privilege of being one of those tribes that is starting to make this groundbreaking start to overturn Oliphant, but I get to work with several tribes, Sisseton and Fort Peck, who are doing that. Three Affiliated is in the process too.

We are looking at all that kind of stuff. I don't know if I am getting too far off the subject. One of the other things we are going to need to overcome in the future is how to take care of the needs of non-offenders such as medical needs. There are a lot of things to overcome here but it is an exciting time.

I worked in a shelter for many years. One of the things we so often saw was it is 2:00 a.m., a non-Indian has assaulted his part-



ner, we have the county sheriff there, and the tribal officers. Nobody can arrest him. That was just a horrible place. She can come into the shelter. There is no accountability.

I am very excited to have this happening in my lifetime. I see that it could work better.

Senator UDALL. Chairman Flute, we look to work with you and learn more about how that has worked. You were a pilot tribe under VAWA and the special prosecution.

I also have a question, if it is okay, Mr. Chairman, to ask U.S. Attorney Shores. Another issue I am concerned with is the lack of coordination between BIA and DOJ when it comes to tribal correction facility construction.

Chairman Flute, you testified about the negative effects of BIA decommissioning your jail without a replacement plan. In my home State, the Mescalero Apache are facing a similar issue. They have been without a juvenile detention center for more than a decade. I know I heard Senator Tester talk about tribal correction facility issues in Montana.

U.S. Attorney Shores, the question for the Department of Justice is what is DOJ doing to address the substantial need for more detention facilities within tribal communities?

Mr. SHORES. Mr. Vice Chairman, I know one of the primary issues is resource-based. As we heard from Chairman Flute, the Sisseton-Wahpeton, for example, is having a real challenge right now with regard to their detention facility.

When the Office of Justice Programs and other DOJ agencies look at how we can remedy this issue, I think what we often see is sometimes brick and mortar money may be available in one agency and operational money not available in another agency.

I know there are internal discussions that can be had. As I have learned in my first year of marriage, I can tell you that the secret to any good relationship is good communication. I think certainly encouraging more communication between the BIA and the department on this issue and with this Committee would go a long way when you pair that with resources to be able to fix that issue.

Senator UDALL. Thank you.

Mr. Rice, has BIA done an estimate of the extra costs paid by the Federal Government and tribes to contract bed space with counties and private prisons when BIA facilities are decommissioned?

Mr. RICE. In day eight of stepping into this role, I do not have that information but I am happy follow up with you.

Senator UDALL. I hope you will follow up and give us an answer for the record. I am wondering also what you are doing to ensure tribal inmates housed in contracted facilities have access to education and culturally-relevant rehabilitation? You probably do not know that either based on the first question.

Mr. RICE. Similar to the first answer, I would be happy to follow up.

Senator UDALL. For the both of you, this is a big issue for tribes. As I said, Chairman Flute, I hear this from my members. I am sure the chairman hears it from his. What happens when you get a decommissioning, then tribes end up paying a lot of money to send somebody way off. You have transportation costs and you

have to pay the other facility. We need to realize when we are decommissioning that is the impact we are going to have.

With that, you have been very generous, Mr. Chairman. With the time, I will yield back.

The CHAIRMAN. Again, I want to thank all of our witnesses so much for being here and for your good work.

The hearing record will be open for two weeks.

With that, we are adjourned. Thank you.

[Whereupon, at 4:20 p.m., the Committee was adjourned.]

## A P P E N D I X

PREPARED STATEMENT OF HON. RUSSELL BEGAYE, PRESIDENT, NAVAJO NATION

I would like to thank Chairman Hoeven, Vice-Chairman Udall, Members of the Committee, and staff for holding a hearing on three important bills concerning public safety Indian Country. Below are my comments regarding S. 1870, S. 1953, and S. 1942.

### **S. 1870 The Securing Urgent Resources Vital to Indian Victim Empowerment (SURVIVE) Act**

The Victims of Crime Act was established in 1984, it set up the Office for Victims of Crime and created the Victims of Crime fund, which provides funding to the states for victim assistance and compensation programs that offer support and services to those affected by violent crimes. Unfortunately, tribes were left out of the act, even though the United States has had federal jurisdiction over major crimes in Indian Country since 1885.

Indian Country has some of the highest rates of crime of violence, and the Navajo Nation is no exception that. Yet, only 0.5 percent of the Crime Victims Fund has been expended on Indian Country. The SURVIVE Act's 5 percent set aside for Indian Country is long overdue.

The Navajo Nation's (the Nation) criminal justice system is one of the most extensive and well-developed systems in Indian Country, but the lack of adequate funding and staffing stymie the effective operation of this system.

The Nation has 7 police districts and employs 239 commissioned law enforcement officers, 204 of whom are patrol officers. These officers patrol over 27,000 square miles of the Nation (about the size of West Virginia), a jurisdiction that extends into Arizona, New Mexico, and Utah. The 2010 U.S. Census estimated a population of 174,000 people on the Nation and showed a ratio of officers to residents of 12.5 to 10,000. This is well below the national average of 19 officers to 10,000 residents.

Although, the Nation is vigorously recruiting to fill many of its vacant positions, our officers do their best with limited staff. Navajo patrol officers have the added challenge of patrolling vast geographic distances to travel when responding calls. Longer distances also provide a delay in response times, which decreases the rate of successful arrests, makes it more difficult to sufficiently investigate crime scenes and identify witnesses, and reduces the chance of a successful prosecution. Additionally, our officers do their best to keep victims apprised of their case.

The SURVIVE Act would appease some of the patrol officers work by having the funds to hire victim advocates, provide victim service programs, and shelters for victims. Our Navajo people have normalized the violence that surrounds them when they should not have to. Therefore, I fully support this bill and the 5 percent set aside for funding. Thank you Senator Hoeven for introducing this bill and empowering the victims on the Navajo Nation.

### **S. 1953 TLOA Re-Authorization**

The Navajo Nation supports the re-authorization of the Tribal Law and Order Act. Although, the Nation has not implemented TLOA, I support its provisions with the intention of implementing them in the future.

Law and order in Indian Country is much needed, especially on the Navajo Nation. As mentioned our Navajo Police Department is understaffed. We have lost two police officers in the line of duty in the past two years. The Nation is working hard to improve the state of law enforcement, and as we work towards implementation of TLOA we support the following provisions:

- Indian Law Enforcement Reform Act
- Indian Civil Rights Act of 1968
- Integration & Coordination of Programs
- Data Sharing
- Judicial Administration in Indian Country
- Detention Facilities

- Federal Notice
- Tribal Court Training
- Public Defender Tribal Liaisons
- Offenses in Indian Country: Trespass on Indian Land
- Substance Abuse Prevention Tribal Action Plans
- Office of Justice Services Spending Report
- Trafficking Victims Protection
- Reporting of Indian Victims of Trafficking
- Improving Justice for Indian Youth

I thank you Senator Hoeven for reintroducing this bill and understanding the importance of law and order in Indian Country.

**S. 1942 A Bill to Direct the Attorney General to Review Revise and Develop Protocols on Missing and Murdered Indians a.k.a. Savanna's Act**

The Navajo Nation supports this bill as it provides awareness and priority for cases involving missing and exploited Native women. I support the requirement for the Department of Justice and Department of Interior to coordinate efforts to establish protocols to investigate missing and murdered American Indians and Alaskan Natives. It is time that the issue of missing and murdered Native American women get the awareness it deserves.

**Conclusion**

Thank you again Chairman Hoeven and Vice Chairman Udall for holding a legislative hearing on three important bills concerning public safety in Indian Country.

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PREPARED STATEMENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS (NCAI)

NCAI is the oldest and largest national organization representing American Indian and Alaska Native tribal governments in the United States. We are steadfastly dedicated to protecting the rights of tribal governments to achieve self-determination and self-sufficiency, and to the safety and security of all persons who reside or visit within Indian Country.

Ten years ago, the National Congress of American Indians passed a resolution at its Midyear conference in Anchorage, Alaska, and provided testimony to this Committee calling for Congress to redirect the law enforcement priorities of the Department of Justice on Indian reservations, and to empower tribal government law enforcement. This was followed by several years of hearings and legislative drafting in the Senate Committee on Indian Affairs. From that resolution, as well as a great deal of effort from many tribes and the leadership of this Committee, Congress enacted the Tribal Law and Order Act of 2010 (TLOA) and set the stage for expanded tribal jurisdiction under the Violence Against Women Act Reauthorization of 2013 (VAWA 2013). We recognize the Committee's ongoing commitment to these issues, and greatly appreciate your continuing efforts to build on those laws and improve public safety in tribal communities.

**S. 1953, Tribal Law and Order Act Reauthorization**

We extend great appreciation to Senator Hoeven for his leadership in introducing the reauthorization of the TLOA. Since 2010, NCAI has been deeply involved in the implementation of this critically important law. The TLOA is a comprehensive law designed to improve numerous facets of the public safety system in Indian Country. However, even when we began working on the law in 2007, tribal leaders knew that it wouldn't resolve every issue. This is why we so greatly appreciate a reauthorization that continues to address the problems and concerns regarding public safety on tribal lands. The introduced legislation includes a number of important provisions, and serves as a strong foundation for continued work with tribal governments.

All authorized funding under the TLOA expired in 2015 and it is important that Congress reauthorize this funding. Tribal justice systems also have more than six years of experience with implementing the law, and that implementation has led to proposals to continue to improve the law. In the following two sections we include comments on the introduced bill, as well as additional suggestions.

*Section 101: Bureau of Indian Affairs Law Enforcement*

Under this section, if the Director of the BIA Office of Justice Services fails to submit two reports required by the original Act in 2010, administrative funds would be withheld so long as the withholding does not adversely impact the capacity to provide law enforcement services in Indian Communities. The two reports are (1) annual reports to the appropriations committees on unmet tribal law enforcement

needs, and (2) annual reports summarizing technical assistance and training provided to tribal law enforcement and corrections agencies that operate pursuant to self-determination contracts or self-governance compacts.

NCAI strongly supports the effort for completion of these vital reports. In particular, the annual report on unmet law enforcement needs, which was submitted for the first time in 2016, is important to help quantify the extent of the need for increases in tribal public safety funding. (What does this report say? Can we quickly summarize?) We urge that the Committee continue communication with the Secretary of Interior so that these important annual reports continue in 2017 and into the future.

*Section 102: Integration and Coordination of Programs*

We appreciate the proposal to require agency consultation with tribes regarding the integration of diverse funding for law enforcement, public safety, and substance abuse and mental health programs. We encourage the Committee, however, to move forward with its own consultation on legislation to accomplish this goal of funding integration and coordination. At the end of this testimony we attach a proposal for legislative language that is designed to accomplish this goal, and we encourage the Committee to consult directly with tribal governments about it.

Currently, base funding for law enforcement is provided through the BIA and is entirely inadequate. Additional funding is provided through the Departments of Justice and Health and Human Services under a series of grant programs that have the typical problems of competitive grant programs. Within the DOJ these funds are further divided into dozens of competitive grants for specific purposes. Moreover funding for prevention, rehabilitation, and treatment programs, which are key components of any community's approach to reducing crime, are located at IHS, SAMHSA, and elsewhere within the DHHS. In order to obtain this funding, tribes often must compete against each other under the priorities and guidelines set by the administering agency. These proposals are then peer reviewed by individuals who may or may not have experience with Indian tribes and tribal justice systems. In the end, the tribes that have the financial and human resources to employ experienced grant writers end up receiving funding, while the under-resourced tribes may be left without. Moreover, tribes cannot count on funding continuing beyond the current grant period, and Indian Country has countless stories of successful programs disappearing at the end of a two- or three-year grant cycle.

This system requires a costly, sophisticated grant writing capability and a good bit of creativity in order to access the funds. Millions could easily be spent providing the technical assistance tribes need just to navigate this overly complex system. Under this ad hoc system, tribal law enforcement will receive vehicles, but no maintenance. They will get a detention facility, but no staff. They will receive radios, but no central dispatch. The system does not make sense. NCAI believes that tribal public safety funding should be increased overall and tribes should have the option of streamlining it into a single funding vehicle that would be negotiated on an annual basis and made more flexible to meet local needs. A proposal for statutory text that could be the basis for a discussion among tribal stakeholders and Congress is included as an appendix.

*Section 103: Data Sharing with Indian Tribes*

We strongly support these provisions to improve criminal database information sharing with tribal governments. In addition, we urge that the legislation address a specific problem with access to background checks for non-law enforcement purposes.

28 USC 534(d) authorizes release of criminal history information to tribal law enforcement agencies, but doesn't allow release of criminal information to other tribal agencies for important purposes, like child welfare background checks on foster parents, or teachers or childcare workers. The DOJ interprets the appropriations rider language from P.L. 92-544 as a permanent statute that prevents sharing this information with tribal governments. In their view, criminal history for licensing of foster parents can only be shared "if authorized by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing." We suggest to add a subsection to 534(d): "If authorized by tribal law and approved by the Attorney General, the Attorney General shall also permit access to officials of tribal governments for non-criminal justice, non-law enforcement employment and licensing purposes."

*Section 104: Judicial Administration in Indian Country*

This section extends the Bureau of Prisons Tribal Prisoner Program for seven years. This pilot project has already been successful as a temporary program, and

then abruptly shut down. We urge the Committee to go further, and permanently authorize the program.

Permanently extending the TLOA Federal Bureau of Prisons Pilot Program is an essential part of overcoming the many challenges facing tribal criminal justice agencies. The Pilot Program, which expired on November 24, 2014, gave tribes the option to send highly violent offenders to federal corrections facilities. Many tribes do not have the resources or personnel to adequately and safely house these types of offenders. The federal system also offers greater access to treatment, rehabilitation, and reentry programs. The Bureau of Prisons also strongly supports extending the program.

When the BOP Pilot Project was authorized under the TLOA, NCAI believed that the program would be used sparingly for only the most violent offenders. However, some in Congress were concerned about costs, and imposed the limitations of only four years and up to 100 detainees. But in that short time the program had only begun to work. Tribal governments must develop new criminal codes and procedures and train staff to use the program, and generally take a steady approach to implementing change. Two tribes transferred a total of four prisoners to federal prisons, so it is clear that the floodgates are not a problem. At the same time, it is the small number of very violent offenders that create serious difficulties for tribal justice systems, because our detention programs are not set up or funded for long term detention of violent offenders.

We urge that the program is made permanent and tribes continue to have the opportunity to exercise this option. Tribal governments are increasingly seeking to enhance their sentencing authority under the TLOA. Providing tribes this flexibility to house violent offenders will allow tribal governments to concentrate their resources on other pressing criminal justice and public safety needs. The Federal Bureau of Prisons has echoed all of these recommendations in its report to Congress required by the TLOA.

NCAI also supports the provision to require the Director of BIA, Director of Bureau of Prisons, Director of IHS, and the Administrator of the Substance Abuse and Mental Health Services Administration to consult with Indian Tribes regarding juvenile justice and incarceration. For decades tribal leaders have encouraged a more proactive and humane approach to juvenile justice that is focused on prevention and mentoring and rehabilitation rather than criminalization. Tribal leaders strongly believe that we owe it to our youth and future generations to focus resources on our young people right at the beginning, rather than waiting for them to go astray and then begin the cycle of institutionalization and incarceration that has proven to be so ineffective.

#### *Section 105: Federal Notice*

This section requires the Office of the United States Attorney's that convict any enrolled member of a federally recognized tribe to provide notice of that conviction to the appropriate tribe. NCAI supports this provision, but also far more strongly encourages that the Bureau of Prisons be required to provide notice when any tribal member is released from federal prison. Prisoner reentry is the Achilles heel of the federal criminal justice system. All too often, Native inmates are released into urban environments that provide services but no family or social support, or into reservation environments that provide no services. The critical time period is the release from federal prison when monitoring and services are critically needed. This is the time when the community most needs to be aware, and services provided to released inmates.

#### *Section 106: Detention Facilities*

Under these provisions, a tribe may request to use any available detention funding from a contract or compact for appropriate alternatives to detention. NCAI supports this provision but urges removal of the requirement that the tribe, Secretary, and Director of the Office Justice Services mutually agree. The requirement of agreement will add significant costs and delay and will undermine the intention. Tribal governments must be trusted to implement programs for alternatives to incarceration, just as tribal courts are trusted to make decisions regarding guilt or innocence.

#### *Section 108: Amendments to the Indian Civil Rights Act*

The right to a jury trial would be amended to include only those crimes where there is a possibility of imprisonment of 180 days or more. This would match the federal and state constitutional requirements, and relieve tribal courts of the obligation to provide a jury trial for misdemeanors. Tribal courts suffer from a significant lack of resources. On some reservations, defendants have learned to act collectively and request a jury trial for every misdemeanor, and have succeeded in forcing the

dismissal of many cases because the tribal court cannot afford the time or money for a jury trial for every petty crime. This provision would bring the Indian Civil Rights Act jury requirements into line with the federal constitutional rule.

*Section 109: Special Assistant Public Defender Liaisons*

NCAI supports the purpose of this section to provide greater coordination on indigent defense in Indian Country. However, the truly great need is for funding for indigent defense services. As background, the Indian Civil Rights Act of 1968 requires that defendants in tribal courts have the right to counsel, but at their own expense. Our testimony suggests a mechanism for Congress to finally provide funding for indigent defense in Indian Country, which would come at no additional costs to the federal budget.

First, tribes have strongly supported the provision of counsel to indigent defendants in tribal courts for many years, but have generally lacked adequate funding. Some tribes with greater resources provide indigent defense from their own funds, and have done so for many years. Tribes sought the provision in the Indian Tribal Justice Act that seeks to enhance tribal courts' capacity to provide indigent defense counsel. 25 U.S.C. § 3613(b). Tribes have also repeatedly urged Congress to appropriate the funds necessary to support indigent defense throughout Indian Country, as one component of support for tribal justice systems. See, NCAI Resolution #ABQ-10-116, and NCAI Resolution SD-02-015.

Second, under the TLOA and VAWA 2013, tribes can exercise greater criminal authority and better protect their communities with extended sentencing authority and jurisdiction over non-Indian domestic violence offenders, but only if they provide indigent defense. Thus, the lack of resources for indigent defense is a barrier to greater public safety on tribal lands.

We suggest the authorization of a set-aside of 3 percent of Defender Services program in the Financial Services and General Government (FSGG) Appropriations bill. This account funds the operations of the federal public defender and community defender organizations, and compensation, reimbursements, and expenses of private practice panel attorneys appointed by federal courts to serve as defense counsel to indigent individuals.

*Section 110: Criminal Trespass on Indian Land*

Under Section 1165 of Title 18, the misdemeanor offense of hunting, trapping, or fishing would be expanded to include felony offenses for violations of a tribal exclusion order. NCAI greatly appreciates this section as it would address a great source of harm on tribal lands. Indian reservations are experiencing increasing problems with serious criminal trespass and a lack of deterrence. Tribes are unable to address problems with sexual assault and stalking offenders who continue to return to the reservation to harass victims. Drug dealers are a perennial problem. Violating a tribal protection order or exclusionary order should be subject to more serious federal penalties. Tribes also have difficulties with former lease tenants who overstay agricultural and residential leases for many years and refuse to leave or pay rent. Tribes are also experiencing problems with timber theft, repeated poaching, illegal mining and illegal marijuana operations, serious crimes that are infrequently enforced because there is no relevant criminal statute. There are also repeat offenders who dump hazardous waste and serious property crimes and are warned again and again but refuse to respect tribal property rights.

Because of this, we would urge two amendments to this section to set an appropriate scale of criminal penalties for increasingly severe criminal trespass crimes. First, we suggest that an offense should be added for persons who commit serious property crimes on tribal lands with fines and penalties of up to \$15,000 and three years imprisonment or both. We suggest consultation with the U.S. Attorneys to determine an appropriate range of penalties that will create deterrence for those who cause serious threats to persons or damage to property.

Secondly, we urge that the provision should include violation of tribal protection orders as well as exclusionary orders. Protection orders are often issued against persons who commit crimes of domestic violence, sexual assault or stalking. There is an existing crime at 18 U.S. Code § 2262—Interstate violation of protection order. However, this crime is rarely enforced because it requires proof beyond a reasonable doubt of intent: that the person traveled into Indian country for the specific purpose of violating a protection order. This is very difficult to prove, so even if a perpetrator traveled into Indian country and beat up his former girlfriend in violation of a protection order, it is difficult to show that he had this specific intent when he set out on his journey. Instead, we propose that the provisions for exclusionary orders would also include protection orders. We also suggest consultation with the U.S. At-

torneys to determine an appropriate range of penalties that will create deterrence. The following is a proposal for statutory text:

18 U.S. Code § 1165—Hunting, trapping, or fishing on Indian land (to be retitled “Criminal Trespass on Indian Lands,” the first section retained, and renumbered subsection (a) with additional subsections for escalating penalties for severe offenses).

- b) Repeated trespassing offenses and persons who commit crimes against persons or property on tribal lands shall be subject to fines and penalties of up to \$15,000 and three years imprisonment or both.

c) VIOLATION OF TRIBAL PROTECTION ORDER OR TRIBAL EXCLUSION ORDER—

(1) IN GENERAL.—It shall be unlawful for any person to knowingly violate the terms of a tribal protection order or exclusion order that was issued by a court or other tribunal of an Indian tribe in accordance with the requirements of paragraph (4).

(2) PENALTY.—Any person who violates paragraph (1) shall be guilty of a crime and fined up to \$10,000, imprisoned for up to 5 years, or both.

(3) DEFINED TERMS.—For the purposes of this subsection, the term—

- (A) “protection order” includes any order which  
 (i) satisfies the definitions set forth in 18 USC 2266(5);  
 (ii) satisfies the jurisdiction and notice provisions set forth in 18 USC 2265(b); and

(B) “exclusion order” means an order issued in a proceeding by a court or other tribunal of an Indian tribe which temporarily or permanently excludes a person from tribal land for violation of the criminal laws of the tribal government.

(4) REQUIREMENTS FOR ORDERS.—

(A) PROTECTION ORDERS —A violation of a protection order shall constitute an offense under paragraph (1) if the order includes a statement that violation of the order will result in criminal prosecution under Federal law and the imposition of a fine, imprisonment, or both; and

(B) EXCLUSION ORDERS —A violation of an exclusion order shall constitute an offense under paragraph (1) if the respondent was served with or had actual notice of—

- (i) a complaint setting forth a plain statement of facts which, if true, would provide the basis for the issuance of an exclusion order against the respondent;  
 (ii) the date, time and place for a hearing on the complaint; and  
 (iii) a statement informing the respondent that if he or she fails to appear at the hearing a order may issue, the violation of which may result in criminal prosecution under Federal law and the imposition of a fine, imprisonment, or both;  
 (iv) a hearing on the complaint was held on the record at which the respondent was provided an opportunity to be heard and present testimony of witnesses and other evidence as to why the order should not issue;  
 (v) the order temporarily or permanently excludes the respondent from Indian land under the jurisdiction of that Indian tribe;  
 (viii) the order includes a statement that a violation of the order may result in criminal prosecution under Federal law and the imposition of a fine, imprisonment, or both; and  
 (ix) the respondent was served with or had actual notice of the order.

(5) NO LIMITATION ON TRIBAL AUTHORITY; EFFECT OF SUBSECTION.—Nothing in this subsection limits or otherwise affects the application of the Violence Against Women Act, (18 U.S.C. 2261–2266).

*Section 201: Federal Jurisdiction Over Indian Juveniles*

The words “Indian Tribe” and “tribal” are added to Section 5032 of Title 18 of the U.S. Code, so that federal offenses could be referred to tribal court. NCAI supports this provision, but also recognizes that there are a relatively small number of serious felonies committed by youth that could result in referral for federal prosecution.

*Section 203: Assistance for Indian Tribes Relating to Juvenile Crime*

NCAI continues to urge Congress to improve justice for Indian youth under the Juvenile Justice and Delinquency Prevention Act (JJDP) by requiring notice to tribes when a member youth enters a state or local justice system, requiring tribal participation on advisory groups, coordinating services for tribal youth, and includ-



ing tribal traditional or cultural programs that reduce recidivism as authorized activities for federal funding.

In particular, NCAI strongly supports notice to tribes when a youth enters state or local justice system. In many cases, Indian tribes have developed programs and services for Native youth that are more culturally appropriate, and will be welcomed by county court judges as alternatives to incarceration. However, these programs and remedies cannot work unless the tribal government has notice and is able to communicate with the local court system.

Although NCAI remains committed to accomplishing the vital reforms to JJDP set forth in the Tribal Law and Order Reauthorization and Amendments Act of 2016 (S. 2920 during the 114th Congress), NCAI is supportive of the technical assistance, consultation, development of processes, and other provisions included in Section 203 of S. 1953 that are intended eventually to produce substantive reform. Time is of the essence for tribal youth in federal, state, local, and tribal justice systems. Congress must make progress to ensure better outcomes for tribal youth.

#### *Additional Provisions*

Although the above amendments and additions to the Reauthorization of TLOA set a strong foundation towards improving public safety in Indian Country, we would still like to request consideration that the following provisions be added to the reauthorization.

- 1) *Annual declination reporting.* The TLOA was passed by Congress against a backdrop of criticism that far too many Indian Country crimes were never adequately investigated, and prosecution was too frequently declined. For many years, tribal leaders had raised the concern that the U.S. Attorneys did not consider Indian Country crimes a priority and declined to prosecute an extraordinary percentage of cases. A Denver Post investigative reporting series from November of 2007 raised these concerns:
  - Between 1997 and 2006, federal prosecutors rejected nearly two-thirds of the reservation cases brought to them by FBI and Bureau of Indian Affairs investigators, more than twice the rejection rate for all federally prosecuted crime.
  - Investigative resources spread so thin that federal agents are forced to focus only on the highest-priority felonies while letting the investigation of some serious crime languish for years. Long delays in investigations without arrest leave sexual assault victims vulnerable and suspects free to commit other crimes.
  - Many low-priority felonies never make it to federal prosecutors in the first place. Of the nearly 5,900 aggravated assaults reported on reservations in fiscal year 2006, only 558 were referred to federal prosecutors, who declined to prosecute 320 of them. Of more than 1,000 arson complaints reported last year on Indian reservations, 24 were referred to U.S. Attorneys, who declined to prosecute 18 of them.
  - From top to bottom, the Department of Justice's commitment to crime in Indian Country was questionable. Former United States Attorney for the Western District of Michigan Margaret Chiara was quoted saying, "I've had (assistant U.S. attorneys) look right at me and say, 'I did not sign up for this'. . . They want to do big drug cases, white-collar crime and conspiracy." Comments from former United States Attorney for Arizona, Paul Charlton indicate that this attitude came from the top. Charlton has related a story where a high-level Department of Justice official asked him why he was prosecuting a double-murder in Indian Country in the first place.<sup>1</sup>

This dire and long-term institutional dysfunction required a response. Therefore a key feature of the TLOA requires both the FBI and the U.S. Attorneys to submit annual reports to Congress compiling information regarding decisions not to refer investigated cases, and all declinations to prosecute in Indian Country, including the types of crimes alleged and the reasons for declination. The law also requires coordination with tribal law enforcement if a federal law enforcement official terminates an investigation or declines to prosecute an alleged violation of Federal criminal law in Indian country. The annual reports to Congress are to be organized in the aggregate; and for the FBI, by Field Division; and for U.S. Attorneys, by judicial district; and including any relevant explanatory statements.

In general, we believe that the annual reports have led to an increased awareness of responding to Indian Country crime within the DOJ. However, there are a num-

<sup>1</sup>Mike Riley, *Principles and Politics Collide: Some U.S. Attorneys who emphasize fighting crime on Indian lands have seen themselves fall out of favor in D.C.*, DENVER POST, Nov. 14, 2007.

ber of aspects of the reporting system that should be improved. The first is straightforward. The TLOA requires annual declination reporting on a calendar year, but the existing reporting system at the DOJ is on a fiscal year basis. Our understanding is that this creates unnecessary difficulty. We recommend consultation with the U.S. Attorneys and the EOUSA and resolve this difference to improve reporting.

Secondly, and more importantly, we recommend additional consultation with tribal leaders and prosecutors regarding specific improvements to the declination reporting system. For example, tribal prosecutors routinely request more case-specific and tribe-specific sharing of information between federal and tribal prosecutors so that they can use the data to allocate resources and prosecution efforts. In addition, the annual reports showed prosecution being declined in 50 to 60 percent of reported crimes due to “insufficient evidence.” Although Congress has required the “reasons” for a declination, “insufficient evidence” is so broad as to provide little analytic value. Tribal leaders frequently describe cases with little or no investigation, or that occur many months after the crime. It is impossible to tell from the declination reports whether more robust investigations would have resulted in additional prosecutions.

Another example is that many referred crimes are declined because they “are not a federal crime.” It is impossible to tell from the declination reports how often this designation is used for crimes such as theft, destruction of property; domestic violence and low-level gang activity that commonly involves both Indian and non-Indian defendants. We have also heard reports that many of these crimes are never compiled into the reports. In fact, these are federal crimes in Indian country under the Assimilative Crimes Act, 18 U.S.C. § 13, which makes state laws applicable to conduct occurring in federal territory. Despite this, the “no federal offense evident” category is used in a discretionary and informal manner. However, the absence of tribal jurisdiction to deal effectively with non-Indians in these cases creates a perception that the likelihood of being caught and punished is low, and encourages a disregard for tribal law enforcement.

Third, we urge greater engagement with the Federal Bureau of Investigations on its role in investigating Indian Country crimes. On May 30, 2013 the first report of statistics gathered under the Act was released by the DOJ. It covered 2011 and 2012 and showed a 54 percent increase in prosecutions in 2012 as compared to 2008. However substantial problems remained with prosecution being declined in 60 percent of reported crimes due to “insufficient evidence,” which tribal leaders attribute, at least in substantial part, to inadequate and slow investigations.

Prior to the 1980’s, the Bureau of Indian Affairs law enforcement had a significant budget for investigations, and they had their own investigators. In the late 1980’s responsibility for investigations in Indian country was transferred to the FBI, as well as the financial appropriations for that responsibility. Approximately 90 million was transferred out of the Interior appropriations and into the FBI appropriations. At that time promises were made that the FBI would do far more professional work with investigations and it would result in greater public safety on Indian reservations.

However, over time the FBI leadership has lost sight of this commitment, diminishing its Indian country responsibilities and staffing, while keeping all the funding. In 1993, the FBI entered a Memorandum of Understanding with the BIA, stating that investigations were a “shared” responsibility, and that “determining which law enforcement agency, federal or tribal, has primary responsibility for investigation of a particular crime may depend on the nature of the crime committed and any applicable local guidelines, which vary across jurisdictions.” A significant amount of resources were reprogrammed after 9/11, and smaller numbers of FBI agents have trickled away from Indian country on a continuous basis in almost every year. In May of 2008, FBI Director Mueller testified at a hearing of the House Judiciary Committee. In response to a question regarding the FBI’s role in and commitment to fighting crime in Indian Country, he stated his hope was that other agencies would grow to fill that need and that the FBI would no longer have to provide services in Indian country.

More recently, in the FY2011 budget, 20 million was transferred from the BIA law enforcement budget to the FBI to improve resources for investigations. Meanwhile the declination data shows most federal declinations to prosecute are from insufficient evidence. While FBI agents are in short supply in Indian Country, the funds reprogrammed out of the BIA remain steadily in the FBI budget.

- 2) *Access to Firearms for Tribal Police*—NCAI Resolution ABQ-10-029—NCAI supports legislation to amend the National Firearms Act of 1934 and the Gun Control Act of 1968 so that Tribal Police Departments are recognized as governmental entities similar to agencies of the United States government, or of

a state government, or a political subdivision thereof without the requirement of special law enforcement commissions so that Tribal Police Departments are exempt from payment of the transfer tax for NFA firearms, are eligible to receive firearms interstate, and can possess a machine gun manufactured after May 18, 1986.

- 3) *Alaska Native Villages*—The legislation in its current form does not address the unique law enforcement issues in Alaska Native communities. Alaskan tribal lands are not considered “Indian country” after the Supreme Court’s decision in *Alaska v. Native Village of Venetie*. Tribal communities in Alaska experience high rates of domestic violence and sexual assault and significant problems with substance abuse. Most of the Alaska Native communities are only accessible by plane or boat, and are completely dependent on state law enforcement. The Village Public Safety Officer program has had its budget slashed by the state, and many tribal communities in Alaska are terribly underserved by state police and other services. We know that the Committee is aware of these problems and would urge the Committee to reach out to Alaska tribal leaders to develop ways to improve law enforcement in Alaska. Our primary recommendations are that the Federal Government provide direct funding for rural law enforcement in Alaska, to strengthen victims services, to support the land to trust process in Alaska, to strengthen tribal courts, and that tribal communities in Alaska be given greater control over alcohol and substance abuse policies.
- 4) *Eliminate Requirement of “Indian” Status for Purpose of Major Crimes Act*—In cases such as *U.S. v. Zepeda*, defendants have repeatedly challenged their status as an “Indian” under the Major Crimes Act. However, given that 1152 covers non-Indian crimes, and 1153 covers Indian crimes, the provisions could be amended in a manner so that Indian status would be irrelevant for most crimes. Major crimes on tribal land are subject to essentially identical federal criminal prohibitions no matter the status of the defendant. The endless litigation over these common law definitions of Indian also pose a continuing threat to the political status of tribal citizens and threaten precedent such as *Morton v. Mancari* and *U.S. v. Antelope*. The following is an initial proposal for replacement language for 1153 that would eliminate the requirement of Indian status.

18 U.S. Code § 1153—Major offenses committed within Indian country

(a) Any person who commits against the person or property of another person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to federal law and penalties within the jurisdiction of the United States.

(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

### Conclusion

NCAI greatly appreciates the work of the Senators and the Committee on this important legislation. This is the stage in the process where we must listen to tribal leaders and other public safety professionals and take advantage of the insights they can provide. In particular, we have found that the best information often comes from people who work in the criminal justice system—tribal police officers, tribal prosecutors, tribal judges and the like. NCAI encourages the Committee to continue reaching out for their views on how the legislation can be strengthened. We urge continuing dialogue with tribal leaders on the proposals in this testimony, and those received from all tribal governments.

### S. 1870, the SURVIVE Act

NCAI has long advocated for amendments to the Victims of Crime Act (VOCA), like those included in S. 1870, that would remedy the unconscionable exclusion of tribal governments from the Crime Victims Fund. NCAI strongly supports passage of S. 1870 and applauds the Committee for prioritizing this issue.

American Indians and Alaska Natives experience the highest crime victimization rates in the country. Complex jurisdictional issues, along with the cultural diversity of tribes and the basic reality of geography, pose significant challenges for crime victims in Indian Country. Tribal governments, like other governments, are responsible for meeting the needs of victims in their communities for mental health counseling,

appropriate medical care, support during criminal justice proceedings, and emergency financial and housing assistance. Unfortunately, tribal governments often have few or no resources available to provide services to victims.

Unlike state and territorial governments, Indian tribal governments do not receive an annual allocation from the Crime Victims Fund to help crime victims in their communities. As a result, crime victims on tribal lands still struggle to have even their most basic needs addressed. The BIA describes the situation this way:

Native American victim assistance programs currently resemble the mainstream victim assistance programs of the 1970's: little money, few staff, no resources and a huge number of victims. Due to a lack of victim service programs in Indian Country, there often is little or no response to family members of homicide victims, sexual assault victims, child abuse victims, and others.<sup>2</sup>

The Office for Victims of Crime at the Department of Justice has also recognized the disproportionate, urgent need for increasing victim services in tribal communities. Its *Vision 21* report singled out tribal communities and called for increasing resources in order to “ensure that victims in Indian Country are no longer a footnote to this country’s response to crime victims.”<sup>3</sup> The President’s budget request for FY 2018 includes a 5 percent allocation for tribal governments from overall outlays from the Crime Victims Fund.

#### Need for Victims Services

American Indians and Alaska Natives experience the full range of criminal victimization that occurs nationally from drunk driving, to child sex abuse, to identity theft.<sup>4</sup> Compared with the general population, however, Native people are particularly at risk for violent victimization, including homicide, assault, child abuse, sex trafficking, and drunk driving. Tribal members are also more likely to be poly-victimized and suffer the effects of historical and intergenerational trauma. While there are gaps in our knowledge of the incidence and prevalence of criminal victimization of Native Americans, we know that we represent the most victimized population in the nation.<sup>5</sup> The U.S. Department of Justice (DOJ) has reported that the crime rates experienced by American Indians and Alaska Natives are 2.5 times higher than that of the general U.S. population.<sup>6</sup> The Bureau of Justice Statistics has estimated that 1 out of 10 American Indians aged 12 and older become victims of violent crime annually.<sup>7</sup>

Domestic violence and sexual assault are particularly prevalent. Approximately 56 percent of Native women are will experience sexual violence within their lifetime, with 1 in 7 experiencing it in the past year.<sup>8</sup> When Native women are raped, they are more likely to experience other physical violence during the attack, their attacker is more likely to have a weapon, and they are more likely to have injuries requiring medical attention.<sup>9</sup> Victims of sexual assault need access to trained emergency responders as well as ongoing, long-term trauma counseling. They may also need assistance with legal and financial issues that result from their victimization. Because jurisdiction for the assault may be shared between tribal, state, and federal actors, the victim will also need assistance navigating a particularly complicated, and perhaps geographically-distant, justice system. Domestic violence victims have a similar experience. Nearly 61 percent of Native women are assaulted during their lifetime. A recent NIJ study found that 1 in 12 Native women report experiencing

<sup>2</sup><http://www.bia.gov/WhoWeAre/BIA/OJS/VictimServices/index.htm>

<sup>3</sup>Office of Justice Programs, U.S. Department of Justice, *Vision 21: Transforming Victim Services Final Report*, (Washington, DC: OVC, 2014).

<sup>4</sup>Generally, available data on fraud victimizations do not disaggregate data for American Indian and Alaska Native populations. Available data on identity theft, however, suggests that American Indians and Alaska Natives experience identity theft at rates similar to other groups. See, BJS, “Identity Theft Reported by Households: 2005–2010,” (2011), available at <http://www.bjs.gov/content/pub/pdf/itrh0510.pdf>.

<sup>5</sup>*Vision 21*.

<sup>6</sup>Neelum Arya and Addie Rolnick, *A Tangled Web of Justice: American Indian and Alaska Native Youth in Federal, State, and Tribal Justice Systems* n6 (5 Campaign for Youth Justice Policy Brief 2008).

<sup>7</sup>2004 report, American Indians and Crime, A BJS Statistical Profile, 1992–2002.

<sup>8</sup>*The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 summary report*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (2011).

<sup>9</sup>R. Bachman, et al, “Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What is Known,” (2008), p. 36, available at <https://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf>.

physical violence perpetrated by their intimate partner in the past year.<sup>10</sup> On some reservations, the murder rate of Native women is 10 times the national average.<sup>11</sup> Victims of domestic violence on tribal lands need the same safety, legal, financial, health, and counseling services as other DV victims. They may have a particularly difficult time accessing safe shelter in their communities. They also may need assistance determining the appropriate jurisdiction to issue a protection order and how to ensure that the protection order is recognized by other jurisdictions.

Native children also experience exceptionally high victimization rates. AI/AN children are 50 percent more likely to experience child abuse and sexual abuse than white children.<sup>12</sup> Rates of child maltreatment in certain states are even more alarming. According to data from the Department of Health & Human Services, Native children in Alaska experience maltreatment at a rate more than six and a half times the rate for white children.<sup>13</sup> In North Dakota, the rate of maltreatment for Native children is more than three times the rate for white children. Native children also experience extremely high rates of secondary victimization and exposure to violence. In 2013, Attorney General Holder appointed an Advisory Committee on American Indian and Alaska Native Children Exposed to Violence that held field hearings across the nation. In their final report the Committee concluded that service providers and policy makers should assume that all Native children have been exposed to violence and the immediate and long term effects of this exposure to violence includes increased rates of altered neurological development, poor physical and mental health, poor school performance, substance abuse, and overrepresentation in the juvenile justice system. This chronic exposure to violence often leads to toxic stress reactions and severe trauma; which is compounded by historical trauma.<sup>14</sup>

Children who experience abuse and neglect are at higher risk for depression, suicidal thoughts, and suicide attempts. Sadly, Indian youth have the highest rate of suicide among all ethnic groups in the U.S., and suicide is the second-leading cause of death (after accidental injury) for Native youth aged 15–24.<sup>15</sup> Due to exposure to violence, Native children experience post-traumatic stress disorder at a rate of 22 percent—the same levels as Iraq and Afghanistan war veterans and triple the rate of the rest of the population.<sup>16</sup> There is a significant need for trauma-informed mental health counseling for Native children.

American Indians and Alaska Natives also have a relatively high prevalence of alcohol-impaired driving and the highest alcohol-related motor vehicle mortality rates among racial/ethnic populations. Among fatal crashes involving American Indians and Alaska Natives in 2012, an estimated 42 percent were alcohol-related. Nationally, during this same time period, 31 percent of total crashes were alcohol-related.<sup>17</sup>

Compounding these high rates of multiple exposures to violence is historical trauma and the ongoing effects of decades of violent and abusive federal policies.<sup>18</sup> Many Native people today suffer from the lasting effects of generations of forced removal, relocation, and forced assimilation at federally-run or sanctioned boarding schools where horrific physical and sexual abuse of Native children was wide spread. Historical trauma severely impacts an individual's psyche, spiritual/emotional core, and well-being.<sup>19</sup> Understanding historical trauma and the role the federal government played in perpetrating violence against Native people for generations helps inform why statistics relating to American Indian and Alaska Native well-being are so dismal, and how services to crime victims must provide healing for both the immediate victimization and also the intergenerational trauma experienced by

<sup>10</sup> A. Rosay, "VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND MEN," (2016) available at <https://www.ncjrs.gov/pdffiles1/nij/249822.pdf>

<sup>11</sup> R. Bachman, et al., "Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What is Known," (2008), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf>.

<sup>12</sup> Children's Bureau, U.S. Department of Health and Human Services, Child Maltreatment 2011, 28 (2012).

<sup>13</sup> <http://www.acf.hhs.gov/sites/default/files/cb/cm2012.pdf>, pg. 37.

<sup>14</sup> Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence: Ending Violence so Children Can Thrive (2014), pg. 6.

<sup>15</sup> SAMHSA, National Survey on Drug Use and Health, 2003.

<sup>16</sup> AG Advisory Committee, *supra*, note 12, at 38.

<sup>17</sup> See, CDC, "Tribal Road Safety: Get the Facts," available at <http://www.cdc.gov/motorvehiclesafety/native/factsheet.html>.

<sup>18</sup> BigFoot, Dolores Subia, et al., "Trauma Exposure in American Indian/Alaska Native Children," Indian Country Child Trauma Center 1–4 (2008).

<sup>19</sup> Written Testimony of Deborah Painte, Hearing of the Task Force on AI/AN Children Exposed to Violence, Bismarck, ND, December 9, 2013 at 2.

the survivor. The victimization of entire communities over long periods of time is difficult to address in the contemporary justice and victim services systems.

#### *Jurisdictional Complexities*

The complexities of criminal jurisdiction in tribal communities can further compound the challenges of providing services to victims. A victim's experience with the criminal justice system will vary considerably depending on whether the crime occurs on or off tribal lands, and whether the particular crime falls under the purview of federal, state, or tribal authorities. Which jurisdiction has the authority to investigate or prosecute the case may determine whether the victim reports the crime in the first instance and what type of support the victim needs to navigate the criminal justice system. A crime committed in Indian Country can be investigated by tribal or Bureau of Indian Affairs (BIA) law enforcement; state law enforcement, such as a county sheriff or city police, or state troopers; and/or the Federal Bureau of Investigation (FBI). Once a case has been investigated, it may be subject to prosecution in federal, state and/or tribal jurisdiction. A number of factors determine who has jurisdiction to investigate and prosecute a case including: where the crime took place; whether the victim and/or the perpetrator is Indian or non-Indian; the type of crime; and laws specifically granting jurisdiction to particular states.

The sobering reality in many tribal communities presents substantial challenges for victim services programs. Like all crime victims, AI/AN victims need access to comprehensive services that meet their medical, mental health, financial, legal, spiritual and other needs in a culturally-appropriate manner. In addition, many Native victims seek the assistance of traditional healers and participate in traditional cultural practices.<sup>20</sup> They also are more likely to participate in restorative justice and peacemaking practices that hold victims accountable in a victim-centered way. There are 372,000 indigenous language speakers in the U.S., and practitioners report that crime victims are generally more comfortable discussing their victimization in their Native language.<sup>21</sup> Whether a victim lives within the tribal community or outside, they need access to culturally-appropriate services and service providers who understand the unique historic and legal situation of tribes and tribal members.

While there is tremendous diversity among all tribes, it is worth noting that many of the 229 tribes in Alaska experience extreme conditions that differ significantly from tribes outside Alaska. Many of the Alaska Native villages are located in remote areas that are often inaccessible by road and have no local law enforcement. Victims live in small, close-knit communities where access to basic criminal justice services is virtually non-existent and health care is often provided remotely through telemedicine technology. Providing comprehensive services to victims in these circumstances presents unique challenges. In many of these communities community members provide services in informal ways. Domestic violence victims, for example, may be offered shelter in a home that is a known "safe house" in the village.

Despite having the highest crime victimization rates in the nation, the historic lack of funding for tribal victims services programs, discussed below, means that the infrastructure for providing victims services in tribal communities is woefully underdeveloped. The services that are available are provided by a complicated and fragmented system that includes federal, state, tribal, and private actors. Programs struggle to find stable sources of funding and often close when grant funds run out. There is no comprehensive compilation of the services that are available in Indian Country, nor a comprehensive analysis of the gaps. The information that is available, however, makes clear that many of the most vulnerable Native victims do not have access to the services they need.

Children's Advocacy Centers (CACs), for example, are a recognized best practice for providing a child-focused, multidisciplinary response to child abuse, especially child sexual abuse. Children who receive services at CACs are twice as likely to receive specialized medical exams and significantly more likely to receive referrals for specialized mental health treatment.<sup>22</sup> Despite the increased victimization risk for Native American children, very few CACs exist on tribal lands. While some tribal communities may be served by CACs off the reservation, the average driving distance to a CAC from tribal lands is 62 miles. For more than 100 tribal communities,

<sup>20</sup> Office of Justice Programs, U.S. Department of Justice, *Vision 21: Transforming Victim Services Final Report*, (Washington, DC: OVC, 2014), pg. 19.

<sup>21</sup> U.S. Census Bureau, *Native North American Languages Spoken at Home in the United States and Puerto Rico: 2006-2010*. (December 2011).

<sup>22</sup> Randall Cooper, "Children's Advocacy Centers and Indian Country," Update: National Center for Prosecution of Child Abuse, vol. 24, no 2 (2014), available at [http://www.ndaa.org/pdf/Update%20Vol24\\_No2.pdf](http://www.ndaa.org/pdf/Update%20Vol24_No2.pdf).

the driving distance is between 100 and 300 miles.<sup>23</sup> For example, a child abuse victim on the Rosebud Reservation in South Dakota must travel two and a half hours across the state (or more in bad weather) to reach a CAC.<sup>24</sup> Even where tribal CACs exist, tribes struggle to find stable funding to maintain the programs. For example, the Eastern Shoshone Tribe opened a CAC on the Wind River Reservation in 2013 after an existing CAC operated by the Northern Arapaho Tribe ran out of funding and closed.<sup>25</sup> The new CAC is dependent on a three-year federal grant with no guarantee that funding will be renewed after the grant period ends.

Domestic violence victims face similar challenges. Shelters provide essential services to victims of domestic violence. In addition to emergency housing for a woman and her children fleeing abuse, they often provide counseling, advocacy, legal services, and referrals to other services. There are currently fewer than 40 tribal domestic violence shelters in operation. Those programs that do exist struggle to find sufficient funding to maintain their operations. The domestic violence shelter on the Pine Ridge reservation, for example, closed 8 years ago. Advocates report that in order to access shelter, they must transfer victims—and often their children—at least 100 miles one way to a shelter in Rapid City. When shelter space is not available in Rapid City, advocates drive victims 700 miles to Sioux Falls.<sup>26</sup>

The Emmonak Women's Shelter, the only domestic violence shelter located in an Alaska Native village, has faced similar challenges. Like so many victim services programs in Indian Country, the shelter is reliant on short-term, discretionary funding from the Federal Government in order to remain operational. This two-bedroom shelter serves 500 women a year from 13 surrounding Native communities. Given the geographic isolation of the region, it is generally the only option for local women seeking to escape abuse. In operation since 1978, the shelter was forced to temporarily close in 2005 after the state of Alaska eliminated funding for this and a number of other rural services for Alaska Natives. Even while closed, battered women sought refuge there. Met with locked doors, women climbed surrounding trees and even hid in trash cans to escape their abusers. The shelter was able to reopen months later after securing funding from a tribal non-profit, and months after that, it received its first federal grant.<sup>27</sup> The shelter temporarily closed again in 2012 after running out of its DOJ funding due to high fuel costs during an especially brutal winter. The shelter was able to reopen after obtaining \$30,000 in private donations and a \$50,000 emergency grant from the Bureau of Indian Affairs. Staff took pay cuts and rationed fuel in order to conserve the little funding they had.<sup>28</sup>

Access to services for sexual assault survivors is similarly limited. Sexual Assault Examiner (SAE) and Sexual Assault Response Team (SART) programs have been shown to improve both the care of survivors of sexual assault and criminal justice outcomes in sexual assault cases.<sup>29</sup> SAEs and SARTs are instrumental in facilitating immediate access to appropriate health care and other services for victims and for minimizing re-victimization by the justice system. A 2014 study used GIS mapping to evaluate proximity of trained forensic examiners to 650 census-identified Native American lands. The study found that more than two-thirds of Native American lands are more than 60 minutes away from the nearest sexual assault forensic examiner.<sup>30</sup>

#### *Crime Victims Fund*

Since its creation in 1984 through VOCA, the Crime Victims Fund (CVF) has been the federal government's primary funding source for supporting crime victim compensation and assistance. Each year millions—and in recent years billions—of dollars are deposited into the fund from the penalties assessed against convicted criminals. The VOCA statute allocates funds made available from the CVF for a host of

<sup>23</sup> Randall Cooper, "Children's Advocacy Centers and Indian Country," Update: National Center for Prosecution of Child Abuse, vol. 24, no 2 (2014), available at [http://www.ndaa.org/pdf/Update%20Vol24\\_No2.pdf](http://www.ndaa.org/pdf/Update%20Vol24_No2.pdf)

<sup>24</sup> *Id.*

<sup>25</sup> Rebecca Martinez, "Child Advocacy Center Opens on Wind River Reservation," Wyoming Public Media, January 24, 2013, available at <http://wyomingpublicmedia.org/post/child-advocacy-center-opens-wind-river-reservation>.

<sup>26</sup> Conversation with advocates from the Pine Ridge reservation on June 2, 2015 at the Women Are Sacred conference.

<sup>27</sup> Timothy Williams, In Remote Alaska, Financing Puts a Rare Refuge at Risk, N.Y. TIMES, May 23, 2012, at A3.

<sup>28</sup> Timothy Williams, With Grant, an Alaska Women's Shelter, N.Y. TIMES, July 6, 2012, at A15.

<sup>29</sup> Jennifer Giroux, Ashley Juraska, Eric Wood & Lindsey Wood, *Sexual Assault Services coverage on Native American Land*, 10 Journal of Forensic Nursing, 92, 92 (2014).

<sup>30</sup> *Id.*

purposes, including a small discretionary tribal grant program through the Children's Justice Act to improve the investigation and prosecution of child abuse cases in tribal communities. There is generally about \$2.7 million available for 566 Indian tribes each year in this program. The bulk of CVF funds are distributed to state and territorial governments as a formula grant, which they then sub-grant to victim assistance programs in their jurisdiction. Tribal governments, however, do not receive a similar formula distribution from the CVF. Other than the tribal CJA program, Indian tribes are able to access CVF funds for victim services only via sub-grants from the states, or by competing for very limited resources that the Department of Justice chooses to make available from its discretionary allocation. Both of these mechanisms have failed to provide adequate funding for tribal victim services programs, which has had devastating consequences for victims on tribal lands and their communities.

In early 2015, NCAI submitted a request to the Office for Victims of Crime (OVC) under the Freedom of Information Act asking for information about sub-grants made by states to programs serving American Indian and Alaska Native victims over the past five years. NCAI received the attached spreadsheets in response, which show that pass-through funding has proven wholly unsuccessful in distributing funds to tribal victim service providers. According to data from OVC, from 2010–2014, the states passed through 0.5 percent of available funds to programs serving tribal victims, less than \$2.5 million annually. New Mexico, where American Indians make up 10.7 percent of the population, sub-granted less than 1 percent of total available funds to programs serving Indian victims during that time period. Oklahoma, a state that is frequently held up as a place where the VOCA sub-grant process is working and where the Indian population is 12.9 percent, has never sub-granted more than 5.5 percent of its funds to programs serving Indians victims. And in Alaska, where Alaska Natives make up 19.4 percent of the population, the state of Alaska reports that from 2010–2013 it sub-granted between 0 and 3.9 percent of funds received through VOCA to programs serving Native victims. The vast majority of existing tribal victim service programs we have spoken to report that they are not able to access these funds at all.

Given that pass-through funding is not reaching tribal victims, tribal governments must largely rely upon the discretionary grant funding made available by OVC. OVC originally established a Victim Assistance in Indian Country (VAIC) discretionary grant program in 1989 in response to revelations about wide spread sexual abuse perpetrated by Bureau of Indian Affairs teachers in several reservation communities.<sup>31</sup> On the Hopi Reservation, the federal government ignored reports of abuse and allowed a teacher to abuse more than 140 Indian children over a 9-year period. In attempting to identify services for the child victims, OVC realized that “funding to on reservation victim assistance programs was virtually non-existent.”<sup>32</sup> VAIC funding was awarded for a three year period to state applicants who had partnered with tribal programs. OVC hoped that structuring the grant program to require state-tribal collaboration would help integrate tribal programs into the state VOCA programs and that the states would continue to fund the tribal programs after the federal grant ended. The states did not continue funding tribal programs at the conclusion of the three-year grant, however, and in 1998 OVC discontinued its failed efforts to encourage pass-through funding and began funding tribal programs directly.<sup>33</sup> Today this program is known as the Comprehensive Tribal Victim Assistance Program (TVAP).

While the TVAP is an improvement over the pass-through model used previously, its success is hampered by the low level of funding available and the short-term discretionary nature of the grants. Tribes must compete against one another to access these funds, and, until 2015, 8 tribes generally received these grants each year for a three-year term, with no guarantee that this funding will be renewed. After the significant increase in disbursements from the Crime Victims Fund for FY 2015, OVC increased its discretionary commitment to the TVAP and provided funding to 24 tribal programs for FY 2015. We commend OVC for its ongoing commitment to victims on tribal lands, but point out that they are only able to fund 24 of the 567 federally-recognized Indian tribes. Too often when a grant ends, tribal programs must completely shut down. As the Committee considers this critical issue, our foremost request is that tribal victims' services are not set up as another short-term grant program. Tribal governments need sustainable funding to meet the needs of

<sup>31</sup> CCAN, “History of Federal Victim Assistance Services and Programs in Indian Country,” Upon the Back of a Turtle, (1998), available at <http://www.icctc.org/IB-Ch%204%20victim%20asst%20svcs.pdf>

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*



victims into the foreseeable future, not a short-term program at risk of disappearing soon after it is fully established. We also urge you to amend the legislation to remove the sunset provision that will terminate the program after 10 years. As we have seen in so many other areas, the sunset provision will have the likely result of leaving Indian tribes fighting a difficult and time-consuming battle to save an important program when authorization expires. None of the other programs funded by the Crime Victims Fund sunset or expire, and we do not see a reason why this program should be any different.

In recent years, annual disbursements from the CVF have been about \$700 million. Collections, however, reached as high as \$2.8 billion in 2013, leaving a balance in the fund of more than \$13 billion. There has been significant pressure on Congress to make this money available for crime victims, and Congress significantly increased the disbursements from the CVF for FY 2016 and 2017 to approximately \$3 billion. Despite the fact that outlays have quadrupled, Congress has not directed any of this money to Indian tribal governments. Without additional action by Congress, Indian tribal governments will continue to have no direct access to critical CVF funds, and victims in Indian Country will continue to be left behind. S. 1870 would remedy this and ensure that Indian tribal governments have access to these life-saving funds and are able to develop the victim services and compensation infrastructure that is taken for granted in much of the rest of the country.

S. 1870 has the potential to transform the crime victim services landscape in tribal communities and is a significant step toward finally ensuring that Native American crime victims have equitable access to the life-saving services funded by the Victims of Crime Act. NCAI looks forward to working with the Committee to ensure that the *SURVIVE Act* is enacted into law, and we will continue to work with your staff on our specific recommendations.

#### **S. 1942, Savanna's Act**

We thank Senator Heitkamp for her leadership in introducing Savanna's Act, which is aimed at improving the response to missing persons and murder cases involving Native victims. Last year, NCAI adopted a resolution, PHX-16-077, Addressing the Crisis of Missing and Murdered Native Women, that called for increased coordination across agencies; the review and revision of protocols for responding to the disappearance of Native women; and access to services for victims and their families. Savanna's Act would increase accountability for federal and state officials and we strongly support its passage.

#### **Proposal to Integrate and Coordinate Public Safety and Justice System Funding**

##### **Intended for the purpose of providing concepts for consultation with tribal governments**

###### Section 1. DEFINITIONS.

The following definitions apply:

- (1) Indian tribe. The terms "Indian tribe" and "tribe" shall have the meaning given the term "Indian tribe" in section 4(e) of the Indian Self-Determination and Education Assistance Act.
- (2) Indian. The term "Indian" shall have the meaning given such term in section 4(d) of the Indian Self-Determination and Education Assistance Act.
- (3) Secretary. Except where otherwise provided, the term "Secretary" means the Secretary of the Interior.

###### Section 2. INTEGRATION OF SERVICES AUTHORIZED.

The Secretary of the Interior, in cooperation with the Attorney General and the Secretary of Health and Human Services shall, upon the receipt of a plan acceptable to the Secretary of the Interior submitted by an Indian tribal government, authorize the tribal government to coordinate, in accordance with such plan, its federally funded law enforcement, public safety, justice systems, and substance abuse and mental health programs in a manner that integrates the program services involved into a single, coordinated, comprehensive program and reduces administrative costs by consolidating administrative functions.

###### Section 3. PROGRAMS AFFECTED.

The programs that may be integrated in a demonstration project under any such plan shall include any program under which an Indian tribe is eligible for receipt of funds under a statutory or administrative formula for the purposes of funded law enforcement, public safety, justice systems and substance abuse and mental health programs.

###### Section 4. PLAN REQUIREMENTS.

For a plan to be acceptable pursuant to section 4, it shall—

- (1) identify the programs to be integrated;
- (2) be consistent with the purposes of this Act authorizing the services to be integrated in a demonstration project;
- (3) describe a comprehensive strategy which identifies the full range of law enforcement, public safety, justice systems and substance abuse and mental health program needs;
- (4) describe the way in which services are to be integrated and delivered and the results expected from the plan;
- (5) identify the projected expenditures under the plan in a single budget;
- (6) identify the agency or agencies of the tribal government to be involved in the delivery of the services integrated under the plan;
- (7) identify any statutory provisions, regulations, policies, or procedures that the tribal government believes need to be waived in order to implement its plan; and
- (8) be approved by the governing body of the affected tribe.

#### Section 5. PLAN REVIEW.

Upon receipt of the plan from a tribal government, the Secretary of the Interior shall consult with the Secretary of each Federal department providing funds to be used to implement the plan, and with the tribal government submitting the plan. The parties so consulting shall identify any waivers of statutory requirements or of Federal departmental regulations, policies, or procedures necessary to enable the tribal government to implement its plan. Notwithstanding any other provision of law, the Secretary of the affected department shall have the authority to waive any regulation, policy, or procedure promulgated by that department that has been so identified by such tribal government or department, unless the Secretary of the affected department determines that such a waiver is inconsistent with the purposes of this Act or those provisions of the statute from which the program involved derives its authority which are specifically applicable to Indian programs.

#### SEC. 6. PLAN APPROVAL.

Within 90 days after the receipt of a tribal government's plan by the Secretary, the Secretary shall inform the tribal government, in writing, of the Secretary's approval or disapproval of the plan. If the plan is disapproved, the tribal government shall be informed, in writing, of the reasons for the disapproval and shall be given an opportunity to amend its plan or to petition the Secretary to reconsider such disapproval.

#### SEC. 7. FEDERAL RESPONSIBILITIES.

(a) Responsibilities of the Department of the Interior. Within 180 days following the date of enactment of this Act, the Secretary of the Interior, Attorney General, and the Secretary of Health and Human Services and the Secretary of Education shall enter into an interdepartmental memorandum of agreement providing for the implementation of the demonstration projects authorized under this Act. The lead agency for a demonstration program under this Act shall be the Bureau of Indian Affairs, Department of the Interior. The responsibilities of the lead agency shall include—

- (1) the use of a single report format related to the plan for the individual project which shall be used by a tribal government to report on the activities undertaken under the project;
- (2) the use of a single report format related to the projected expenditures for the individual project which shall be used by a tribal government to report on all project expenditures;
- (3) the development of a single system of Federal oversight for the project, which shall be implemented by the lead agency; and
- (4) the provision of technical assistance to a tribal government appropriate to the project, except that a tribal government shall have the authority to accept or reject the plan for providing such technical assistance and the technical assistance provider.

(b) Report Requirements. The single report format shall be developed by the Secretary, consistent with the requirements of this Act. Such report format, together with records maintained on the consolidated program at the tribal level shall contain such information as will allow a determination that the tribe has complied with the requirements incorporated in its approved plan and will provide assurances to each Secretary that the tribe has complied with all directly applicable statutory requirements and with those directly applicable regulatory requirements which have not been waived.

#### SEC. 8. NO REDUCTION IN AMOUNTS.

In no case shall the amount of Federal funds available to a tribal government involved in any demonstration project be reduced as a result of the enactment of this Act.

**SEC. 9. INTERAGENCY FUND TRANSFERS AUTHORIZED.**

The Secretary of the Interior, Attorney General, and Secretary of Health and Human Services, as appropriate, are authorized to take such action as may be necessary to provide for an interagency transfer of funds otherwise available to a tribal government in order to further the purposes of this Act.

**SEC. 10. ADMINISTRATION OF FUNDS AND OVERAGE.**

(a) Administration of Funds.—

(1) In general. Program funds shall be administered in such a manner as to allow for a determination that funds from specific programs (or an amount equal to the amount attracted from each program) are spent on allowable activities authorized under such program.

(2) Separate records not required. Nothing in this section shall be construed as requiring the tribe to maintain separate records tracing any services or activities conducted under its approved plan to the individual programs under which funds were authorized, nor shall the tribe be required to allocate expenditures among such individual programs.

(b) Overage. All administrative costs may be commingled and participating Indian tribes shall be entitled to the full amount of such costs (under each program or department's regulations), and no overage shall be counted for Federal audit purposes, provided that the overage is used for the purposes provided for under this Act.

**SEC. 11. FISCAL ACCOUNTABILITY.**

Nothing in this Act shall be construed so as to interfere with the ability of the Secretary or the lead agency to fulfill the responsibilities for the safeguarding of Federal funds pursuant to the Single Audit Act of 1984.

**SEC. 12. REPORT ON STATUTORY OBSTACLES TO PROGRAM INTEGRATION.**

(a) Preliminary Report. Not later than two years after the date of the enactment of this Act, the Secretary shall submit a preliminary report to the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives on the status of the implementation of the demonstration program authorized under this Act.

(b) Final Report. Not later than five years after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources on the results of the implementation of the demonstration program authorized under this Act. Such report shall identify statutory barriers to the ability of tribal governments to integrate more effectively their services in a manner consistent with the purposes of this Act.

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PREPARED STATEMENT OF UNITED SOUTH AND EASTERN TRIBES SOVEREIGNTY  
PROTECTION FUND (USET SPF)

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Committee on Indian Affairs (SCIA) with the following testimony for the record of its October 25th legislative hearing to receive testimony on S. 1870, the Securing Urgent Resources Vital to Indian Victim Empowerment (SURVIVE) Act of 2017, S. 1953, the Reauthorization of the Tribal and Law Order Act (TLOA) of 2010, and S. 1942, Savanna's Act. These bills, if enacted, would provide Tribal Nations with critical resources, financial and otherwise, to aid in the fight against crime and the preservation of public safety in Indian Country. Below, we offer our support for the intent of each bill, as well as some suggested changes with a goal of ensuring all Tribal Nations have access to their provisions.

USET SPF is a non-profit, inter-Tribal organization representing 27 federally recognized Tribal Nations from Texas across to Florida and up to Maine. USET SPF is dedicated to enhancing the development of Tribal Nations, to improving the capabilities of Tribal governments, and assisting the USET SPF Member Tribal Nations in dealing effectively with public policy issues and in serving the broad needs of Indian people.

**S. 1870, the Securing Urgent Resources Vital to Indian Victim Empowerment (SURVIVE) Act**

As you are well aware, Indian Country currently faces an epidemic of crime, with Tribal citizens 2.5 times more likely to become victims of violent crime and Native women, in particular, subject to higher rates of domestic violence and abuse. And yet, Tribal Nations do not have direct access to funding that would allow them provide victim services. Currently, Tribal Nations must access Crime Victims Fund (CVF) dollars via state pass-through or by competing for modest Department of Justice grants. To meet the needs of crime victims on Tribal lands, Tribal governments need a stable source of funding to build the crime victim services and compensation infrastructure that is taken for granted in much of the rest of the country. Only then can Tribal citizens truly begin to access critically needed services and healing. As sovereign governments, Tribal Nations must have direct access to this funding—just like states and territories.

The SURVIVE Act ensures that 5 percent of annual disbursements from the CVF are directed to Tribal governments through a competitive grant process. While USET SPF is strongly supportive of a statutorily mandated Tribal set aside, it is the long-standing position of this organization that the federal fiduciary trust responsibility is not fulfilled under a competitive grant model. Not only is it an abrogation of the federal trust responsibility to force Tribal Nations to compete for federal dollars, the competitive grant process often precludes some Tribal Nations from having access to those dollars at all. We urge SCIA to consider a more equitable method of distribution for this funding, including the opportunity to receive dollars through existing contracts and compacts.

**S. 1953, the Reauthorization of the Tribal and Law Order Act of 2010**

Passage of TLOA in 2010 was a major victory for Tribal jurisdiction, self-determination, and the fight against crime in Indian Country. This law provides critical opportunities for Tribal Nations to assume new authorities and responsibilities for protecting their homelands. However, seven years later, there remain barriers for many Tribal Nations, including USET SPF member Tribal Nations, to the assumption of these new authorities.

*Sentencing Authority*

Many USET SPF Tribal Nations have an interest in implementing enhanced sentencing authority under TLOA, as an increase in Tribal sentencing is more likely to deter crime, which continues to rise on our reservations. However, with the exception of one or two Tribal Nations, no USET SPF member Tribal Nation is currently exercising this authority. Our region is not unique in this regard. Nationally, only a handful of Tribal Nations have implemented or are in the process of implementing this provision.

A primary barrier to the implementation of enhanced sentencing in the USET SPF area and beyond is the lack of federal funding to support Tribal Court systems. For Tribal Nations to fully exercise new authorities, their courts need to comply with costly requirements. Currently, many Tribes do not have adequate funding to abide by these requirements and will not be able to assume new authorities. Through USET SPF's participation on the Tribal Interior Budget Committee (TIBC), USET SPF member Tribal Nations have consistently identified Tribal Courts as a top priority for line item funding increases within the Bureau of Indian Affairs' budget. With an average funding level of around \$75,000, Tribal Nations can barely afford the work of a part-time judge, let alone institute the other types of judicial infrastructure required by TLOA. For Fiscal Year (FY) 2018, the President's Budget Request contains a nearly 22 percent cut to Tribal Courts. Though this cut is restored in the House Interior Appropriations bill, it is critical that any reauthorization of TLOA address gaps in existing judicial infrastructure. We urge this Committee to support increased funding for Tribal Courts in pursuit of this goal.

Compounding and in addition to insufficient funding are the unique circumstances faced by some USET SPF member Tribal Nations in which land claim settlement acts with their respective states are being severely misinterpreted. These land claim settlement acts were primarily intended to provide certainty to landowners concerning disputed title to claimed lands. Unfortunately, top officials in some of these states assert that these settlement acts prevent the execution of any federal law passed afterward for the benefit of Tribal Nations unless Nations with restrictive settlement acts are explicitly identified in statute. That is, these Tribal Nations are currently restricted from accessing any legislative gains made in recent years for Indian Country, including the benefits of TLOA. Some USET SPF member Tribal Nations report being threatened with lawsuits, should they attempt to implement TLOA's enhanced sentencing provisions. USET SPF asserts that Congress did not

intend these land claim settlements to forever prevent a handful of Tribal Nations from taking advantage of beneficial laws meant to improve the health, general welfare, and safety of Tribal citizens. We would like to further explore a long-term solution to this problem with the Committee. In the short-term, we urge this Committee to include language in the upcoming TLOA reauthorization that ensures the law applies to all federally-recognized Tribal Nations.

#### *Drug Enforcement*

S. 1953 seeks to address and prevent drug trafficking in Tribal communities. Yet, this objective remains elusive throughout much of Indian Country, including within the USET SPF region. USET SPF member Tribal Nations are in desperate need of adequate law enforcement resources, especially those for drug enforcement. Drug abuse and trafficking, particularly opioids, is a persistent and growing problem in Indian Country, including within the USET SPF Area. However, in our BIA Drug Enforcement Region (from ME to FL to NM to the central US), there are only 7 drug enforcement agents assigned to serve over 100 Tribal Nations.

USET SPF continues to advocate for increased funding for law enforcement, including drug enforcement. Though our Tribal patrol officers perform a vital role in addressing drug issues within a communities, drug investigations are conducted primarily by specialized units or task forces on departmental, statewide and federal levels. These units involve enhanced intelligence gathering, information sharing, controlled buys, surveillances and other factors. Our BIA Drug Enforcement Region needs much more than 7 personnel available for this purpose.

#### *State-Tribal-Federal Collaboration*

Much of the implementation of TLOA depends on collaboration between Tribal, state, and federal governments, including issues related to jurisdiction, cross-deputization, cooperative agreements, and information sharing. While USET SPF member Tribal Nations continue to have meaningful and productive collaboration with federal partners, many Nations report difficulty in achieving similar relationships with states. While USET SPF recognizes that many of these difficulties are deep-seeded, we request that this Committee and our partners within federal government seek methods of ensuring states engage in meaningful consultation with Tribal Nations we they collaborate on the implementation of TLOA. As it considers the reauthorization of TLOA, USET SPF encourages SCIA to include provisions requiring states to meaningfully consult with Tribal Nations.

#### *Tribal Law Enforcement Employee Retention*

As the Committee works toward reauthorizing TLOA, USET SPF asks that it consider addressing issues related to the retention of Tribal law enforcement personnel. Because of the deep disparity in resources between Tribal law enforcement agencies and those at the local, state, and federal level, it is often difficult to retain Tribal law enforcement personnel. As Penobscot Police Chief, Bob Bryant, noted in his 2015 testimony to the President's 21st Century Task Force on Policing:

Tribal law enforcement agencies remain underfunded and understaffed, creating a paradigm of officer "burn out," low morale, stress related illnesses, and lack of stress management resources. The result puts the safety and life of each police officer in jeopardy every time they put on their badge and walk out the door to serve their community. . . . As with any community, law enforcement agencies are asked to engage and partner with the communities and citizens that they serve. Such engagement and partnership promotes problem solving and solutions to the issues that hamper the progress and well-being of our communities. This becomes difficult, if not impossible, with high officer turnover. Nowhere is the turnover rate higher than in Tribal law enforcement. This turnover is the direct result of the many issues I have outlined in my testimony today.

USET SPF supports and recommends the inclusion of provisions that would increase funding for Tribal law enforcement personnel, encourage mutual aid compacts with other units of government, increase access to counseling for officers who have experienced on-the-job trauma, and create access to federal retirement and other benefits for officers.

#### *Tribal Access to Crime Information*

USET SPF supports language in the bill designed to increase Tribal access to the U.S. Department of Justice Tribal Access Program (TAP) to allow Tribal Nations to more effectively serve and protect their citizens and communities. The U.S. Department of Justice launched the TAP in August 2015 to provide Tribal Nations with access to information systems for both civil and criminal purposes. TAP allows Tribal criminal justice agencies to strengthen public safety, solve crimes, conduct back-

ground checks, and offer greater protection for law enforcement by ensuring the exchange of critical data across the Criminal Justice Information Services systems.

In Fiscal Year (FY) 2017, with \$2 million of unexpended FY 2016 funds allocated by the USDOJ SMART Office and COPS Office, the Department was only able to deploy workstations and training to 11 Tribal governments, while more than 50 Tribal Nations, including several USET SPF member Tribal Nations, had submitted letters of interest to take part in TAP. Without a secure and robust funding stream, rollout to the remaining 300+ eligible Tribal Nations will be a long process, unnecessarily delaying Tribal access to this critical criminal justice data, hampering law enforcement coordination, and further compounding gaps in Tribal resources. Since the program began, only 19 Tribal Nations have benefited from this technology and training. Additional funding is needed to meet demand and a dedicated funding stream would ensure the long term viability of this program. We urge the Committee to authorize additional funding for TAP, in addition to providing for enhanced technical assistance.

#### **S. 1942, Savanna's Act**

As this Committee well knows, American Indian/Alaska Native (AI/AN) women suffer from violent crime at a rate three-and-a-half times greater than the national average. Nearly 84 percent of all AI/AN women will experience domestic violence and one in three AI/AN women will be sexually assaulted in their lifetimes. We must do more to address this crisis. This includes ensuring Tribal Nations are able access to more tools to prevent these tragedies.

Savanna's Act is a critical step in this fight. The bill would provide Tribal Nations will improved access to federal crime databases, require Tribal consultation on database access at all levels of government, standardize the response to missing and murdered AI/AN, and require reporting on statistics related to missing and murdered AI/ANs. USET SPF supports each of these provisions, as an opportunity to begin to close the deep divide in protection from violence, sexual assault, trafficking, and other crimes between AI/AN women and those in the rest of the United States.

#### **Conclusion**

There is still much work to done to ensure that all Tribal Nations across the United States have the ability to provide for the public safety of their citizens, protect from and address crime victimization, and end the epidemics of violence and drug trafficking in Tribal communities. We are hopeful that with additional funding, improved infrastructure, and clarifying language, many more Tribal Nations will be able to exercise the types of authorities vital to these goals. We appreciate SCIA's attention to our comments and look forward to further opportunities to discuss improved public safety in Indian Country.

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PREPARED STATEMENT OF ADDIE C. ROLNICK, ASSOCIATE PROFESSOR, WILLIAM S. BOYD SCHOOL OF LAW, UNIVERSITY OF NEVADA

Thank you Chairman Hoeven, Vice Chairman Udall, and members of the Committee for allowing me to provide written testimony on S. 1953. The bill, which is intended to improve the delivery of criminal justice services to Indian people and to strengthen tribal justice systems, includes Title II—Improving Justice for Indian Youth. My comments will be directed primary at this title.

I am a law professor at the University of Nevada, Las Vegas. I have been engaged in research, advocacy, and institution building to improve juvenile justice in Indian country, and for Native youth elsewhere, for over a decade. My publications include: *Untangling the Web: Juvenile Justice in Indian Country*, 19 *N.Y.U. J. of L. & Pub. Pol'y* 49 (2016); *Locked Up: Fear, Racism, Prison Economics, and the Incarceration of Native Youth*, 40 *Amer. Indian Culture & Res. J.* 55 (2016); *A Tangled Web of Justice: American Indian and Alaska Native Youth in Federal, State, and Tribal Juvenile Justice Systems*, Campaign for Youth Justice (2008) (with Neelum Arya); *Native Youth and Juvenile Injustice in South Dakota*, S.D. L. Rev. (forthcoming 2017); and a policy paper entitled *Resisting Invisibility: Native Girls in the Justice System* to be published in 2017–2018.

My research focuses on the need to improve the administration of juvenile justice in Indian country. Native youth who commit acts of juvenile delinquency may find themselves in tribal, state, or federal court, depending upon location, offense type, and identity of the victim. In many cases, two governments have jurisdiction, a situation that can result in duplicative prosecutions and in federal or state authorities undermining a tribe's ability to set delinquency policy. Across all systems, available data indicates that Native youth tend to be arrested for low-level offenses, yet are more likely to be detained, removed from home, and incarcerated than other youth.

S. 1953 includes several positive proposals. The bill's inclusion of juvenile justice is important because advocates have had difficulty adding Indian country-specific provisions to bills addressing juvenile delinquency generally, such as the Juvenile Justice and Delinquency Prevention Act.

While I support all the proposed changes, I believe some could be strengthened. Specifically, I suggest that Congress add a deadline and required outcome for the Departments' consideration of the issues described in Section 203 and include the Secretary of Health and Human Services in the coordination process. I also recommend amending Public Law 280 to require that states exercising delinquency jurisdiction pursuant to it are required to give tribes notice and an opportunity to exercise tribal jurisdiction in all juvenile cases arising in Indian country. My hope is that the Departments' planning process will result in a requirement that all states notify a child's tribe when a tribal child comes into their systems, but this notification is essential in Public Law 280 states, where tribes have concurrent jurisdiction, and should be added as an amendment to existing law, not simply a topic for consideration. I discuss each section in more detail below.

Section 201 of the bill would amend the Federal Juvenile Delinquency Act ("FJDA") to require the Attorney General to certify, for juveniles in Indian country, that the tribe with jurisdiction refuses to assume jurisdiction or does not have available programs and services adequate to meet the juvenile's needs. Current law requires that, before proceedings against a juvenile in federal court for any offense, the U.S. Attorney must certify that "(1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, (2) the State does not have available programs and services adequate for the needs of juveniles," or (3) that the crime is a violent felony or listed federal drug or gun offense and "there is a substantial Federal interest in the case to warrant the exercise of Federal jurisdiction."<sup>1</sup> Certification is a prerequisite to federal court jurisdiction.<sup>2</sup>

For non-Indian country youth, this provision ensures that federal juvenile proceedings are limited to certain federal offenses and to cases in which the state cannot or does not wish to handle the case. It embodies a presumption in favor of state jurisdiction for all but the few cases implicating a significant federal interest.<sup>3</sup> It also helps guard against duplicative proceedings by providing that the federal government will defer to state jurisdiction except in rare cases. This is true even though the Act only applies to juveniles who have committed federal law offenses. The FJDA defines state to include states, "the District of Columbia, and any commonwealth, territory, or possession."<sup>4</sup> The preference for local jurisdiction thus extends to every area of the United States except for Indian tribes.

Indian country criminal laws extend federal jurisdiction over offenses that would be handled locally if they took place under state jurisdiction, so Indian country juveniles may end up in federal court for traditionally local offenses. Indeed, approximately half of the juveniles under federal jurisdiction are Native juveniles. The certification requirement is met in these cases if the state lacks jurisdiction over the offense because it occurred in Indian country. No consultation with, or surrender to, a tribal government is contemplated by the Act.

The proposed change would remedy this ensuring that tribes are treated the same as other local jurisdictions. It would allow tribes to take the lead in juvenile delinquency matters whenever possible, as states do, and would facilitate communication between tribal and federal prosecuting authorities. The change would not eliminate federal jurisdiction over Indian country juveniles. It would allow tribes to continue to refer some or all serious juvenile offenders to federal court if desired. It would, however, prevent a juvenile from going to federal court when the tribe has the re-

<sup>1</sup> 18 U.S.C. § 5032.

<sup>2</sup> *United States v. Chambers*, 944 F. 2d 1253, 1259 (6th Cir. 1991), cert. denied, 502 U.S. 1112, 112 S. Ct. 1217, 117 L. Ed. 2d 455 (1992); *United States v. Juvenile Male*, 923 F. 2d 614, 618 (8th Cir. 1991); *United States v. Brian N.*, 900 F. 2d 218, 222–23 & n.8 (10th Cir. 1990) see also U.S. Dep't of Justice, U.S.A.M., C.R.M. § 120.

<sup>3</sup> *United States v. Juvenile Male*, 864 F. 2d 641, 644 (9th Cir. 1988) (discussing legislative history); Charles Doyle, Cong. Research Serv., R130822, *Juvenile Delinquents and Federal Criminal Law: The Federal Juvenile Delinquency Act and Related Matters 1* (2004); U.S. Dep't of Justice, U.S.A.M., C.R.M. § 116 (recognizing that the intent of the FJDA is to "help ensure that state and local authorities would deal with juvenile offenders whenever possible"). For further discussion of the history of the federal juvenile delinquency system, see Addie C. Rolnick, *Untangling the Web: Juvenile Justice in Indian Country*, 19 N.Y.U. J. L. & Pub. Pol'y 49, 122–125 (2016) and David S. Tanenhaus, *The Elusive Juvenile Court: Its Origins, Practices, and Re-Inventions*, in *THE OXFORD HANDBOOK ON JUVENILE CRIME AND JUSTICE* 419, 427–28 (Barry C. Feld & Donna M. Bishop eds., 2012).

<sup>4</sup> 18 U.S.C. § 5032.

sources and desire to handle the matter in tribal court. This change is a simple way for Congress to ease the heavy hand of federal criminal jurisdiction in Indian country, and help to strengthen tribal juvenile systems, without altering the status quo in any drastic way. For these reasons, the Indian Law and Order Commission recommended in 2013 that Congress amend the FJDA.<sup>5</sup> I am pleased that the bill includes this important provision, and I strongly urge the Committee to support and protect it.

Section 203 requires the Attorney General, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, and the Secretary of the Interior to coordinate to address a range of issues related to juvenile delinquency. As part of their coordinated efforts, the Departments must conduct regular tribal consultations on juvenile delinquency issues. Section 203 also requires the OJJDP to develop and implement a tribal consultation policy and requires the Departments to report on their consultation policy and activities.

This proposal is well-intentioned, and it reflects the important reality that problems in the administration of juvenile justice are best resolved through a coordinated effort among tribes and the various agencies involved. Given the prevalence of trauma in the histories of Native juvenile delinquents, it is essential that health care services and funding sources be part of the equation for Native youth. To that end, I suggest that the Committee include the Secretary of Health and Human Services in the coordination required by Section 203.

Furthermore, while I support the ideas in Section 203, I believe it does not go far enough. While the Departments are required to coordinate regarding solutions to important problems, the bill does not impose a time limit, require a report on any activities beyond the tribal consultation sessions, or even mandate that the Departments arrive at a solution to any of the listed issues.

One goal of the proposed coordination is “developing a means for collecting data on the number of offenses committed by Indian youth in Federal, State, and tribal jurisdiction, including information regarding tribal affiliation or membership of the youth.” Improving and standardizing data collection on Native youth in the juvenile justice system is an essential step to finding out what is happening to young people, determining which programs work, and learning about practices that may be harming them. As someone who works closely with existing data on Native youth and juvenile justice, I can assure you that the data in this area is sparse compared to the data that exists for other youth. I urge the Committee to consider amending the bill to require that the Departments develop and implement an improved data collection process by a specified time. I also urge the Committee to expand the scope of the required data collection. Data should include offenses, charge and case outcomes, whether the young person was held in pre-adjudication detention, and disposition. In particular, it is important that this data include information on whether juveniles are removed from home, and for which offenses, and whether they are at any point placed in secure confinement.

Another goal is “to develop a process for informing Indian tribal government when a juvenile member of an Indian tribe comes into contact with the juvenile justice system of the Federal, State, or other unit of local government, and for facilitating intervention” by the tribe. Under current law, neither federal, nor state, nor local governments are required to notify the tribe (even where the tribe has concurrent jurisdiction over the juvenile’s offense). Section 201 would help ensure that federal officials notify and coordinate with tribes, but it is equally important that state and local jurisdictions do so.

Where states and tribes exercise concurrent jurisdiction over a juvenile, tribal notice and the opportunity to intervene and/or transfer jurisdiction is essential. In my view, such a process should include a preference for tribal jurisdiction unless the tribe requests that another government proceed against the juvenile. This can easily be addressed by amending Public Law 280 to impose a requirement similar to that imposed on the Attorney General by Section 201 of this bill. I urge the Committee to consider adding an amendment to require Public Law 280 states to notify and coordinate with tribes exercising concurrent jurisdiction.

I agree with the bill’s premise that notification and tribal involvement should not be limited to cases in which the tribe has jurisdiction over the juvenile’s offense. Notification and tribal involvement are so important that I urge the Committee to strengthen this requirement by adding a deadline and requiring a proposal, including proposed legislative language should changes to the law be required.

There is one area in which existing law requires states to notify and involve tribes under, and that is status offenses. When a child faces removal from the home for

<sup>5</sup>INDIAN LAW & ORDER COMM’N, A ROADMAP FOR MAKING NATIVE AMERICA SAFER 159–61, 171–73 (2013).



commission of an act that would not be criminal if the committed by an adult (e.g., underage drinking, curfew violation, or running away), the Indian Child Welfare Act (ICWA) requires that the state notify the tribe. There is evidence that this does not always occur, and that Native youth are disproportionately removed from home and even incarcerated as a result of status offenses.<sup>6</sup> I urge the Committee to include a review of outcomes for Native status offenders, including an assessment of the degree to which states are following the ICWA.

I also urge the Committee to consider expanding the research areas listed in subsection (a)(7). For example, there is little to no research on the structure of tribal juvenile systems, the characteristics and outcomes of youth in those systems. Understanding the needs and experiences of youth in tribal systems is a critical piece of juvenile justice reform, and may reveal the need for further legislative or policy change. There is also very little research on the successes and failures of tribal juvenile justice programs.

Section 204 would bring Native issues into the center of federal juvenile justice policy by adding the Secretary of the Interior as a member of the Coordinating Council on Juvenile Justice and Delinquency Prevention and adding tribal coordination to the description of the Council's functions. Other sections of bill would reauthorize several important juvenile justice programs, ensuring that tribes have access to needed funding. I support the funding reauthorizations and the proposed change to the Coordinating Council.

I have limited my comments to the juvenile justice provisions of the bill. Although it is included elsewhere, Section 106 also has important implications for juveniles. My research indicates that incarceration plays an outsized role in tribal juvenile justice systems.<sup>7</sup> Often, incarceration is emphasized at the expense of other options. This can lead to a sad cycle in which children who should not be incarcerated are placed in secure confinement simply because there is nowhere else for them to go. Over-reliance on incarceration is not unique to tribes, but it stands in tension with the expressed goals of many tribal governments regarding juvenile justice. It is traceable in large part to the availability of federal funding for detention facility construction and operation, and the comparative scarcity of funding for alternatives. Part of this structure has been the Bureau's limitations on tribes' ability to reprogram funding from detention to alternatives. Section 106 would correct this problem, and I strongly support it.

Thank you for introducing this important bill and for allowing me to provide testimony. I stand ready to answer any additional questions Members of the Committee may have.

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PREPARED STATEMENT OF TAYLOR SHERIDAN, BOSQUE RANCH PRODUCTIONS, INC.

Mr. Chairman, Mr. Vice Chairman and Members of the Senate Committee on Indian Affairs, my name is Taylor Sheridan. Thank you for the opportunity to submit written testimony in support of H.R. 4485, *Savanna's Act*. I am the writer and director of the film *Wind River*, which is rooted in my travels and time spent living in Indian Country. It is the third movie in a trilogy that explores the modern American West.

During my late 20s, I was welcomed into the Oglala Sioux Tribal community on the Pine Ridge Indian Reservation. While there, community members shared with me the story about a young Oglala Lakota woman, who I will refer to as "Natalie". Natalie was a basketball star with exceptional athletic ability and a student leader with an impressive academic record that would make her the first in her family to attend college. By all accounts, Natalie's path in life pointed towards her escaping the cycle of poverty endemic to Indian reservations, and the possibility of becoming a future leader in her community and elsewhere. In a tragic turn of events, after missing for days, Natalie's body was found in a remote part of the reservation. Very little is known about the circumstances surrounding Natalie's death, but stories like hers have become commonplace.

Natalie's story—and countless others like hers—was the inspiration for *Wind River*, which tells the story of a young woman's rape and murder on the Wind River Indian Reservation, as well as the heartache and difficulties endured in bringing her perpetrators to justice. I hired a legal team to research statistics on the number of women who have gone missing on Indian reservations. My intention was to have

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<sup>6</sup>John Litt & Heather Valdez Singleton, *American Indian/Alaska Native Youth & Status Offense Disparities: A Call for Tribal Initiatives, Coordination & Federal Funding* (2015).

<sup>7</sup>See *Locked Up: Fear, Racism, Prison Economics, and the Incarceration of Native Youth*, 40 *Amer. Indian Culture & Res. J.* 55 (2016).

a post script at the end of the film that highlighted the number of missing and murdered women on Indian reservations. Since no single government agency tracks information regarding missing and murdered Indigenous women, my team had to individually contact the Bureau of Indian Affairs, the Department of Justice, the Federal Bureau of Investigation, the Department of Health and Human Services, the Indian Health Service, the Substance Abuse and Mental Health Services Administration, the Administration for Family and Children, the Census Bureau, the Government Accounting Office, and the State Department seeking data. After three months of reviewing academic studies, government reports and talking to every possible agency with jurisdiction over this matter, we determined that there were no reliable statistics on missing and murdered Indigenous women. My team and I were justifiably stunned by this realization. Ultimately, I concluded the film with the following statement: “While missing person statistics are compiled for every other demographic, none exists for Native American women. No one knows how many are missing”.

The appalling pervasiveness of missing and murdered Indigenous women is not unique to the Great Plains, nor is the Hollywood community immune. In 2014, the Blackfeet actress Misty Upham’s body was found in a ravine outside of Auburn, Washington, a border town just outside of the Muckleshoot Indian Reservation. As with all missing and murdered Indigenous women, the circumstances are suspect. According to press reports, the conduct of the City of Auburn’s law enforcement is equally disturbing in that police personnel appeared to have casually dismissed the family’s concerns and failed to cooperate with the tribal community. I urge the Committee to read *The Guardian’s* story on Misty’s death—which can be found at the following link: <https://www.theguardian.com/global/2015/jun/30/misty-upham-native-american-actress-tragic-death-inspiring-life>. It is yet another classic case-study that demonstrates law enforcement’s failure to bring justice for missing and murdered Indigenous women.

I recently met with Lailani Upham, a close relative of Misty and a respected journalist. She shared with me the story of her maternal grandmother who was raped and killed in the winter of 1953 on the Fort Belknap Indian Reservation. Her grandmother’s rape and murder have never been investigated. Lailani recounted several other stories that were told to her about missing and murdered Indigenous women. In our conversation, I was heartened to learn that *Wind River’s* portrayal of this terrible truth provided Indian people with an avenue to continue healing their communities.

I would like to thank “Natalie” and the Northern Arapaho and Eastern Shoshone Tribes of the Wind River Indian Reservation for trusting me to tell their story. The Wind River tribal leaders have expressed that my film *Wind River* is not just their story, but all Indian Country’s story—which in itself is a tragedy. To be frank, it is a tragedy I had to make this movie in the first place.

While *Savanna’s Act* addresses the data collection issue and serves to establish reporting protocols, there is a lack of jurisdictional clarity and cooperation between law enforcement agencies in Indian Country, which further exacerbates the problem. Such conflicts undermine obtaining any real justice for missing and murdered Indigenous women.

In recent conversations with the Crow and Standing Rock tribal leadership, they pointed out that while Congress may attempt to address these jurisdictional issues, they are not doing so fast enough. Tribes must be able to exercise their sovereign authority to protect their people, because one more missing woman is one too many. With every woman who goes missing, the Native community loses another future leader, future doctor, future teacher, another resource for which this community can lean against and look up to is gone. No problem can be solved until it is understood. Tribal governments need data to understand the problem, freedom from bureaucracy to investigate the problem, and the autonomy to combat the problem. I urge Congress to move quickly in order to rectify the data collection gaps and provide tribal leadership and local law enforcement with the resources needed to protect Indigenous women, and bring justice to those who have perpetuated violence upon them. It is impossible to move with enough haste—for as this testimony is being read, another Indigenous woman just disappeared.

At a recent event in Helena, Montana, I met Theda New Breast and Lucy Simpson. Theda has been active in national Indigenous women’s issues for over 30 years and Lucy is the Executive Director of the National Indigenous Women’s Resource Center (NIWRC). Theda recounted Savanna’s Greywind’s story to me, which felt heart-wrenchingly familiar and underscored the need for resources for nonprofit organizations like the NIWRC. The NIWRC is among a very small network of not-for-profit organizations leading the effort to bring awareness to the issue of missing and murdered Indigenous women. Lucy provided me with a detailed briefing on the

vital work that the NIWRC does in Indian Country to end all forms of gender-based violence against Indigenous peoples. I urge the Committee and Congress to continue supporting organizations like the NIWRC and the important work that they are doing by enacting and funding legislation such as the *Victims of Crime Act*.

Finally, last year Congress passed Senate Resolution 60, a measure introduced by Senator Steve Daines (R-MT) and Jon Tester (D-MT), designating May 5, 2017 as the “National Day of Awareness for Missing and Murdered Native Women and Girls.” It is time for Congress to take the next step by passing and enacting *Savanna’s Act*. With the passage of *Savanna’s Act*, the lives and voices of Savanna Greywind, Misty Upham and “Natalie” will not be silenced.

Of all responsibilities our government assumes, none is more urgent, more dire, and more necessary than the protection of the most vulnerable of our society. I am testifying on behalf of a segment of our society that could not be in more desperate need of that protection. And that protection begins by being accounted for—it begins by simply knowing how many Native American woman and girls have been murdered and never found. I urge you—no, I beg you—pass *Savanna’s Act*.

## FIRST NATIONS WOMEN'S ALLIANCE

103 NORTH COLLEGE DRIVE SUITE 3, DEVILS LAKE, ND 58301

October 20, 2017

Honorable Heidi Heitkamp  
United States Senate  
SH-516 Hart Senate Office Building  
Washington, DS 20510

Dear Senator Heitkamp:

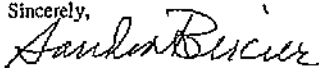
On behalf of the First Nations Women's Alliance (FNWA), the North Dakota DV/SA Tribal Coalition, we are writing this letter of support for Savanna's Act. Savanna was a member of the Spirit Lake Tribe and a descendant of the Turtle Mountain Band of Chippewa. She now, as a result of "homicidal violence", sadly represents all Missing and Murdered Indigenous Women (MMIW). What happened to Savanna has had a deep impact on human beings across the United States. These are some of the staggering statistics:

- In 2016, 5,712 cases of missing Native women were reported to the National Crime Information Center (NCIC).
- According to the Centers for Disease Control and Prevention, homicide is the third leading cause of death among American Indian and Alaska Native women between 10 and 24 years of age and the fifth leading cause of death for American Indian and Alaska Native women between 25 and 34 years of age.
- In some tribal communities, American Indian women face murder rates that are more than 10 times the national average.
- Native American women are also two times more likely than other groups to experience rape or sexual assault and two and a half times more likely than others to experience violent crimes in their lifetimes.

As stated in the summary of Savanna's Act, this act will improve the federal government's response to addressing the crisis of MMIW nationwide. Data has been so lacking for Tribal programs such as ours when we want to apply for funding that will help us eradicate violence. The recent social media action that was entitled #MeToo further demonstrates that the impact of sexual assault is even greater than we were aware of. All of these devastating acts of violence need to be recorded and addressed, with murder being the ultimate act of violence.

FNWA is in total support of Savanna's Act. We urge the United States Senate to stand with you and with us to move our Nation forward in protecting our beautiful and precious Indigenous women.

Sincerely,



Sandra Bercier, Executive Director FNWA

SACRED SPIRITS FIRST NATIONS COALITION  
*Mahnomen, MN, 10/25/2017*

Sen. Heidi Heitkamp,  
Hart Senate Office Building,  
Washington, DC.

Dear Senator Heitkamp,

Sacred Spirits First Nations Coalition is a non-profit that has been addressing violence against Native American and Alaska Native Women for the last 17 years.

We applaud your leadership within the U.S. Federal government in creating legislation to address the epidemic levels of missing and murdered Native American and Alaska Native women with Savanna's Act.

The horrific murder of Savanna LaFontaine-Greywind and the womb kidnapping of her unborn daughter Haisley Jo is yet another historical mark to the grave level of injustice Native American and Alaska Native face in the U.S. The level of violence committed against Native American and Alaska Native women and the barriers created within Indian Country, Alaska Native Villages and Urban Cities through federal and state laws and policy is a continuum of human rights violations.

Savanna's Act is critical to begin to address the issues that have been long standing in the U.S. with the missing and murdered Native women. The U.S. government has a federal trust responsibility and legal obligation to safeguard not only the Treaties, but to ensure all citizens of the United States have equal access to justice and the right to live a life free from violence.

Further, we stand and support Lisa Brunner, Policy Consultant for Sacred Spirits First Nations Coalition recommendations made yesterday on your podcast, that a National Inquiry into the MMIW is a necessary fundamental response to truly understand the gravity of the extensive issues faced for Native women in the country.

These listening sessions/field hearings truly require visiting the complex jurisdictional mapping of tribal communities both on and off reservations. Tribal nations located within Non-Public Law 280 such as those in your home state of North Dakota that is strictly under the federal jurisdiction, tribal nations located Public Law 280 states such as Minnesota and California which are under state jurisdiction, Alaska Native villages located in Alaska, Oklahoma with the checkerboard jurisdiction and urban cities as 80 percent of the Native American and Alaska Native population live off reservations.

These areas outlined are necessary to understand not only the complexities of the jurisdictions, but the depth of the issues of law enforcement and judicial responses that affect the lives and safety of Native women every day. This insight can only bring about positive changes among all agencies responsible for the life and safety of their citizens, specifically that of Native women who are targets of violence far greater than all other women in the United States as a whole.

In conclusion, Sacred Spirits First Nations Coalition support you Senator Heitkamp and Savanna's Act.

Sincerely,

CLINTON ALEXANDER,  
*Interim Executive Director.*

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INDIGENOUS WOMEN'S HUMAN RIGHTS COLLECTIVE, INC.  
*Mahnomen, MN, 10/24/2017*

Sen. Heidi Heitkamp,  
Hart Senate Office Building,  
Washington, DC.

Dear Senator Heitkamp,

Indigenous Women's Human Rights Collective, Inc., is a non-profit whose collective work of staff and board represents over 65 years of work experience addressing domestic violence, stalking, sexual assault, sex trafficking and missing and murdered Native American and Alaska Native women.

We applaud your leadership within the U.S. Federal government in creating legislation to address the epidemic levels of missing and murdered Native American and Alaska Native women with Savanna's Act.

The horrific murder of Savanna LaFontaine-Greywind and the womb kidnapping of her unborn daughter Haisley Jo is yet another historical mark to the grave level of injustice Native American and Alaska Native face in the U.S. The level of violence committed against Native American and Alaska Native women and the barriers created within Indian Country, Alaska Native Villages and Urban Cities through federal and state laws and policy is a continuum of human rights violations.

Savanna's Act is critical to begin to address the issues that have been long standing in the U.S. with the missing and murdered Native women. The U.S. government has a federal trust responsibility and legal obligation to safeguard not only the Treaties, but to ensure all citizens of the United States have equal access to justice and the right to live a life free from violence.

Further, I stand by my recommendation that a National Inquiry into the MMIW is a necessary fundamental response to truly understand the gravity of the extensive issues faced for Native women in the country. These listening sessions/field hearings truly require visiting the complex jurisdictional mapping of tribal communities both on and off reservations. Tribal nations located within Non-Public Law 280 such as those in your home state of North Dakota that is strictly under the fed-

eral jurisdiction, tribal nations located Public Law 280 states such as Minnesota and California which are under state jurisdiction, Alaska Native villages located in Alaska, Oklahoma with the checkerboard jurisdiction and urban cities as 80 percent of the Native American and Alaska Native population live off reservations.

These areas outlined are necessary to understand not only the complexities of the jurisdictions, but the depth of the issues of law enforcement and judicial responses that affect the lives and safety of Native women every day. This insight can only bring about positive changes among all agencies responsible for the life and safety of their citizens, specifically that of Native women who are targets of violence far greater than all other women in the United States as a whole.

In conclusion, Indigenous Women's Human Rights Collective, Inc., support you Senator Heitkamp and Savanna's Act.

Sincerely,

LISA BRUNNER AND PEGGY BIRD  
*Co-Directors.*

CAWS NORTH DAKOTA  
*Bismarck, ND, 10/24/2017*

Sen. Heidi Heitkamp,  
Hart Senate Office Building,  
Washington, DC.

Senator Heitkamp,

On behalf of CAWS North Dakota I am pleased to write this letter of support for, and commitment to, supporting Savanna's Act, in order to address and improve the Federal Government's response to the crisis of missing and murdered indigenous women nationwide.

CAWS North Dakota is a dual coalition approaching its 40th anniversary, growing from a loose network of five organizations to a membership of twenty (20) direct service providers. The rich history of the organization includes not only the nurturing and subsequent growth of a direct service provider network but also a consistent presence working to help shape public policies and systems that are responsive to the needs and experiences of victims of domestic and sexual violence. The Coalition has been active in this role since early 1979.

In 2016, our 20 crisis centers provided services to 5,218 victims of domestic violence and 1,041 victims of sexual assault. Twenty nine (29) percent of domestic violence victims and 21 percent of sexual assault victims identified as American Indian or Alaska Native. Our work as a coalition has focused on building a strong network of service providers that are dedicated to working alongside our tribal coalition (First Nations Women's Alliance) to ensure Native American woman living on and off the reservation have access to culturally relevant and safe services.

We believe the provisions outlined in Savanna's Act including improving access to federal crime databases and creating standardized protocols for responding to cases of missing and murdered Native American women with guidance on interjurisdictional cooperation will enhance and sustain the work of our sister coalitions and crisis centers across the country to ensure justice for Native American victims and survivors.

It's without hesitation that CAWS North Dakota supports the introduction of Savanna's Act and urg passage of the legislation.

Sincerely,

JANELE MOOS,  
*Executive Director.*

FRIENDS COMMITTEE ON NATIONAL LEGISLATION  
*Washington, DC, 10/27/2017*

Sen. Heidi Heitkamp,  
Hart Senate Office Building,  
Washington, DC.

Dear Senator Heitkamp,

On behalf of the Friends Committee on National Legislation, we want to thank you for your focused efforts to bring an end to human trafficking and violence against women and children in Indian Country. The FCNL supports Savanna's Act (S. 1942) and look forward to working with you for its passage.

The Friends Committee on National Legislation is Quaker lobby in the public interest. We have lobbied on Native American concerns, hopefully as a faithful ally to tribes, since the 1950s. We also lead an interfaith coalition that examines and tries to improve the historic relationship between tribes and faith groups, and speaks out on current concerns.

Savanna's Act addresses two of the most perplexing conundrums afflicting tribal criminal justice—access to data, and coordination among jurisdictions and agencies. The two other bills considered in the Senate Committee on Indian Affairs on October 25 can work hand in hand with Savanna's Act to make significant progress in this area. The SURVIVE Act would provide a reliable funding stream to help tribal and local law enforcement and social services to collaborate in their responses to violence on Indian lands. As witnesses noted, the presence and involvement of victim advocates and victim service providers is essential not only for the victims themselves, but sometimes make prosecutions possible.

An effective response can also be enhanced by potential changes in the Tribal Law and Order Act and the 2013 VAWA amendments to open up some of the narrow restrictions on tribal jurisdiction. The tribe cannot keep its citizens safe if it does not have the resources and the recognized authority to do so.

We raise one caution about the intent of some of the provisions of the Tribal Law and Order Reauthorization Act: the support offered for new prisons. From our historic and current work on criminal justice and prisons, we at FCNL know that building more prisons does not reduce crime. We were heartened to hear from at least two of the witnesses yesterday that they seek to replace and upgrade overcrowded and substandard prisons on reservation lands, but not necessarily to expand prison capacity overall.

Indeed, tribal justice systems are leading the way in addressing crimes at the community level. Processes like the "Peacemaker Circles" described by one witness seek permanent and comprehensive solutions to crimes and community offenses, by involving offenders, direct victims, tribal elders, and the whole community in the decisions about how to respond to a particular crime or situation. We will watch closely for language in the Tribal Law and Order Act Reauthorization, to ensure that tribes continue to retain their sovereign rights to judge in these cases whether prison is or is not part of a comprehensive solution to a community offense.

As you said yourself, Senator, in the September 27 hearing on the GAO's report about the need for more data, we cannot solve this problem by prosecution alone. "Everything that we do to build resilience within Indian Country is an anti-trafficking move." We look forward to supporting your efforts to address human trafficking and its root causes in a comprehensive framework.

In hope for justice,

RUTH FLOWER,  
*Consultant—Native American Policy.*

UNITED TRIBES OF NORTH DAKOTA  
10/22/2017

Senator John Hoeven,  
Sen. Heidi Heitkamp,  
Hart Senate Office Building,  
Washington, DC.

RE: SUPPORT FOR S. 1942, "SAVANNA'S ACT," A BILL TO DIRECT THE AG TO REVIEW, REVISE AND DEVELOP LAW ENFORCEMENT AND JUSTICE PROTOCOLS APPROPRIATE TO ADDRESS MISSING AND MURDERED INDIANS; AND S. 1870, THE SECURING URGENT RESOURCES VITAL TO INDIAN VICTIM EMPOWERMENT ACT  
2017

Dear Senators,

We write to thank you for your direct response to our letter of September 8, 2017 calling for direct action in response to the tragic loss of Savanna LaFontaine-Greywind and all Murdered and Missing Indigenous Women. The United Tribes of North Dakota and our citizens stand in solidarity with Savanna's family, and all the families of missing and murdered Native American women. In our September 8, 2017 letter, we urged you to consider the following recommendations:

1. Create a federal-local law enforcement task force regarding Greywind's murder to ensure justice, and to ensure appropriate crime victim resources are provided to her child and family;

2. Direct the DOJ to commission a cross-jurisdictional law enforcement task force to re-open the cold files on the hundreds of missing and murdered Native American women. Direct this task force to create national protocols on missing Native women and to coordinate the multiple jurisdictions;
3. Require the DOJ to collect and provide statistics on an annual basis and provide recommendations on data collection for missing and murdered Native American women. Native women are one of the only populations without this data;
4. Support the Violence Against Women Act, and the continued strengthening of tribal criminal jurisdiction, so that the murder of a Native woman on an Indian reservation will finally receive the same swift justice and law enforcement resources as off reservation;
5. Ensure all United States Attorneys for North Dakota fully appreciate their unique treaty obligations in Indian Country;
6. End the unconscionable exclusion of tribal governments from the federal Crime Victims Fund so that we can provide victim services to our families with missing and murdered Native women;
7. Guarantee that Tribal law enforcement agencies are given equal access to National the Crime Information Center (NCIC) and the Tribal Access Program for National Crime Information (TAP);
8. Provide tribal law enforcement and courts additional funding to develop protocols on missing persons; Ensure federal law enforcement receive appropriations to protect our women, consistent with their federal treaty obligation;
9. Appreciate that mascots, utilization of racial slurs, and other caricaturizations of Native Americans contribute to the unconscious dehumanization and objectification of Native American women, that contributes to the ease in which violence is directed towards them;
10. Commission a Congressional task force to undertake a study similar to one conducted in Canada, in partnership with tribes and Native women's advocacy groups.

We also passed Resolution #17-09-08-01 on September 8, 2017, titled "Support for a Permanent Dedicated Tribal Set-Aside in the Victims of Crime Act (VOCA) Fund to Assist Tribal Victims of Crime, Including Related to Cases of Missing and Murdered Indigenous Women."

We asked for specific action, and you have responded, each introducing a bill that specifically addresses some of the actions we requested.

- "S. 1942, a bill to direct the AG to review, revise and develop law enforcement and justice protocols appropriate to address missing and murdered Indians", known as "Savanna's Act," responds to our requests for statistics on MMIW, data access, and increased coordination. (Senator Heitkamp)
- "S. 1870, the Securing Urgent Resources Vital to Indian Victim Empowerment Act 2017" responds to the UTND resolution #17-09-08-01. (Senator Hoeven)

We thank you for your quick response to our call to action, and for your sincere and continued attention to the epidemic of Missing and Murdered Indigenous Women. We look forward to supporting these bills, and to working together on this issue of national importance.

Sincerely,

DAVE FLUTE,

*Chairman, Sisseton Wahpeton Oyate and United Tribes of North Dakota*

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NATIONAL INDIGENOUS WOMEN'S RESOURCE CENTER  
*Lame Deer, MT.*

Sen. Heidi Heitkamp,  
Hart Senate Office Building,  
Washington, DC.

Dear Senator Heitkamp,

We, the National Indigenous Women's Resource Center, write to express the urgent need to address the national crisis of missing and murdered as stated in the Findings of S. 1942; the Savanna's Act. The recent murder of Savanna LaFontaine-Greywind and the horrific ongoing violence committed against Native women and girls, particularly the reports of those missing and murdered, are a glaring confirmation of this reality in our everyday lives.



According to the Centers for Disease Control and Prevention, homicide is the third leading cause of death among American Indian and Alaska Native women between 10 and 24 years of age and the fifth leading cause of death for American Indian and Alaska Native women between 25 and 34 years of age. In some tribal communities, American Indian women face murder rates that are more than 10 times the national average.

This year, the Senate passed a resolution declaring May 5th, 2017 as a National Day of Awareness for Missing and Murdered Native Women and Girls. As demonstrated on May 5th by the response of Indian tribes, advocates, and most important the families of Native women who are missing and/or tragically murdered, much remains to be done to address this crisis. We extend our gratitude for your support for the National Day of Awareness. Furthermore, we are pleased to inform you that the National Day of Awareness reached millions of people across the United States and the world through social media platforms, community actions, and heartfelt prayers at vigils across tribal communities. This public response continues to demonstrate that increased awareness is badly needed and indicative of the extent of the reality that Native women go missing on a daily basis often without any response by law enforcement.

The National Indigenous Women's Resource Center calls for prayer and healing in response to the violence committed against American Indian and Alaska Native Women across the United States. As a country, we must acknowledge this crisis and the systemic changes that are urgently needed to save lives. To respond to this reality, we can begin the process of removing barriers to the safety of Native women and strengthen the ability of Indian nations to protect women. We thank you, Senator Heitkamp for your dedication and that of the Senate Committee on Indian Affairs and call on all justice-loving people to stand strong and continue the important work addressed by Savanna's Act and the work we have before us to end all forms of violence in our communities.

LUCY SIMPSON,  
*Executive Director.*

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO  
HON. JOEL BOYD

#### **Federal Administrative Assistance to Tribes**

*Question 1.* In order for Congress to exercise its oversight authority, it needs timely reporting of information on Indian programs from federal agencies. S. 1953 seeks to incentivize timely reporting by withholding administrative funding from agencies within the Department of Justice and the Department of the Interior that fail to submit required reports by the legislative deadline. Do you believe that withholding administrative funds would impact your tribe's ability to get timely responses from the Bureau of Indian Affairs and the Department of Justice on public safety and victim service related issues?

Answer. It would depend on the particular functions or accounts that the funds are withheld from, but as drafted, we do not believe so. The Office of Justice Services is a separate account from the Assistant Secretary—Indian Affairs and we believe that the prospect of withholding funds from the policy making side of Indian Affairs for noncompliance is a positive move.

#### **Prisoner Rights**

*Question 2.* S. 1953 seeks to address a number of issues related to public safety in Indian Country, but fails to address the protection of Native inmates' rights, including their religious freedoms (e.g., hair length and wearing sacred objects). According to a study by the Navajo Nation Corrections Project, recidivism among American Indians is dramatically reduced by participation in traditional religious ceremonies.<sup>1</sup> However, many Native American inmates have been denied the ability to participate in regular religious practice or keep articles of religious devotion.<sup>2</sup> Last year, the Supreme Court rejected an appeal from several Native American inmates incarcerated in an Alabama state prison to review a decision by the Eleventh Circuit that said the state's restrictions on prisoner hair length did not violate fed-

<sup>1</sup>See "Navajo Nation Corrections Project," Harvard Kennedy School of Government, at <https://www.innovations.harvard.edu/navajo-nation-corrections-project>.

<sup>2</sup>See, e.g., Stephanie Beran, "Native Americans in Prison: The Struggle for Religious Freedom," *Nebraska Anthropologist*, 2005.

eral law by infringing on the prisoners' religious beliefs.<sup>3</sup> Native youth are disproportionately represented in federal prisons due to the unique jurisdictional landscape of Indian Country;<sup>4</sup> thus, their cultural rights and needs are often not respected. Do you believe it is important for the Department of Justice and the Bureau of Indian Affairs to work more closely with tribes to address their policies regarding Native cultural expression and practices?

Answer. Yes. Both the BIA and DOJ should have personnel dedicated as points of contact for these issues. The BIA's Office of Justice Services and DOJ's Office of Tribal Justice have such a large portfolio of issues and demands on their resources that specific individuals should be designated.

*Question 3.* Several years ago, news reports began to surface that Native youth in BIA-funded detention facilities were not provided with any educational or vocational opportunities.<sup>5</sup> Additionally, Native youth represent as much as 60 percent of juveniles in federal custody.<sup>6</sup> However, the federal corrections system contains no juvenile division—meaning these youth have limited to no access to age-appropriate educational or rehabilitation opportunities.<sup>7</sup> S.1953 fails to adequately address the educational-access rights of Native youth in tribal, BIA, and federal detention facilities. What sort of accountability for incarcerated Native youth education would you recommend the Committee consider for the Bureau of Indian Affairs and the Department of Justice?

Answer. The absence of services for juvenile offenders is a severe problem for the Colville Tribes. The Colville Tribes operates an adult detention facility that it operates under a 638 contract. That facility, however, does not house any juvenile offenders. The Colville Tribes would like to operate a juvenile detention wing, but the minimum staff needed to operate a juvenile facility dwarfs the federal funding that would be available to the Tribe under its 638 contract. That available amount is approximately \$200,000. The Colville Tribes would need to supplement this amount with tribal dollars several times over to staff a juvenile wing with the minimum required staff, which unfortunately is not a feasible option for the Tribe. That only addresses the costs of minimum staff; it would not include any therapy or rehabilitation services for juvenile offenders.

Currently, the Colville Tribes' juvenile offenders are housed in county facilities under contractual arrangements. Depending the facility, services provided for juvenile offenders vary considerably.

As for accountability for BIA and DOJ for incarcerated Native youth, the Colville Tribes believes that separate funding resources must be available for these purposes. Many tribes have tribal member youth that have been arrested at a young age for sex offenses. Statistics show that intervention and treatment in these cases at a young age is much more effective than when the offenders become adults. This Committee can direct that the BIA and/or DOJ affirmatively provide these therapy and rehabilitation services-or make funding available to Tribes-for tribal youth offenders.

### **Tribal Public Safety Resources**

*Question 4.* S.1870 (SURVIVE Act) amends the Victims of Crime Act (VOCA) to authorize a 10-year 5 percent tribal set-aside within the Crime Victims Fund to support a new tribal grant program. Do you believe the VOCA tribal grant program should be made permanent?

Answer. Yes.

*Question 4a.* How would making it permanent benefit tribes and victim service programs? Please be specific.

Answer. The Colville Tribes currently provides limited victim services through a combination of tribal programs. The Tribes received a modest grant through the VOCA program through the State of Washington in 2016, but has not received funding since. Making the VOCA tribal grant program permanent would allow Tribes to develop and maintain victims' services programs without having to support these programs exclusively through Tribal funds. The Colville Tribes is interested in establishing permanent services similar those funded by the VOCA Compensation

<sup>3</sup>*Knight v. Thompson*, 796 F.3d 1289 (11th Cir. 2015), cert. denied, 136 U.S. 1824 (2016).

<sup>4</sup>*See, e.g.*, "Juvenile Justice: Failing the Next Generation," *A Roadmap for Making Native America Safer*, Tribal Law and Order Commission, 157, at [https://www.aisc.ucla.edu/iloc/report/files/Chapter\\_6\\_Juvenile\\_Justice.pdf](https://www.aisc.ucla.edu/iloc/report/files/Chapter_6_Juvenile_Justice.pdf).

<sup>5</sup>*See, e.g.*, Tate, Julie, "From Broken Homes to a Broken System," *The Washington Post*, (Nov. 28, 2014), at [http://www.washingtonpost.com/sf/national/2014/11/28/from-broken-homes-to-a-broken-system/?utm\\_term=.22fbc8c05d3](http://www.washingtonpost.com/sf/national/2014/11/28/from-broken-homes-to-a-broken-system/?utm_term=.22fbc8c05d3).

<sup>6</sup>*See* "Juvenile Justice: Failing the Next Generation," *supra* note 4, at 157.

<sup>7</sup>*Id.* at 155.

Formula Grant Program—i.e., financial assistance and reimbursement to victims for crime-related out-of-pocket expenses—but has been constrained by tribal budgets. Having a permanent source of funds would allow the Tribes to move forward.

*Question 4b.* Do you believe 5 percent is sufficient?

Answer. The largest number that is politically feasible, the better.

*Question 4c.* Would there be a benefit to modifying the bill language to turn the 5 percent set-aside into a funding minimum?

Answer. If feasible, yes.

*Question 5.* S.1953 mandates a feasibility study of creating a block grant program similar to CTAS, the 477 tribal workforce program, and NAHASDA by pooling tribal public safety funds from the Department of the Interior, the Department of Health and Human Services, and the Department of Justice. If enacted, how would you recommend the grant funds authorized under this legislation be distributed?

Answer. The funds should be distributed based on a combination of criteria similar to how the Office of Justice Services currently allocates increases for law enforcement. These criteria include the (1) size of the Tribe's reservation/tribal land base; (2) number of enrolled tribal members; (3) rate of violent crime on the Tribe's reservation; and (4) the number of additional law enforcement officers needed (if any).

*Question 6.* S.1870 creates a grant program to administer a 5 percent Victim of Crime Act set-aside for tribal victim services but does not specify whether these grants will be competitive or formula-based. Do you think that creating a public safety block grant such as this would benefit your tribe?

Answer. Yes. Currently, funding for tribal victim services at the Colville Tribes are a combination of programs from tribal and federal grant sources. A formula-based block grant would provide a reliable source of funding to ensure that there is no interruption of services in these programs.

*Question 6a.* If enacted, how would you like to see the funds distributed?

Answer. The funds should not be distributed on a competitive grant basis. Rather, the funds should be distributed based on a formula using the criteria similar to the criteria described in the answer to question 2, above, but with the rate of violent crime perhaps being more heavily weighed.

*Question 6b.* Are there any lessons learned from CTAS, NAHASDA and the 477 program that should be incorporated into a potential block grant under S. 1953?

Answer. The 477 program is instructive because it reduces administrative overhead in administering programs by requiring a single reporting requirement. Tribes should be able to receive VCA set aside funds through a 477 plan or a 477-like arrangement.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. HEIDI HEITKAMP TO  
HON. JOEL BOYD

*Question 1.* Given the legislation and issues we are discussing here today—and the FBI's critical role in investigating major crimes and being the top law enforcement agency on the beat in Indian Country. What is your view of the FBI's presence and responsiveness to crime on your reservations? Is it adequate? If not, what more should be done to increase their presence and responsiveness to criminal activity and crime on your reservation?

Answer. Currently, a supervisory FBI agent in Spokane, Washington, provides monthly reports to the Colville Business Council on the status of investigations, declinations, etc. The Colville Tribes' law enforcement currently has seven active cases that interacts with the FBI on. Prior to the current monthly report arrangement, however, the Colville Tribes had difficulty getting reliable information from the FBI.

Even with the monthly reports, the Colville Tribes is still not formally notified of declinations of prosecutions. The Colville Tribes also has been frustrated at the reluctance, in some cases, for the U.S. Attorney's Office's apparent unwillingness to pursue cases unless they are "open and shut" cases.

*Question 2.* In Mr. Rice's testimony, he discussed the TLOA's Indian Law and Order Commission and its promotion of intergovernmental cooperation—this is something I know a lot about from my time as Attorney General in North Dakota as I worked constantly to secure cross-deputization agreements or memorandums of understanding between tribes and state/local/county law enforcement. This is a very challenging exercise and one that will only ever work when there is a very high-level of trust on both sides of the agreement. Now, Mr. Rice's testimony talks about BIA and presumably the DOJ encouraging tribes and state and local law enforcement to engage in more of these types of agreements. How has BIA and/or DOJ

worked with your tribe to help facilitate these conversations or provide you with the resources necessary to reach agreement with state and local law enforcement? Has BIA and/or DOJ led a consultation with your tribe or tribes in your state or region on this issue recently? If so, what was the outcome of that consultation?

Answer. As noted in the answer below, Washington state is somewhat of an anomaly because since 2011 it has authorized tribal police to enforce state laws without requiring an agreement with local jurisdictions. BIA and DOJ work with the Colville Tribes on a variety of issues, though not this issue since 2011.

One issue of concern of the Colville Tribes with the BIA and DOJ is the process for securing Special Law Enforcement Commissions (SLECs) to enable tribal officers to enforce federal laws. Despite provisions in the 2010 Tribal Law and Order Act intended to facilitate SLECs, we have continued to find the SLEC process cumbersome and slow.

*Question 3.* Do you have current MOU's or cross-deputization agreements in place with state and local law enforcement? If not, why? What more do you need in terms of resources, information, guarantees—to encourage further discussion and actual agreements being reached with state and local law enforcement? And have you discussed your challenges in reaching cross-deputization agreements and memorandums of understanding with BIA and/or DOJ? If so, what was their response?

Answer. The Colville Reservation straddles both Okanogan and Ferry Counties in the north central and north eastern part of Washington State. The Colville Tribes has a cross-deputization agreement in effect with the Okanogan County Sherriff's Department, but not with the Ferry County Sherriff. The CCT similarly does not have cross deputization agreements with police departments for the cities of Omak and Coulee Dam, two of the largest population centers on the Colville Reservation. In 2011, the Washington State Legislature enacted a law that authorizes tribal police officers to act as general authority Washington state peace officers. Most Indian tribes that have been unable to secure cross-deputization agreements have been able to obtain the same authority under this law, so Washington State is probably an exception.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO  
BRYAN RICE

**Prisoner Rights**

*Question 1.* As tribes move to exercise the enhanced sentencing restored under TLOA and the special jurisdiction restored under VAWA, they report issues with providing medical care to longer-term inmates. According to data produced by the BIA, nearly 60 percent of BIA and tribal jails are without any on-site healthcare services. Tribal and BIA jails typically depend on the Indian Health Service to care for inmates, but under VAWA, non-IHS eligible inmates are now housed in these facilities for the first time. S. 1953 fails to address the issue of healthcare access for inmates in BIA-funded correction facilities. How is BIA working to ensure that all inmates have access to adequate health care?

Answer. The BIA Office of Justice Services (OJS) works diligently to ensure that all inmates have access to health care for all detention facilities on tribal lands. The health and safety of inmates and staff is of primary concern. BIA Policy requires Detention Facilities to provide access to available health care to all inmates. The BIA works directly with the Indian Health Services (IHS), and persons in BIA or tribal custody are eligible for services on the same basis as other beneficiaries of the IHS. In instances where IHS services are not available, BIA would procure local medical services for inmates.

The Tribal Detention Programs under the P.L. 93-638 Contracts or Self Governance Compacts require the jail administrator and health authority to develop a written plan for the provision of general medical, emergency medical, dental and mental health care. The minimum requirements for this plan between the tribe and the medical provider are outlined within the BIA Detention Guidelines, which are attached.

Due to the lack of bed space in some areas, BIA OJS also manages commercial contracts. The Contractor addresses emergency, routine non-emergency medical, psychological, and dental needs of arrestees or inmates with an established medical professional assessment. The Contractor is required to defer to the Indian Health Service or a tribal health care facility/provider when possible and appropriate for arrestees or inmates who are enrolled members of a federally-recognized tribe.

*Question 1a.* Are there any statutory or regulatory barriers that would prevent BIA-funded corrections facilities from working with federal health systems, like IHS, to address this issue?

Answer. As noted in the previous response, the IHS, as well as Tribal Health programs provide services for Native American inmates. These programs have their own legal requirements regarding who qualifies for the services. BIA does coordinate with IHS on what services they have available in the locations where we operate detention facilities. Generally, Native American inmates are eligible for direct services; however, inmates have limited eligibility for Purchased or Referred Care, which would otherwise cover emergency medical care and specialized treatment not available directly from IHS at particular locations. Accordingly, we are not aware of any express statutory or regulatory barriers that bar BIA from working with federal health systems, such as IHS. BIA defers to IHS regarding whether its statutory or regulatory requirements prevent it from working with BIA to address this issue.

*Question 2.* S. 1953 attempts to address a number of issues related to public safety in Indian Country but fails to address the protection of Native inmates' rights, including their religious freedoms (e.g. hair length and wearing sacred objects). According to a study by the Navajo Nation Corrections Project, recidivism among American Indians is dramatically reduced by participation in traditional religious ceremonies.<sup>1</sup> However, many Native American inmates have been denied the ability to participate in regular religious practice or keep articles of religious devotion.<sup>2</sup> Last year, the Supreme Court rejected an appeal from several Native American inmates incarcerated in an Alabama state prison to review a decision by the Eleventh Circuit that said the state's restrictions on prisoner hair length did not violate federal law by infringing on the prisoners' religious beliefs.<sup>3</sup> Native youth are disproportionately represented in federal prisons due to the unique jurisdictional landscape of Indian Country;<sup>4</sup> thus, their cultural rights and needs are often not respected. How is your Department making sure that culturally-appropriate programming and policies are in place for incarcerated Native youth?

Answer. The BIA OJS Detention Facilities are located within the geographical boundaries of a Reservation. Detention Centers have policies and procedures that support culturally relevant programming to include counseling, treatment, medical, youth activities, domestic violence and spirituality.

*Question 3.* Several years ago, news reports began to surface that Native youth in BIA-funded detention facilities were not provided with any educational or vocational opportunities.<sup>5</sup> Additionally, Native youth represent as much as 60 percent of juveniles in federal custody.<sup>6</sup> However, the federal corrections system contains no juvenile division—meaning these youth have limited to no access to age-appropriate educational or rehabilitation opportunities.<sup>7</sup> S. 1953 fails to adequately address the educational-access rights of Native youth in tribal, BIA, and federal detention facilities. What efforts is the Office of Justice Services undertaking to ensure all Native youth in their detention facilities have access to educational opportunities?

Answer. BIA OJS has employed a contractor to develop and implement an educational program tailored for BIA Juvenile Detention Centers (JDC). The program provides quality educational and support services, benefiting male and female Native American juveniles.

The BIA education contractor teaches reading, language arts, math, science, and study skills to serve most JDC facilities. A special emphasis was placed on teaching remediation skills in reading and math to address the academic needs of the juveniles.

The BIA and Tribal programs develop and implement academic educational program tailored for Native youth in their Detention Centers, and provide quality educational and support services benefitting both male and female juveniles.

<sup>1</sup>See "Navajo Nation Corrections Project," Harvard Kennedy School of Government, at <https://www.innovations.harvard.edu/navajo-nation-corrections-project>.

<sup>2</sup>See, e.g., Stephanie Beran, "Native Americans in Prison: The Struggle for Religious Freedom," *Nebraska Anthropologist*, 2005.

<sup>3</sup>*Knight v. Thompson*, 796 F.3d 1289 (11th Cir. 2015), cert. denied, 136 U.S. 1824 (2016).

<sup>4</sup>See, e.g., "Juvenile Justice: Failing the Next Generation," *A Roadmap for Making Native America Safer*, Tribal Law and Order Commission, 157, at [https://www.aisc.ucla.edu/iloc/report/files/Chapter\\_6\\_Juvenile\\_Justice.pdf](https://www.aisc.ucla.edu/iloc/report/files/Chapter_6_Juvenile_Justice.pdf).

<sup>5</sup>See, e.g., Tate, Julie, "From Broken Homes to a Broken System," *The Washington Post*, (Nov. 28, 2014), at [http://www.washingtonpost.com/sf/national/2014/11/28/from-broken-homes-to-a-broken-system/?utm\\_term=.22fca8c05d3](http://www.washingtonpost.com/sf/national/2014/11/28/from-broken-homes-to-a-broken-system/?utm_term=.22fca8c05d3).

<sup>6</sup>See "Juvenile Justice: Failing the Next Generation," *supra* note 4, at 157.

<sup>7</sup>*Id.* at 155.

### Tribal Public Safety Resources

*Question 4.* In FY14, the Department of Justice imposed a unilateral moratorium on tribal public safety and justice construction. Since that time, the BIA has decommissioned several tribal corrections facilities, leaving some communities without corrections facilities. Sisseton Wahpeton's Chairman testified that his tribe has to "catch and release" domestic violence offenders and drunk drivers, decreasing the effectiveness of officers' attempts to deescalate or contain offenders.<sup>8</sup> In addition to exacerbating public safety issues, DOJ's moratorium means BIA must divert funding to pay to house offenders in county and private prisons. Has BIA done an estimate of the extra costs paid by the federal government and tribes to contract bed space with counties and private prisons when BIA facilities are decommissioned?

Answer. The chart below displays an analysis of three recently closed detention facilities. Detention facility closures have occurred for multiple reasons to include; severe equipment failures, repair costs exceeding available appropriations, safety violations and the most serious being based off the facility condition impacting life, health and safety of inmates. To date, BIA has not experienced a cost savings from these facility closures because resources were shifted into a short-term hold and prisoner transport program for each facility. This occurred primarily because the vast majority of program costs (74 percent to 78 percent) reside in personnel and travel, which are costs that continue despite the facility closure.

Due to existing staff shortages at other BIA-run facilities, any displaced employees not used for short-term hold/transport are redirected to fill staffing gaps at other locations. As a result, there have been no savings related to facility closures to offset against our additional contract bed costs with counties and private prisons. The median inmate costs at BIA operated facilities is approximately \$120 a day versus approximately \$65-\$150 a day at a contract bed facility, in addition to an increase in transportation costs to transport inmates to contract facilities outside the local area. These additional costs to the Federal government and tribes are shown in the far right column.

| Decommissioned Bed | Bed Capacity | Average Annual Program Cost 2013-2016 | Actual Program Cost in 2017 | Additional Contract Bed Cost (Annual) |
|--------------------|--------------|---------------------------------------|-----------------------------|---------------------------------------|
| Hopi               | 68           | \$2,382,785                           | \$2,651,846                 | \$912,503                             |
| Crow               | 32           | \$1,225,802                           | \$1,248,082                 | \$1,140,750                           |
| Sisseton (Tribal)* | 20           | \$210,711                             | \$213,066                   | \$149,879                             |

\*Tribal program resources necessarily shift in a manner similar to our Federal operations upon facility closure. As a result, no cost savings are assumed for the Sisseton program.

*Question 4a.* Additionally, what is BIA doing to ensure that tribal inmates housed in contracted facilities have access to education and culturally relevant rehabilitation?

Answer. Each contracted facility has a contracting officer representative (COR) who is a BIA Correctional Specialist. Through the COR, the BIA has input on each contract and the services that would be provided by contracted facilities. Each county, private company, or state facility has their own array of programs and services. BIA makes efforts to seek out contracts that properly place inmates where the services are needed and have bed space available. The services would include educational opportunities and cultural programming.

These contracts are monitored annually and site visits are conducted throughout the year.

### RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. HEIDI HEITKAMP TO BRYAN RICE

*Question 1.* In April, the OOJ Office of Tribal Justice created the Indian Country Federal Law Enforcement Coordination Group, consisting of 12 federal law enforcement components, that aims to increase collaboration and coordination to enhance the response to violent crime in Indian country. The Bureau of Indian Affairs Office of Justice Services is co-leading this effort. Can you provide an update on the Group's discussions and if anything has come out of them yet?

Answer. BIA, the Executive Office of United States Attorneys (EOUSA), and the Office of Tribal Justice continue to collaborate on the Attorney General's Violent Crime Reduction Coordinating Committee and have been critically important in de-

<sup>8</sup> Statement of David Flute, Chairman of the Sisseton Wahpeton Sioux Tribe, before the Senate Committee on Indian Affairs (Oct. 25, 2017)

veloping relationships between federal agencies. The Indian Country Federal Law Enforcement Coordination Group (ICFLECG) also provides a forum for law enforcement to discuss new issues facing Indian Country. The Coordination Group has identified the prosecution of violent crime and opioid abuse in Indian Country as a priority. As part of the collaboration through ICFLECG, BIA and EOUSA have collaborated on a curriculum to train tribal prosecutors and Special Assistant United States Attorneys (SAUSAs) in trial advocacy skills. This curriculum focuses on skill sets needed to properly prosecute opioid and violent crime cases. This training will be held at the DOJ National Advocacy Center the week of March 19, 2018 and 42 tribal prosecutors plan to attend. The training facts are derived from a recent case at Pascua Yaqui which involved violence and use and sale of illegal narcotics. Thereafter, DOJ and BIA will select 9 advanced tribal prosecutors from the March 19 training, and work to create 9 additional training sessions in each OJS District to take place within the next 2 years. These relationships have resulted in joint investigations between BIA and other agencies in the area of drug enforcement, and training regarding the dangers of Fentanyl and Fentanyl derivatives. The group has also worked together to coordinate an increased presence in Indian Country during the National Drug Take Back Initiative. Through this federal agency collaboration with the Drug Enforcement Administration and other DOJ components, BIA increased the number of take back locations to 115 throughout Indian Country. These Indian Country locations removed just over 1,500 pounds of illegal substances from tribal communities.

*Question 2.* There continues to be a huge gap in the training of BIA officers versus FBI agents when it comes to investigating crimes like human trafficking and homicide. Given the fact that in many cases BIA officers will be the first on the scene or to speak with a victim, how do we ensure that our BIA officers have the proper training and knowledge to make sure that the investigation is not compromised and that the FBI and US Attorney's offices are able to prosecute the perpetrators?

Answer. The duties of a BIA Uniformed Officer are much different than an FBI or BIA Special Agent. Typical duties for a uniformed officer include responding to emergency and non-emergency calls, patrolling assigned areas, conducting traffic stops, and issuing citations. The Federal Law Enforcement Training Center (FLETC) basic police training programs address common knowledge, skills, and abilities that are expected of all federal uniformed officers. This includes, but is not limited to skills such as how to preserve a crime scene, identify and collect evidence, interview witnesses and prepare written incident reports that record all aspects of a criminal or non-criminal incident.

The BIA also employs Special Agents that are highly experienced and trained to take the lead on complex federal criminal investigations or lead a team of investigators on major crime scenes. These agents also work alongside the FBI, DEA and other federal agencies to conduct joint federal criminal investigations within Indian Country. Over the past decade, BIA has focused on enhancing the investigative abilities of their special agents to meet or exceed those of other federal agencies. Since BIA agents normally work closely with the BIA uniformed police programs, the uniformed officers are able to learn additional investigative techniques and hone their investigative skills through mentoring and hands-on experiences with seasoned agents.

*Question 3.* What additional training and/or requirements do you think we need so that we begin to move towards parity in the investigation and presentation of a case to the US Attorney's office regardless of who is the lead investigating agency or first on the scene?

Answer. The BIA and Tribal investigators complete criminal investigator training programs offered by the Federal Law Enforcement Training Center (12 weeks) or the Department of the Interior's Investigator Training Program (6 weeks). Additional criminal investigation training specific to the investigation of violent crime in Indian Country is provided to BIA, tribal, and FBI special agents in the Indian Country Criminal Investigation Training Program (2 weeks) that includes courses in Criminal Jurisdiction in Indian Country; US Attorney's Office Communication and Collaboration; Trial Preparation, and Defense Strategies.

The BIA has assessed additional training and resources which includes the capacity to conduct criminal investigation to address Archeological Resources Protection Act (ARPA) and Drug Investigation and Awareness—specifically, opioids. BIA training is carried out at the Federal Law Enforcement Training Center (FLETC) in Artesia, New Mexico, which provides facilities for partner organizations but currently has no forensic crime scene facility to support important training initiatives for Indian Country.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO  
HON. DAVE FLUTE

**Federal Administrative Assistance to Tribes**

*Question 1.* Will withholding administrative funds impact your tribe's ability to get timely response from the BIA and DOJ on public safety and victim services related issues?

Answer. Withholding funds from the BIA for failing to file timely public safety reports will only penalize Indian country for the lack of funding and resources in Indian law enforcement. A better approach would be to withhold funding from the leadership offices at the Department level. For example, withhold funding from the Office of the Secretary or the Deputy Secretary of the Department of the Interior and the Office of the Attorney General or the Deputy Attorney General and you will get immediate results and focus attention on the need for adequate funding for Indian country law enforcement.

**Prisoner Rights**

*Question 2.* Do you believe it is important for the Department of Justice and the Bureau of Indian Affairs to work more closely with tribes to address their policies regarding Native cultural expression and practices?

Answer. Yes. Native American prisoners should be allowed Freedom of Religion in Federal Prisons. For example, for many Native Americans, it is traditional to wear long hair and engage in sweat lodge ceremonies. Native Americans should have freedom of expression in the exercise of these religious customs. Given the Federal Trust and Treaty Responsibilities to Indian nations, the U.S. Department of Justice and the Bureau of Prisons should consult closely with Indian nations on the treatment of Native American prisoners because their incarceration at the Federal level is largely due to the Federal Government's unique Indian country public safety and law enforcement responsibilities.

*Question 3.* What sort of accountability for incarcerated Native youth education would you recommend for the Bureau of Indian Affairs and the DOJ?

Answer. Recently, the Sisseton-Wahpeton Sioux Tribe sent a law enforcement delegation to visit the San Carlos Apache Tribe. The San Carlos Apache Tribe has an outstanding BIE funded juvenile detention education curriculum that is conducted by two award winning teachers. These teachers are able to help the youth in custody to catch up on their studies, graduate high school or earn General Equivalency Degrees, and upon release, get jobs or go to college. The record of achievement is impressive. The BIA and Department of Justice should be required to work with the BIE to provide appropriate education for youth in custody because quality instruction can result in positive outcomes for our youth and our communities in the long-run.

**The Violence Against Women Reauthorization Act of 2013—Tribal Public Safety Resources**

*Question 4.* Do you believe the VOCA tribal grant programs should be made permanent?

Answer. Yes, the VOCA tribal grant programs should be made permanent. The SURVIVE Act should be enacted into law. The United States, through the Departments of the Interior and Justice, have special Federal treaty, trust and statutory responsibilities for public safety and law enforcement in Indian country. Unlike the rest of the United States, the U.S. Attorneys serve as our District Attorneys for felony crime, violent crime, drug crime, domestic violence, and sexual assault. Accordingly, the VOCA crime victim funding is essential to providing remedial, counseling, therapeutic services to crime victims in Indian country. Men, women and children who suffer such crimes often suffer Post Traumatic Stress Disorder, and are in great need of mental, behavioral, and physical health assistance, housing, and special victims services. The VOCA and SURVIVE Act provisions are greatly needed.

*Question 4a.* How would making it permanent benefit tribes and victims of crime. Please be specific.

Answer. One of the very serious problems that Indian tribes face, especially on large rural reservations, is a lack of base funding for public safety and law enforcement. Typically, the Office of Justice Programs has served as the vehicle for competitive grants across America, yet Indian tribes need more basic, ongoing funding so that we can provide basic public safety and law enforcement on a continuing basis to serve those in need of Victims Services. We know that the violence and drug crime are ongoing, and we need to provide ongoing services for the victims of crime.

*Question 4b.* Do you believe that 5 percent is sufficient?



Answer. The proposed 5 percent set aside is a good starting point because, at present, we are only receiving ½ of 1 percent in Indian country from the Crime Victims Fund. The 5 percent should be a minimum funding level and in future years, the Justice Department should be authorized to raise that funding level to 7 percent, just as Congress has authorized for the DOJ Office of Justice Programs. In the future, even that 7 percent should be increased to 10 percent to reflect the depth of the law enforcement needs in Indian country and the United States special responsibilities to Indian country, Indian nations, and Indian homelands.

*Question 4c.* Would there be a benefit to modifying the bill language to turn the So/o set aside into a funding minimum?

Yes, the SURVIVE Act should establish a 5 percent minimum for funding.

*Question 5.* If enacted, how would you recommend the grant funds authorized under this legislation be distributed?

Answer. If enacted, the funds under the Crime Victims Fund should be distributed through tribal block grants in accordance with a formula based on several factors, the population of Indian nations, the size of reservations, incidence of crime, victimization levels, Federal and tribal jurisdiction authority and the needs of public safety and tribal law enforcement. The model that should be used is the Public Law 102-477 Program, so that these programs can be part of a Master Tribal Law Enforcement Contract with the Justice Department and the Interior Department in coordination with Public Law 93-638 Contracts from the Bureau of Indian Affairs.

*Question 6.* Do you think that creating a public safety block grant would benefit your tribe?

Answer. Yes, Federal funding for law enforcement should move forward under master tribal government plans for law enforcement and block grants to fund those plans. See above. The Federal funding has to flow to those areas most in need of public safety and law enforcement, and Indian tribes should be able to count on year-over-year funding based upon a sensible block grant formula based upon these factors.

*Question 6a.* If enacted, how would you like to see the funds distributed?

Answer. As noted above, the funds should be distributed through tribal block grants based upon Indian country demographics, geography and law enforcement need. Funding should be consistent year-over-year so Indian nations can establish master plans for supporting tribal victims of crime, providing for public safety and enhancing tribal law enforcement.

*Question 6b.* Are there any lessons learned from CTAS, NAHASDA and the 477 grant program that should be incorporated into a potential block grant under S. 1953?

Answer. Pilot projects should be established for our Indian nations in the Great Plains Region based upon Indian nation demographics, Indian country geography, the need for public safety, and the requirements of tribal law enforcement. The projects should be initiated immediately based on the type of formula outlined above.

We need to address real law enforcement need, the public served, offenders stopped, arrested, prosecuted and convicted, the level of drug crime, violent crime, violence against women, domestic violence, and juvenile offenses, and the population and area of Indian country served.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. HEIDI HEITKAMP TO  
HON. DAVE FLUTE

*Question 1.* What is your view of the FBI presence and responsiveness to crime on your reservation? Is it adequate? If not, what more should be done to increase their presence and responsiveness to criminal activity and crime on your reservation?

Answer. There should be increased funding for FBI in Indian country and a greater number of agents available to help us fight crime. We are working hard on inter-governmental arrangements with the U.S. Attorney, FBI, State's Attorney, State Attorney General, and state and local police. Yet, we still have an urgent problem with drug crime, violent crime, violence against women, domestic violence, and juvenile offenders. In addition, missing and murdered Indian persons is an ongoing issue. The FBI should not just respond to crime, but should be proactive and continue to help us break-up drug cartels, gangs, and violent offenders who continue to victimize our Native people because of gaps in law enforcement facilities, presence, funding and jurisdiction.

*Question 2.* How has the BIA and/or DOJ worked with your tribe to help facilitate conversations or provide you with the resources necessary to reach agreement with state or local law enforcement? Has BIA and/or DOJ led a consultation with your tribe/tribes in your state and your region on this issue recently? If so, what was the outcome of that consultation?

Answer. The Sisseton Wahpeton Sioux Tribe have worked for several years on cooperative prosecutorial diversion programs at the probation level. As a Tribe, we have sought to convene intergovernmental meetings with the U.S. Attorney, FBT State's attorney, state and local police, BIA and tribal police to address the growing problem of drug crime and violent crime in our area. We have engaged on intergovernmental drug task forces, spent our own tribal resources on drug dogs, and participation in such intergovernmental efforts. So, we have worked very actively on such intergovernmental efforts. There is very little funding for cross-jurisdictional efforts, so we need more funding for these programs. The Governors of North and South Dakota have commended us for our tribal law enforcement efforts. Recently, the State Attorney General requested a joint powers agreement, so that our tribal criminal investigator can investigate crimes by non-Indians on our checkerboard fee lands with our homeland, the Lake Traverse Reservation.

*Question 3.* What do we need in terms of increased law enforcement and public safety?

Answer. First and foremost, we need a new state-of-the-art Justice Center. We have been frustrated by the BIA process of reviewing and closing older tribal and BIA jails—with no plan for repair or replacement. For over 10 years, we have sought Federal funds to assist us with a new jail—we have received DOJ planning funds and our estimated cost of the Sisseton Wahpeton Justice Center, which incorporates Adult and Juvenile Detention, Tribal Court, Police Intake, Alcohol and Substance Abuse Detox, Counseling and Treatment, and Transitional Housing is \$32 Million. In December 2016, the BIA closed our Sisseton Wahpeton Jail with no plan for reopening or replacing the jail, and the doors were off, plumbing salvaged, and beds removed within 2 weeks. This—despite the fact that we had met with the BIA Leadership and sought replacement of our outmoded Jail for several years prior to its closure. This has left us with a “catch and release” system of tribal law enforcement, and it is a breach of the Federal trust responsibility, treaty rights, and tribal self-government.

The BIA approach to closing jail facilities with no plan for replacement is not sound law enforcement, it undermines public safety and destroys tribal government infrastructure. The BIA system for closing jails should be stopped and replaced with an adequate system for facility building, operation, staffing and maintenance, law enforcement and public safety.

We need more funding for tribal police, criminal investigators, police drug dogs, equipment, uniforms, vehicles to fight drug crime, violent crime and violence against women and children.

*Question 4.* What part of the special jurisdiction implementation has been the most resource intensive for your tribe?

Answer. The amount of time and attention of our employees, leaders, and attorneys to ensure all areas of SDVCJ were ready for implementation. Additionally, code revision was crucial when preparing for implementation. While preparing for code revision a significant amount of time was also spent meeting with tribal leadership, to ensure throughout the entire process our leadership understood and supported SDVCJ. In addition to working closely with tribal leadership we also had to ensure court staff police department officials, tribal programs, tribal committees among others were also part of the process to ensure all areas of implementation were in working order. In addition to time and attention for those working on implementation was ensuring the funding for public defense was in order.

*Question 5.* If more federal support were available for special jurisdiction implementation, where would the tribe most need them?

Answer. The ability to hire additional staff to spearhead projects and additional funding for legal counsel is imperative to getting implemented. Have competent and dedicated staff are critical. Having the Intertribal Working Group was an excellent resource. Having the ability to work with an organization (in this instance NCAI) that had a coalition of Tribes and several attorneys made a significant impact towards implementation. We were able to share ideas and see what was done before in getting implementation accomplished. Without a working group like ITWG, federal support would include areas such as increased funding for attorneys and consultants.

*Question 6.* Would your tribe benefit from being able to use the Victims of Crime Act (VOCA) funding set-aside in the SURVIVE Act for special jurisdiction implementation?

Answer. Absolutely. VOCA funds could be used both for implementation as well as for programs and shelters that assist domestic violence victims. There are also programs for domestic violence perpetrators that could benefit from a set-aside and address domestic violence at the outset. These funds could also assist the Tribe in community education to create awareness regarding domestic violence, many native women may not feel they can come to the Tribe for assistance or help when their perpetrator is non-Indian. A setaside must be written into law and to ensure victims of crime are getting the services they need.

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**\*RESPONSES TO THE FOLLOWING QUESTIONS WERE NOT AVAILABLE AT THE TIME THIS HEARING WENT TO PRINT\***

WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO  
CARMEN O'LEARY

**Federal Administrative Assistance to Tribes.**

*Question 1.* In order for Congress to exercise its oversight authority, it needs timely reporting of information on Indian programs from federal agencies. S. 1953 seeks to incentivize timely reporting by withholding administrative funding from agencies within the Department of Justice and the Department of the Interior that fail to submit required reports by the legislative deadline. Will withholding administrative funds impact your organization's ability to get timely responses from the Bureau of Indian Affairs and the Department of Justice on public safety and victim services issues?

**Prisoner Rights**

*Question 2.* S. 1953 attempts address a number of issues related to public safety in Indian Country but it fails to address the protection of Native inmates' rights, including their religious freedoms (e.g. hair length and wearing sacred objects). According to a study by the Navajo Nation Corrections Project, recidivism among American Indians is dramatically reduced by participation in traditional religious ceremonies. However, many Native American inmates have been denied the ability to participate in regular religious practice or keep articles of religious devotion. Last year, the Supreme Court rejected an appeal from several Native American inmates incarcerated in an Alabama state prison to review a decision by the Eleventh Circuit that said the state's restrictions on prisoner hair length did not violate federal law by infringing on the prisoners' religious beliefs. Native youth are disproportionately represented in federal prisons due to the unique jurisdictional landscape of Indian Country; thus, their cultural rights and needs are often not respected. Do you believe it is important for the Department of Justice and the Bureau of Indian Affairs to work more closely with tribes to address their policies regarding Native cultural expression and practices?

*Question 3.* Several years ago, news reports began to surface that Native youth in BIA-funded detention facilities were not provided with any educational or vocational opportunities. Additionally, Native youth represent as much as 60 percent of juveniles in federal custody. However, the federal corrections system contains no juvenile division—meaning these youth have limited to no access to age-appropriate educational or rehabilitation opportunities. S. 1953 fails to adequately address the educational-access rights of Native youth in tribal, BIA, and federal detention facilities. What sort of accountability for incarcerated Native youth education would you recommend the Committee consider for the Bureau of Indian Affairs and the Department of Justice?

**Federal Coordination for Native Victim Services**

*Question 4.* Earlier this year, Senator Udall sent a letter to the Department of the Interior, the Department of Health and Human Services, and the National Indian Gaming Commission asking them to coordinate with victim service providers to better spot and respond to domestic violence and human trafficking in Indian Country, and urging them to coordinate with the Stronghearts Native Helpline to ensure that information about the hotline was publicly posted. Several other senators, from both sides of the aisle, signed this letter. S. 1953 seeks to increase coordination between federal agencies on issues related to public safety, but does little to increase awareness of the victim services available in Indian Country. Similarly,

the SURVIVE Act—while providing much-needed funding for victim services in Indian Country—does not take steps to ensure that the public is informed of the existence of these services. Do you believe that requiring more “buy-in” from federal partners to work with tribes and organizations—like the Native Women’s Society and the Stronghearts helpline—will increase the effectiveness of the VOCA set-aside funds?

**Tribal Public Safety Resources**

*Question 5.* S. 1870 (SURVIVE Act) amends the Victims of Crime Act (VOCA) to authorize a 10-year 5 percent tribal set-aside within the Crime Victims Fund to support a new tribal grant program.

- a. Do you believe the VOCA tribal grant program should be made permanent?
- b. How would making it permanent benefit tribes and victim service programs? Please be specific.
- c. Do you believe 5 percent is sufficient?
- d. Would there be a benefit to modifying the bill language to turn the 5 percent set-aside into a funding minimum?

*Question 6.* S. 1870 creates a grant program to administer a 5 percent Victim of Crime Act set aside for tribal victim services but does not specify whether these grants will be competitive or formula-based. S. 1953 mandates a feasibility study of creating a block grant program similar to CTAS, the 477 tribal workforce program, and NAHASDA by pooling tribal public safety funds from the Department of the Interior, the Department of Health and Human Services, and the Department of Justice. If enacted, how would you recommend the grant funds authorized under each program be distributed?

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WRITTEN QUESTIONS SUBMITTED BY HON. HEIDI HEIKAMP TO  
CARMEN O’LEARY

*Question 1.* In your testimony, you stated that in 2013, more than 60 percent of states with Indian tribes did not make a single sub grant. Can you clarify if this statistic is for the two formula grant programs under the Victims of Crime Act, and where this information may be found?

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WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO  
HON. R. TRENT SHORES

**Federal Administrative Assistance to Tribes.**

*Question 1.* In order for Congress to exercise its oversight authority, it needs timely reporting of information on Indian programs from federal agencies. S. 1953 seeks to incentivize timely reporting by withholding administrative funding from DOJ agencies that fail to submit required reports by the legislative deadline.

- a. If the required reports under S. 1953 weren’t submitted on time, what impact would withholding administrative funds have on the Department’s abilities to keep tribal public safety programs running?
- b. Practically, is there a way to withhold administrative funds without impacting tribes?

**Whistleblower Protections**

*Question 2.* S. 1870 (SURVIVE Act) contains a provision that would require the Victims of Crime Act (VOCA) tribal grant recipients and sub-recipients to immediately report any finding of fraud, waste, or abuse to the Director of the Office of Victims of Crime (OVC). This provision is similar to language included in a bill before the Committee last Congress (the Indian Health Service Accountability Act). During a legislative hearing on that bill, the U.S. Office of Special Counsel submitted a statement for the record saying that the similar mandatory reporting procedure “will restrict, rather than expand, existing channels for whistleblower disclosures.”

- a. In what ways does DOJ handle grant misuse reporting for other programs administered by the Department?
- b. What sort of enforcement mechanisms would DOJ likely use to ensure grantees and sub-grantees comply with this reporting mandate?
- c. Could the reporting requirement included in the bill be broadened? Or, is only allowing grantees to report to the Director of OVC sufficient?

### Prisoner Rights

*Question 3.* S. 1953 seeks to address a number of issues related to public safety in Indian Country but fails to address the protection of Native inmates' rights, including their religious freedoms (e.g. hair length and wearing sacred objects). According to a study by the Navajo Nation Corrections Project, recidivism among American Indians is dramatically reduced by participation in traditional religious ceremonies. However, many Native American inmates have been denied the ability to participate in regular religious practice or keep articles of religious devotion. Last year, the Supreme Court rejected an appeal from several Native American inmates incarcerated in an Alabama state prison to review a decision by the Eleventh Circuit that said the state's restrictions on prisoner hair length did not violate federal law by infringing on the prisoners' religious beliefs. Native youth are disproportionately represented in federal prisons due to the unique jurisdictional landscape of Indian Country; thus, their cultural rights and needs are often not respected.

a. What are DOJ's policies for training federal corrections officers on the cultural rights and accommodations of Native inmates?

b. How is your Department making sure that culturally-appropriate programming and policies are in place for incarcerated Native youth?

*Question 4.* Several years ago, news reports began to surface that Native youth in BIA-funded detention facilities were not provided with any educational or vocational opportunities. Additionally, Native youth represent as much as 60 percent of juveniles in federal custody. However, the federal corrections system contains no juvenile division—meaning these youth have limited to no access to age-appropriate educational or rehabilitation opportunities. S. 1953 fails to adequately address the educational-access rights of Native youth in tribal, BIA, and federal detention facilities. Is the Department making efforts to ensure all Native youth in their corrections facilities have access to educational opportunities? If so, please describe.

### Tribal Public Safety Resources

*Question 5.* S. 1870 amends VOCA to authorize a 10-year 5 percent tribal set-aside within the Crime Victims Fund to support a new tribal grant program. The 5 percent is a hard cap; it would not set a legislative floor. Has DOJ conducted an analysis of the level of need for victim services in Indian Country?

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WRITTEN QUESTIONS SUBMITTED BY HON. HEIDI HEITKAMP TO  
HON. R. TRENT SHORES

*Question 1.* During the annual consultations mandated under VAWA, is access to federal crime information databases something you hear often from tribes?

*Question 2.* Are there gaps in federal systems like the National Crime Information Center (NCIC) and the National Missing and Unidentified Persons System (NamUs)? Can they be improved to work better for missing or murdered Native Americans?

*Question 3.* Smaller reservations may not have access to NCIC computers and must rely on local or state police to report crimes for them. DOJ recently announced an expansion of its Tribal Access Program to 15 additional tribes. Can you give us an outlook on continued expansion of this program so we know when all tribes in need will be able to participate?

*Question 4.* Savanna's Act calls for the creation of standard protocols for responding to missing and murdered Native women. Can you describe some of the efforts DOJ currently has in place to provide training for law enforcement officers on cases involving Native Americans? Has that been effective? What does that training consist of?

*Question 5.* Given that FBI and BIA officers are traditionally the lead agencies on major crimes that occur in Indian Country—and in the case of BIA many other crimes as well—do you see a difference in the declination rate and successful prosecution rate between those investigations and cases initiated and led by the FBI versus BIA? If so, what do you see as the major difference that leads to those outcomes and how do we address that?

*Question 6.* If available, what are the statistics for reported homicides, as well as prosecutions for homicide, in Indian country in the last 20 years?