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116TH CONGRESS
1ST SESSION

S. 211

To amend the Victims of Crime Act of 1984 to secure urgent resources vital to Indian victims of crime, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2019

Mr. HOEVEN (for himself, Mr. UDALL, Mr. BARRASSO, Mr. DAINES, Ms. CORTEZ MASTO, Mr. TESTER, Ms. SMITH, and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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A BILL

To amend the Victims of Crime Act of 1984 to secure urgent resources vital to Indian victims of crime, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Securing Urgent Resources Vital to Indian Victim Empowerment Act'' or the ''SURVIVE Act''.

SEC. 2. INDIAN VICTIMS OF CRIME.

(a) GRANT PROGRAM FOR INDIAN CRIME VICTIM SERVICES.—The Victims of Crime Act of 1984 (34 U.S.C.

20101 et seq.) is amended by inserting after section 1404F the following:

"GRANT PROGRAM FOR INDIAN CRIME VICTIM SERVICES

"SEC. 1404G. (a) DEFINITIONS.—In this section:

"(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term 'appropriate committees of Congress' means—

"(A) the Committee on Indian Affairs of the Senate;

"(B) the Subcommittee on Indian, Insular and Alaska Native Affairs of the Committee on Natural Resources of the House of Representatives;

"(C) the Committee on the Judiciary of the Senate; and

"(D) the Committee on the Judiciary of the House of Representatives.

"(2) COVERED GRANT.—The term 'covered grant' means a grant under subsection (c).

"(3) ELIGIBLE INDIAN TRIBE.—The term 'eligible Indian Tribe' means an Indian Tribe that submits a written proposal for a covered grant to the Director in accordance with subsection (c)(2).

"(4) IMMEDIATE FAMILY MEMBER.—The term 'immediate family member' has the meaning given

the term in section 115(c) of title 18, United States Code.

"(5) INDIAN.—The term 'Indian' means a member of an Indian Tribe.

"(6) INDIAN LAND.—The term 'Indian land' has the meaning given the term 'Indian lands' in section 3 of the Native American Business Development, Trade Promotion, and Tourism Act of 2000 (25 U.S.C. 4302).

"(7) INDIAN TRIBE.—The term 'Indian Tribe' has the meaning given the term 'Indian tribe' in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

"(8) PERSONALLY IDENTIFYING INFORMATION.—The term 'personally identifying information' has the meaning given the term in section 40002(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12291(a)).

"(9) SERVICES TO VICTIMS OF CRIME.—The term 'services to victims of crime'—

"(A) has the meaning given the term in section 1404; and

"(B) includes efforts that—

"(i) respond to the emotional, psychological, or physical needs of a victim of crime;

"(ii) assist a victim of crime in stabilizing his or her life after victimization;

"(iii) assist a victim of crime in understanding and participating in the criminal justice system; or

"(iv) restore a measure of security and safety for a victim of crime.

"(10) VICTIM OF CRIME.—The term 'victim of crime' means an individual who has suffered direct physical, sexual, financial, or emotional harm as a result of the commission of a crime.

"(b) DUTIES OF THE DIRECTOR.—The Director shall—

"(1) administer the grant program described in subsection (c);

"(2) provide planning, research, training, and technical assistance to recipients of covered grants; and

"(3) coordinate with the Office of Tribal Justice, the Indian Health Service, and the Bureau of Indian Affairs in implementing the grant program described in subsection (c).

"(c) GRANT PROGRAM.—

"(1) IN GENERAL.—On an annual basis, the Director shall make grants to eligible Indian Tribes for the purposes of funding—

"(A) a program, administered by one or more Indian Tribes, that provides services to victims of crime, which may be provided in traditional form or through electronic, digital, or other technological formats, including—

"(i) services to victims of crime provided through subgrants to agencies or departments of Tribal governments or nonprofit organizations;

"(ii) domestic violence shelters, rape crisis centers, child abuse programs, child advocacy centers, and elder abuse programs providing services to victims of crime;

"(iii) medical care, equipment, treatment, and related evaluations arising from the victimization, including—

"(I) emergency medical care and evaluation, nonemergency medical care and evaluation, psychological and psychiatric care and evaluation, and

other forms of medical assistance, treatment, or therapy, regardless of the setting in which the services are delivered;

"(II) mental and behavioral health and crisis counseling, evaluation, and assistance, including outpatient therapy, counseling services, substance abuse treatment, and other forms of specialized treatment, including intervention and prevention services;

"(III) prophylactic treatment to prevent an individual from contracting HIV/AIDS or any other sexually transmitted disease or infection; and

"(IV) forensic medical evidence collection examinations and forensic interviews of victims of crime—

"(aa) to the extent that other funding sources are unavailable or insufficient; and

"(bb) on the condition that, to the extent practicable, the examiners and interviewers follow

relevant guidelines or protocols issued by the State, unit of local government, or Indian Tribe with jurisdiction over the area in which the examination or interview is conducted;

''(iv) legal services, legal assistance services, and legal clinics (including services provided by pro bono legal clinics and practitioners), the need for which arises directly from the victimization;

''(v) the training and certification of service animals and therapy animals;

''(vi) equipment for Braille or TTY/TTD machines for the deaf necessary to provide services to victims of crime;

''(vii) restorative justice opportunities that allow victims of crime to meet with the perpetrators if the meetings are voluntarily agreed to by the victim of crime and are for therapeutic purposes; and

''(viii) training and related materials, including books, training manuals, and training videos, for staff and service pro-

viders to develop skills necessary to offer quality services to victims of crime;

"(B) the development or implementation of training, technical assistance, or professional development that improves or enhances the quality of services to victims of crime, including coordination between healthcare, education, and justice systems;

"(C) the transportation of victims of crime to—

"(i) receive services; or

"(ii) participate in criminal justice proceedings;

"(D) emergency legal assistance to victims of crime that is directly connected to the crime;

"(E) the supervision of direct service providers and contracts for professional or specialized services that are related directly to providing services to victims of crime;

"(F) the repair and replacement of essential items used during the provision of services to victims of crime to contribute to and maintain a healthy and safe environment for the victims;

"(G) transitional housing for victims of crime, particularly victims who have a particular need for such housing and cannot safely return to previous housing, including travel, rental assistance, security deposits, utilities, and other related costs that are incidental to the relocation to transitional housing;

"(H) the relocation of victims of crime, particularly where necessary for the safety and well-being of the victim, including reasonable moving expenses, security deposits for housing, rental expenses, and utility startup costs;

"(I) the coordination of activities that facilitate the provision of direct services to victims of crime;

"(J) a multi-system, inter-agency, multidisciplinary response to the needs of victims of crime; and

"(K) the administration of the program and services described in this section.

"(2) ELIGIBILITY.—An Indian Tribe seeking a covered grant shall, in response to a request for proposal, submit to the Director a written proposal for a covered grant, which shall include—

"(A) a description of the need for services and the mission and goals of the activity to be carried out using the grant;

"(B) a description of how amounts received under the grant would be used;

"(C) the proposed annual budget for the activities for each fiscal year in which amounts received under the grant may be used;

"(D) any qualifications, certifications, or licenses that may be required for individuals involved in administering the program;

"(E) a certification by the Indian Tribe that, under the law of that Indian Tribe or the law of a State to which the Act of August 15, 1953 (67 Stat. 588, chapter 505) (commonly known as 'Public Law 280') applies—

"(i) victims of crime are entitled to the rights and protections described in section 3771(a) of title 18, United States Code, or substantially similar rights and protections; and

"(ii) individuals who report crimes are protected by law from retribution and retaliation;

"(F) a certification by the Indian Tribe that grant funds will be used to supplement and not supplant other Federal, State, local, and Tribal funds that are used for the purposes described in paragraph (1);

"(G) a description of any plans or agreements to coordinate services among Federal, State, local, and Tribal governments; and

"(H) any additional information required by the Director through written guidance, after consultation with Indian Tribes.

"(3) NO MATCHING REQUIREMENT.—A recipient or subrecipient of a covered grant shall not be required to make a matching contribution for Federal dollars received.

"(4) PROHIBITED USES OF FUNDS.—A recipient or subrecipient of a covered grant may not use the amounts of the grant for—

"(A) salaries, benefits, fees, furniture, equipment, and other expenses of executive directors, board members, and other administrators, except as specifically allowed under this section;

"(B) lobbying and administrative advocacy; and

"(C) fundraising activities.

"(5) ANNUAL REPORT.—A recipient of a covered grant shall, on an annual basis, submit to the Director an itemized budget with a report describing the purpose for which the grant was used, which shall include—

"(A) the purpose for which grant funds were obligated or spent and the amount of funds obligated or spent by the recipient or subrecipient for each purpose, including, on a quarterly basis—

"(i) the amount of grant funds obligated or spent by the recipient or subrecipient for administrative and operational costs; and

"(ii) the amount of grant funds obligated or spent by the recipient or subrecipient for direct services;

"(B) the number of individuals served as a result of the grant;

"(C) a description, in the aggregate, of the types of individuals served, including—

"(i) the alleged crime and injury involved;

"(ii) whether the victim is an Indian; and

"(iii) the age, sex, and Tribal affiliation of the victim, if applicable; and

"(D) a description, in the aggregate, of the general nature and location of the alleged crimes involved, including—

"(i) whether the crime was committed on Indian land;

"(ii) whether the alleged perpetrator is an Indian;

"(iii) the disposition of the incident; and

"(iv) all jurisdictions involved in any disposition.

"(6) OBLIGATION TO REPORT FRAUD, WASTE, OR ABUSE OF GRANT FUNDS.—A recipient or subrecipient of a covered grant shall immediately report to the Director any finding of fraud, waste, or abuse of grant funds.

"(d) PROTECTION OF CRIME VICTIM CONFIDENTIALITY AND PRIVACY.—

"(1) ANNUAL REPORTS.—In order to ensure the safety of victims of crime and immediate family members of victims of crime, recipients and sub-

recipients of covered grants shall protect the confidentiality and privacy of individuals receiving services from the recipient or subrecipient.

"(2) NONDISCLOSURE.—

"(A) IN GENERAL.—Subject to paragraphs (3) and (4), a recipient or subrecipient of a covered grant shall not disclose, reveal, or release any personally identifying information collected in connection with any service requested, used, or denied through a program of the recipient or subrecipient or require the release of personally identifying information as a condition of eligibility for the services provided by the recipient or subrecipient—

"(i) regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected; and

"(ii) subject to subparagraph (B) and the condition that consent for release may not be given by an abuser of the minor, an abuser of a parent or guardian of a minor, or an incapacitated individual, absent the informed, written, reasonably time-limited consent of—

"(I) the individual about whom information is sought;

"(II) in the case of an emancipated minor, the minor, and the parent or guardian; or

"(III) in the case of legal incapacity, a court-appointed guardian.

"(B) CERTAIN MINORS AND OTHER INDIVIDUALS.—If a minor or individual with a legally appointed guardian may lawfully receive services without the consent of a parent or guardian, that minor or individual may consent to the release of information under subparagraph (A)(ii) without the additional consent of a parent or guardian.

"(3) RELEASE.—If the release of information described in paragraph (2) is compelled by a statutory or court mandate, a recipient or subrecipient of a covered grant shall—

"(A) make reasonable attempts to provide notice to victims of crime affected by the disclosure of information; and

"(B) take steps necessary to protect the privacy and safety of the individuals affected by the release of the information.

"(4) INFORMATION SHARING.—A recipient or subrecipient of a covered grant may share—

"(A) data in the aggregate that is not personally identifying information regarding services to clients and demographics in order to comply with Federal, State, Tribal, or territorial reporting, evaluation, or data collection requirements;

"(B) court-generated and law enforcement-generated information contained in secure governmental registries for protection order enforcement purposes; and

"(C) law enforcement-generated and prosecution-generated information necessary for law enforcement and prosecution purposes.

"(5) STATUTORILY MANDATED REPORTS OF ABUSE OR NEGLECT.—Nothing in this subsection shall be construed to prohibit a recipient or subrecipient of a covered grant from reporting suspected abuse or neglect of an individual.

"(6) CONGRESSIONAL OVERSIGHT.—

"(A) IN GENERAL.—Nothing in this subsection shall be construed to prohibit the Director from disclosing grant activities authorized

by this section to the appropriate committees of Congress.

"(B) REQUIREMENTS.—The Director shall ensure that a disclosure under subparagraph (A) protects confidentiality and omits personally identifying information.

"(7) CONFIDENTIALITY ASSESSMENT AND ASSURANCES.—A recipient or subrecipient of a covered grant shall document compliance with the confidentiality and privacy requirements of this subsection.

"(e) OVERSIGHT AND ENFORCEMENT AUTHORITY.—

"(1) AUTHORITY.—The Director shall—

"(A) regularly monitor and review covered grants awarded, which shall include evaluation of quarterly financial reports for victim services grants; and

"(B) conduct investigations and audits—

"(i) to ensure compliance with all applicable Federal law; and

"(ii) to prevent duplication and redundancy in the awarding of covered grants.

"(2) PERFORMANCE MEASURES AND ENFORCEABLE AGREEMENTS.—The Director shall ensure that all covered grants are subject to performance meas-

ures and enforceable agreements that allow for thorough program oversight.

"(3) COMPLIANCE REPORTS TO CONGRESS.—For the first fiscal year beginning after the date of enactment of this section and each fiscal year thereafter, the Director shall submit to the appropriate committees of Congress an annual compliance report on all covered grants awarded.

"(4) VIOLATIONS.—

"(A) IN GENERAL.—If, after reasonable notice and opportunity for a hearing on the record (subject to subparagraph (B)), the Director finds that a recipient or subrecipient of a covered grant has failed to comply substantially with any provision of this section or a rule, regulation, guideline, or procedure issued under this section, a commitment or certification made in the written proposal submitted under subsection (c)(2), or the provisions of any other applicable law, the Director shall—

"(i) terminate payments to the recipient;

"(ii) suspend payments to the recipient until the Director is satisfied that the noncompliance has ended; or

"(iii) take any other action that the Director determines appropriate.

"(B) SUBRECIPIENTS.—A subrecipient of a covered grant may not request a hearing under subparagraph (A) but may assist a recipient in providing information during the hearing process.

"(f) TIMELINES.—

"(1) NEGOTIATED RULEMAKING.—Not later than 60 days after the date of enactment of this section, the Director shall publish a notice in the Federal Register to initiate the negotiated rulemaking described in section 3(b) of the Securing Urgent Resources Vital to Indian Victim Empowerment Act, which shall be completed not later than 180 days after that publication.

"(2) REQUEST FOR PROPOSAL.—Not later than 60 days after the negotiated rulemaking described in paragraph (1) is complete, the Director shall publish a request for proposal in the Federal Register for covered grants.

"(3) REQUIRED DISBURSAL.—Not later than January 31 of each of the first 10 fiscal years beginning after the date of enactment of this section, the

Director shall disburse competitive grants to Indian Tribes in accordance with this section.

"(g) AVAILABILITY OF GRANT FUNDS.—Any amount awarded under a covered grant that remains unobligated at the end of the fiscal year in which the grant is made may be expended for the purpose for which the grant was made at any time during the 5 succeeding fiscal years, at the end of which period, any unobligated sums shall remain available to the Director for award under this section in the following fiscal year.

"(h) EFFECT.—Nothing in this section prohibits—

"(1) an Indian Tribe from contracting for the administration of a program or activity funded under this section; or

"(2) multiple Indian Tribes or Tribal organizations from forming a consortium for any of the purposes described in this section.

"(i) FUNDING.—

"(1) IN GENERAL.—The grant program established under this section shall be carried out using amounts made available under section 1402(d)(1).

"(2) ADMINISTRATIVE EXPENSES.—For each fiscal year in which a grant is made or grant funds may be obligated under this section, the Director

may use not more than 4 percent of the amounts made available under this section for—

"(A) administration and management of covered grants; and

"(B) training and technical assistance.

"(j) TERM.—This section shall be effective for the first 10 fiscal years beginning after the date of enactment of this section.".

(b) FUNDING FOR GRANTS FOR TRIBAL VICTIMS OF CRIME.—Section 1402(d) of the Victims of Crime Act of 1984 (34 U.S.C. 20101(d)) is amended—

(1) by inserting before paragraph (2) the following:

"(1) For each of the first 10 fiscal years beginning after the date of enactment of the Securing Urgent Resources Vital to Indian Victim Empowerment Act, 5 percent of the total amount in the Fund available for obligation during a fiscal year shall be made available to the Director to make grants under section 1404G.";

(2) in paragraph (2)(A), by inserting "after compliance with paragraph (1)" after "deposited in the Fund";

(3) in paragraph (3)(A), in the matter preceding clause (i), by striking ''paragraph (2)'' and inserting ''paragraphs (1) and (2)''; and

(4) in paragraph (5)(A), by inserting ''(1),'' before ''(2)'' each place that term appears.

SEC. 3. REGULATIONS REGARDING INDIAN TRIBES.

(a) EXISTING REGULATIONS.—Any regulation, rule, or guidance promulgated by the Director of the Office for Victims of Crime before the date of enactment of this Act shall have no force or effect with respect to section 1404G of the Victims of Crime Act of 1984, as added by section 2.

(b) NEGOTIATED RULEMAKING.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Director of the Office for Victims of Crime, in consultation with the Secretary of the Interior and Indian Tribes (as defined in section 1404G of the Victims of Crime Act of 1984, as added by section 2) and through notice and comment negotiated rulemaking, following the provisions of subchapter III of chapter 5 of title 5, United States Code (commonly known as the 'Negotiated Rulemaking Act of 1990'), shall promulgate final regulations carrying out section 1404G of the

Victims of Crime Act of 1984, as added by section 2.

(2) REQUIREMENTS.—The Director of the Office for Victims of Crime shall ensure that—

(A) not fewer than 2 Indian Tribes from each Bureau of Indian Affairs region participate in the consultation; and

(B) small, medium, and large land-based Indian Tribes are represented.

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