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2d Session

SENATE

{ REPORT
115-411

TO DIRECT THE ATTORNEY GENERAL TO REVIEW, REVISE, AND DEVELOP LAW ENFORCEMENT AND JUSTICE PROTOCOLS APPROPRIATE TO ADDRESS MISSING AND MURDERED INDIANS, AND FOR OTHER PURPOSES

DECEMBER 4, 2018.—Ordered to be printed

Mr. HOEVEN, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 1942]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 1942) to direct the Attorney General to review, revise, and develop law enforcement and justice protocols appropriate to address missing and murdered Indians, and for other purposes, having considered the same, reports favorably thereon, with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

PURPOSE

This bill is intended to improve law enforcement response to address missing and murdered American Indians and Alaska Natives by (1) improving tribal access to federal criminal databases, (2) improving data collection on cases of missing and murdered American Indians and Alaska Natives for reports to Congress, and (3) directing the Attorney General to review, revise, and develop law enforcement and justice guidelines with local level input.

BACKGROUND

The bill, S. 1942, is named for Savanna LaFontaine-Greywind from North Dakota. On August 19, 2017, Savanna, a pregnant 22-year-old member of the Spirit Lake Tribe, disappeared from her home near Fargo, North Dakota. Eight days later, Savanna's body was found wrapped in plastic in the Red River. While Savanna's tragic death became widespread news, many other Native women and men go missing or are murdered each year, very few of those cases are resolved.

In 2016, the National Congress of American Indians passed a resolution, Addressing Crisis of Missing and Murdered Native Women, which called for the creation of law enforcement and justice protocols appropriate to the disappearance of Native women and girls. These recommendations included addressing inter-jurisdictional issues and improving coordination of efforts between Federal departments, Indian tribes, and States.

NEED FOR LEGISLATION

Data is limited on the number of missing Native women in the United States. Recent data from the Department of Justice shows that violence against American Indians and Alaska Natives is higher than other racial and ethnic categories. According to that data, more than 4 in 5 American Indian and Alaska Native women and men have experienced violence in their lifetime. Some tribal communities find that Native women experience murder rates ten times higher than the national average. Native 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. Increased coordination and communication among Federal, State, Tribal, and local law enforcement agencies—including medical examiner and coroner offices—will positively impact the response to cases of missing and murdered American Indians and Alaska Natives.

LEGISLATIVE HISTORY

On October 5, 2017, Senator Heitkamp introduced 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, and for other purposes. This bill, S. 1942, is also known as the Savanna's Act. The original cosponsors include Senators Franken, Heinrich, Merkley, Tester, and Warren.

On October 25, 2017, the Committee held a legislative hearing on the bill. Senators Cortez Masto, Wyden, and Murkowski joined as cosponsors prior to the Committee's legislative hearing. At this hearing, The Honorable R. Trent Shores, U.S. Attorney for the Northern District of Oklahoma, U.S. Department of Justice, testified in support of the goals of S. 1942. The Honorable Dave Flute, Chairman, Sissteon Wahpeton Oyate of the Lake Traverse Reservation and Ms. Carmen O'Leary, Director, Native Women's Society of the Great Plains, both testified in support of S. 1942.

On November 14, 2018, the Committee held a duly called business meeting to consider S. 1942. Senators Collins, Klobuchar, Tillis, Smith, Cantwell, Schatz, and Udall joined S. 1942 as cosponsors before the Committee convened the business meeting. Senator Heitkamp submitted a timely amendment in the nature of a substitute for consideration. At the business meeting, the Committee passed both amendment and bill, as amended, by voice vote. After the Committee ordered, with amendment, reported favorably, Senator Murray joined as a co-sponsor on November 15, 2018.

On November 29, 2017, Representative Torres introduced the House companion bill (H.R. 4485) to S. 1942 with seven original co-sponsors, including Representatives Cole, Grijalva, Hanabusa, Jayapal, Khanna, Moore, and Radewagen. The bill, H.R. 4485, was referred to the House of Representatives Committees on Judiciary

Subcommittee on Crime, Terrorism, Homeland Security and Investigations, and on Natural Resources Subcommittee on Indian, Insular, and Alaska Native Affairs. No further action has been taken on H.R. 4485. Between the dates of December 1, 2017 to November 29, 2018, Representatives Evans, Dingell, O'Halleran, Kind, McColloch, Norton, Clark, Pallone, Demings, Pocan, Luján, Poliquin, Pingree, Lujan Grisham, Gallego, DeLauro, and Velázquez have joined as cosponsors to H.R. 4485.

SECTION-BY-SECTION ANALYSIS FOR S. 1942, AS AMENDED

Section 1. Short title

This Act may be cited as “Savanna’s Act”.

Sec. 2. Findings and purposes

This section provides several statistics on violence against and the disappearance of Native men and women.

Sec. 3. Definitions

- The term “databases” means the National Crime Information Center database; the Combined DNA Index System; the Next Generation Identification System; and other relevant datasets such as those under the Violent Criminal Apprehension Program and the National Missing and Unidentified Persons System.
 - The term “Indian” means a member of an Indian Tribe.
 - The term “Indian country” has the meaning given the term in section 1151 of title 18, United States Code.
 - The term “Indian lands” has the same meaning given the term in section 4302 of title 25, United States Code.
 - The term “Indian Tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).
 - The term “law enforcement agency” means a Tribal, Federal, State, or local law enforcement agency.

Sec. 4. Improving tribal access to databases

This section requires the Department of Justice to provide training to law enforcement agencies on the importance of and how to record tribal enrollment information or affiliation of a victim in relevant databases. It also requires the Attorney General to consult with tribes on how to further improve these databases and tribal access to them.

This section also amends the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA) to include the topic of homicide and improving access to local, regional, State, and Federal crime information databases and criminal justice information systems in the annual consultations mandated under VAWA.

It also calls for the Attorney General to raise awareness about the National Missing and Unidentified Persons System, including conducting specific outreach to Indian tribes.

Sec. 5. Guidelines for responding to cases of missing and murdered Indians

This section requires United States attorneys with jurisdiction to prosecute crimes in Indian Country to develop guidelines to respond to cases of missing and murdered Indians during the VAWA-mandated annual consultations on sexual violence with Indian tribes and Federal partners. Each United States attorney should use these consultations to work with stakeholders in his or her own region to develop guidelines on inter-law enforcement agency coordination; missing person response best practices; improving access to culturally appropriate victim services; and, missing persons data collection, reporting, and analysis.

This section provides affirmative preference for Department of Justice grants that help implement the guidelines or assist in addressing the issue of missing and murdered Indians generally to incentivize Tribal, State, and local law enforcement agencies to incorporate these guidelines into their existing regime of protocols.

The Attorney General will provide Indian Tribes and law enforcement agencies with training and technical assistance relating to implementation of the guidelines developed under this section and any additional locally specific guidelines developed to respond to cases of missing and murdered Indians.

Sec. 6. Annual reporting requirements

This section requires the Department of Justice to include known statistics on missing and murdered Indians in the United States in its annual Indian Country Investigations and Prosecutions report to Congress. The Department of Justice should base these statistics on relevant data submitted by all Tribal, State, and local law enforcement agencies. The report will also include recommendations on how to improve data collection on missing and murdered Indians.

To incentivize Tribal, State, and local law enforcement agencies to submit this data, they shall be given preference for all Department of Justice discretionary grants that would aid in the implementation of the guidelines under Section 5 or help them address the issue of missing and murdered Indians.

The section also calls for gender information to be included in the Federal Bureau of Investigation's annual statistics on missing and unidentified persons published on its public website.

COST BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated November 28, 2018, was prepared for S. 1942:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 28, 2018.

Hon. JOHN HOEVEN,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1942, Savanna's Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

KEITH HALL,
Director.

Enclosure.

S. 1942—Savanna's Act

Summary: S. 1942 would direct the Department of Justice (DOJ) to provide training on recording tribal affiliation in federal databases and to create guidelines for law enforcement and criminal investigations in Indian Country, or all Indian reservations under the jurisdiction of the United States government.

CBO estimates that implementing the bill would cost \$15 million over the 2019–2023 period. Such spending would be subject to appropriation.

Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 1942 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 1942 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of S. 1942 is shown in the following table. The costs of the legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—					
	2019	2020	2021	2022	2023	2019–2023
INCREASES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	10	4	1	*	*	15
Estimated Outlays	9	4	1	*	*	15

* = between zero and \$500,000.

Basis of estimate: For this estimate, CBO assumes that S. 1942 will be enacted near the end of 2018 and that the necessary amounts will be appropriated each year beginning in 2019. Estimated outlays are based on historical spending for similar programs.

S. 1942 would require DOJ to provide training to law enforcement agencies on how to properly record tribal enrollment information of crime victims into federal databases. DOJ also would need to consult the Department of the Interior and Indian tribes on how to improve tribal access to and the usefulness of such databases.

The bill also would direct the United States Attorneys to develop guidelines for state and local law enforcement agencies on how best to respond to cases of missing and murdered Indians. DOJ would then be required to annually review and report on the compliance of such law enforcement agencies with those guidelines.

Using information from DOJ, CBO expects that visits to law enforcement agencies around the country for additional outreach and training required under S. 1942 would create substantial personnel and travel costs. Furthermore, CBO expects DOJ would need to contract with outside law enforcement experts to assist the U.S. At-

torneys in creating the proposed law enforcement guidelines. CBO estimates that implementing those provisions would cost \$15 million over the 2019–2023 period, assuming appropriation of the necessary amounts.

Pay-As-You-Go considerations: None.

Increase in long-term direct spending and deficits: CBO estimates that enacting S. 1942 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

Mandates: S. 1942 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Robert Reese, Mandates: Rachel Austin.

Estimate reviewed by: Kim P. Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1942 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 1942.

CHANGES IN EXISTING LAW

On February 8, 2017, the Committee unanimously approved a motion by Chairman Hoeven to waive subsection 12 of rule XXVI of the Standing Rules of the Senate. In the opinion of the Committee, it is necessary to dispense with this rule to expedite the business of the Senate.

