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116TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 116-206

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

JANUARY 15, 2020.—Ordered to be printed

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

R E P O R T

[To accompany S. 227]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 227) 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 the bill, as amended, do pass.

PURPOSE

This bill is intended to improve law enforcement efforts to address cases involving missing or murdered Native Americans by (1) improving tribal access to Federal criminal databases; (2) requiring data collection and reports to Congress; and, (3) directing the Attorney General to review, revise, and develop law enforcement and justice guidelines with greater input from Tribal, state, and local governments.

BACKGROUND

The bill, S. 227, is named for Savanna LaFontaine-Greywind, a 22-year old member of the Spirit Lake Tribe of North Dakota who disappeared from her home near Fargo, North Dakota, on August 19, 2017. Eight days later, her body was found wrapped in plastic in the Red River. While Savanna's tragic death became widespread news, many other Native Americans go missing or are murdered each year. Yet the Department of Justice and the Bureau of Indian

Affairs' Office of Justice Services testified before the Committee that many of those cases go unreported or unresolved.¹

NEED FOR LEGISLATION

Information on the number of missing Native Americans in the United States is limited. A 2016 report from Department of Justice reveals that violence against American Indians and Alaska Natives is higher than other racial and ethnic groups.² According to that report, more than four in five American Indian and Alaska Native women and men experience violence in their lifetimes. American Indian and Alaska 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. Tribal and Administration witnesses testified before the Committee that increased coordination and communication between Federal, State, Tribal, and local law enforcement agencies, as outlined in S. 227, will improve the response to cases of missing or murdered American Indian and Alaska Natives.³

LEGISLATIVE HISTORY

On January 25, 2019, Senators Murkowski, Cortez Masto, Cantwell, Sullivan, Coons, Cramer, Udall, Tester, Heinrich, Tester, Tillis, Merkley, and Hoeven introduced S. 227. The Senate referred the bill to the Committee on Indian Affairs. Senators Capito, Daines, Wyden, Gillibrand, Smith, Murray, Klobuchar, Rosen, Harris, Schatz, McSally, Sinema, Baldwin, Risch, Crapo, Warren, and Sanders joined the bill as co-sponsors at various points after its referral.

On June 19, 2019, the Committee held a legislative hearing on the bill where the following witnesses testified in support of the bill:

- Mr. Tracy Toulou, Director, Office of Tribal Justice, U.S. Department of Justice;
- The Honorable Michelle Demmert, Chief Justice, Central Council Tlingit and Haida Indian Tribes of Alaska; and
- The Honorable Lynn Malerba, Secretary, United South & Eastern Tribes Sovereignty Protection Fund.

On November 20, 2019, the Committee held a duly called business meeting to consider two bills, including S. 227. Based on comments and technical assistance received from the Administration, hearing witnesses, tribal organizations, and other stakeholders, Senator Murkowski filed a timely amendment in the nature of a substitute for Committee consideration, co-sponsored by Senator Cortez Masto. At the business meeting, the Committee passed the amendment in the nature of a substitute by voice vote and the bill,

¹*Missing & Murdered: Confronting the Silent Crisis in Indian Country: Hearing Before the S. Comm. on Indian Affairs*, 115th Cong. (2018) (statements of Dir. Gerald LaPorte, Office of Investigative & Forensic Sciences, Nat'l Inst. of Justice, U.S. Dep't of Justice, and Dir. Charles Addington, Office of Justice Services, Bureau of Indian Affairs, U.S. Dep't of the Interior).

² Andre B. Rosay, Nat'l Inst. Of Justice, U.S. Dep't of Justice, *Violence Against American Indian And Alaska Native Women And Men 2010 Findings From The National Intimate Partner And Sexual Violence Survey* (2016).

³*Hearing on S. 1870, S. 1953, and S. 1942 Before the S. Comm. on Indian Affairs*, 115th Cong. 1 (2017); *Missing & Murdered: Confronting the Silent Crisis in Indian Country: Hearing Before the S. Comm. on Indian Affairs*, 115th Cong. 2 (2018); *Hearing on S. 227, S. 228, S. 290, S. 982, and S. 1853 Before the S. Comm. on Indian Affairs*, 116th Cong. 1 (2019).

as amended, by a roll call vote of 12–0, with 1 not voting. The Committee ordered S. 227, as amended, reported favorably.

Representatives Torres, Haaland, Newhouse, Gallego, Davids, Gianforte, Cole, Armstrong, McCollum, Mullin, Young, Kuster, Bass, Maloney, Bonamici, Moore, Ruiz, DelBene, Stanton, Cook, and Sewell introduced a House companion bill, H.R. 2733, on May 14, 2019. The bill was jointly referred to the House of Representatives Committees on Judiciary and the Natural Resources. The Committee on Natural Resources referred the bill to the Subcommittee for Indigenous Peoples of the United States on June 3, 2019, and the Committee on the Judiciary referred the bill to its Subcommittee on Crime, Terrorism, and Homeland Security on June 26, 2019. After its introduction, Representatives McNerney, DeFazio, Kilmer, LaMalfa, Johnson of South Dakota, Radewagen, Stewart, Torres Small, Calvert, Bacon, O'Halleran, Lujan, Gonzalez, Herrera Beutler, Blunt Rochester, Fulcher, Cox, Peterson, Simpson, and Stauber joined the bill as co-sponsors. No further action has been taken on H.R. 2733.

During the 115th Congress, Senators Heitkamp, Tester, Franken, Heinrich, Merkley, and Warren introduced a predecessor bill, S. 1942 on October 5, 2017. Senators Cantwell, Collins, Cortez Masto, Gillibrand, Klobuchar, Murkowski, Murray, Schatz, Smith, Tillis, Udall, and Wyden also co-sponsored this bill after its introduction.

On October 25, 2017, the Committee held a legislative hearing on the bill. 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, Sisseton 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. Senator Heitkamp submitted a timely amendment in the nature of a substitute for consideration. The amendment incorporated changes based on testimony received at the legislative hearing and comments provided by Tribes, tribal organizations, and stakeholders. The Committee passed both the amendment in the nature of a substitute and S. 1942, as amended. The Committee ordered the bill, as amended, reported favorably by voice vote. The Senate passed S. 1942 on December 6, 2018. The bill was sent to the House and held at the desk. However, no further action was taken on S. 1942.

On November 29, 2017, Representatives Torres, Cole, Grijalva, Hanabusa, Jayapal, Khanna, Moore, Amata, and Radewagen introduced a companion bill, H.R. 4485, in the House of Representatives. The House of Representatives jointly referred H.R. 4485 to the Committees on Judiciary and Natural Resources. The Committee on the Judiciary then referred the bill to the Subcommittee on Crime, Terrorism, Homeland Security and Investigations, and the Committee on Natural Resources referred the bill to the Subcommittee on Indian, Insular, and Alaska Native Affairs. Seventeen additional Representatives joined the bill as co-sponsors after its introduction. However, no further action was taken on H.R. 4485.

SUMMARY OF THE BILL

Savanna’s Act will require the Department of Justice to—

- review, revise, and develop law enforcement and justice protocols to address cases of missing or murdered Native Americans;
- train law enforcement on how to record the tribal enrollment information of victims in Federal databases;
- consult with Indian Tribes on how to improve relevance of data in and tribal access to Federal criminal databases for cases of missing or murdered Native Americans;
- develop and implement a strategy to notify citizens of the National Missing and Unidentified Persons System;
- create standardized, regionally-appropriate guidelines for responding to cases of missing or murdered Native Americans that are developed in consultation with Indian Tribes and that include guidance on inter-jurisdictional cooperation among Indian Tribes and Federal, State, and local law enforcement agencies; and
- include data on missing or murdered Native Americans and recommendations on how to improve data collection in an annual report to Congress.

SECTION-BY-SECTION ANALYSIS OF S. 227, AS AMENDED

Section 1. Short title

This section provides the short title for S. 227 to be cited as “Savanna’s Act.”

Section 2. Purposes

This section states the purposes of Savanna’s Act, which are to:

- clarify the responsibilities of Federal, State, Tribal, and local law enforcement agencies;
- increase coordination and communication among law enforcement;
- empower tribal governments with the resources and information necessary to respond to cases of missing or murdered Indians; and
- increase the collection of data related to missing and murdered Indians.

Section 3. Definitions

This section provides for definitions used throughout the bill.

Section 4. Improving tribal access to databases

This section requires the Attorney General to—

- provide training to law enforcement agencies regarding how to record the tribal enrollment information or affiliation of victims in Federal databases;
- complete formal consultation with Indian Tribes and confer with tribal organizations and urban Indian organizations within 180 days of enactment of Savanna’s Act on how to further improve tribal data relevance and access to databases;
- incorporate additional topics into annual consultations with Indian Tribes required by the Violence Against Women Act and develop and implement a strategy to educate the public about the National Missing and Unidentified Persons System; and

- conduct outreach to Indian Tribes, tribal organizations, and urban Indian organizations on the National Missing and Unidentified Persons System.

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

This section requires the Attorney General to—

- direct United States Attorneys to develop, in consultation with Indian Tribes and relevant partners, regionally appropriate guidelines to respond to cases of murdered and missing Indians, including:
 - guidelines on—
 - inter-jurisdictional cooperation among law enforcement agencies (LEA);
 - the input of information related to missing or murdered Indians in a timely manner into applicable databases;
 - the appropriate LEA responsible for inputting information into databases, guidelines on improving LEA response rates, and follow-up to cases of missing and murdered Indians; and
 - ensuring access to culturally appropriate victim services;
 - best practices in conducting searches for missing persons; and
 - standards on the collection, reporting, and analysis of data and information on—
 - missing persons and unidentified human remains, and
 - culturally appropriate identification and handling of human remains identified as Indian; and
- list publicly the LEA that incorporate the guidelines and collect the implemented guidelines as a resource for best practices that can be used by other LEAs.

This section also allows Indian Tribes to submit their own guidelines to respond to cases of missing or murdered Indians to the Attorney General. The Attorney General would collect and publish these guidelines in one centralized location as a resource for any Federal agency, State or Tribal government.

Section 6. Annual reporting requirements

This section requires the Attorney General to—

- collect and make public annual data on missing and murdered Indians in the United States in its Indian Country Investigations and Prosecutions report to Congress; and
- list publicly the LEAs that have provided such data.

Additionally, this section requires the Federal Bureau of Investigations to include information on missing and unidentified persons by gender in its annual statistics published on its website.

Section 7. Implementation and incentive

This section adds two new purpose areas to two U.S. Department of Justice grant programs, which allows grantees to use funds to implement policies, protocols, and training for law enforcement regarding cases of missing or murdered Indians, and to compile and report data to the Attorney General.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated December 20, 2019, was prepared for S. 227:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 20, 2019.

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. 227, the Savanna's Act.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

| S. 227, Savanna's Act As ordered reported by the Senate Committee on Indian Affairs on November 20, 2019 | | | |
|---|------|-------------------------------------|---------------|
| By Fiscal Year, Millions of Dollars | 2020 | 2020-2024 | 2020-2029 |
| Direct Spending (Outlays) | 0 | 0 | 0 |
| Revenues | 0 | 0 | 0 |
| Increase or Decrease (-) in the Deficit | 0 | 0 | 0 |
| Spending Subject to Appropriation (Outlays) | 6 | 14 | not estimated |
| Statutory pay-as-you-go procedures apply? | No | Mandate Effects | |
| Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030? | No | Contains intergovernmental mandate? | No |
| | | Contains private-sector mandate? | No |
| * = between zero and \$500,000. | | | |

S. 227 would direct the Department of Justice (DOJ) to provide training to state, local, and tribal law enforcement agencies on how to record information about tribal affiliation in federal crime databases with respect to Indians who are victims of crimes. The bill also would require DOJ to create guidelines and best practices for law enforcement and criminal investigations occurring on Indian lands and reservations to improve responses to cases of missing or murdered Indians. (Some reservation lands are under the jurisdiction of the federal government.)

Using information from DOJ about the efforts needed to implement S. 227, CBO estimates that the bill would cost \$14 million over the 2020–2024 period, assuming appropriation of the estimated amounts. Most of those costs would be incurred by DOJ attorneys and staff to consult with interested parties, travel, develop

guidance, and disseminate information to law enforcement partners.

The costs of the legislation, detailed in Table 1, fall within budget function 450 (community and regional development).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 227

| | By fiscal year, millions of dollars— | | | | | |
|-------------------------------|--------------------------------------|------|------|------|------|-----------|
| | 2020 | 2021 | 2022 | 2023 | 2024 | 2020–2024 |
| Estimated Authorization | 7 | 5 | 2 | * | * | 14 |
| Estimated Outlays | 6 | 6 | 2 | * | * | 14 |

* = between zero and \$500,000.

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by 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. 227 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 227.

CHANGES IN EXISTING LAW

On February 6, 2019, the Committee unanimously approved a motion by Chairman John 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 subsection 12 of rule XXVI of the Standing Rules of the Senate to expedite the business of the Senate.