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BRIDGING AGENCY DATA GAPS AND ENSURING SAFETY FOR NATIVE COMMUNITIES ACT

JUNE 4, 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. 1853]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 1853) to require Federal law enforcement agencies to report on cases of missing or 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

The bill is designed to improve public safety in Native communities by addressing statutory barriers, and practical inefficiencies that limit investigation of and information sharing in criminal cases that involve Native communities and their members.

BACKGROUND

Indian Country is home to law enforcement agencies (LEAs) operated by federal, Tribal, state, and local governments. Approximately 160 Tribes directly operate their own police departments. Others rely on federally-operated Bureau of Indian Affairs (BIA) police departments, or state and local LEAs pursuant to P.L. 83-280.¹

¹ Commonly referred to as “P.L. 280,” this law transferred federal jurisdiction over reservations to the state governments of California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska. It also allowed other states the option to acquire jurisdiction as well.

As a result of this complicated network of LEAs, collecting and sharing criminal justice data in Indian Country is a barrier to ensuring public safety for many Native communities. Congress has attempted to increase interagency coordination between federal, state, Tribal, and local LEAs over the past several decades, but criminal case information is still fragmented and compartmentalized between different LEA data systems.²

For example, the Department of Justice (DOJ) operates two databases that track missing persons cases: the Federal Bureau of Investigation's (FBI) National Crime Information Center (NCIC) and the National Institute of Justice's (NIJ) National Missing and Unidentified Persons System (NamUs). These two databases do not share information with each other and, for cases of missing adults, federal, state, Tribal participation in these two reporting systems is optional.³ As such, LEAs may be unable to access other LEA's missing person case information.

Law enforcement staffing shortages compound issues created by the data barriers discussed above. The BIA supports approximately 3,000 direct service and Tribal law enforcement officer positions.⁴ The DOJ assigns approximately 140 FBI agents to work in Indian Country, but does not detail Drug Enforcement Agency (DEA) agents or U.S. Marshalls to Indian Country.⁵ In the aggregate, these law enforcement personnel police 56 million acres for more than 200 non-"Pub. L. 280" reservations.⁶ To illustrate this point, in FY2010, Tribes had only 1.9 officers per 1,000 residents compared to an average of 3.5 officers per 1,000 residents nationwide. Upon reviewing this data, the Indian Law and Order Commission estimated that Indian Country had a 50% staffing shortfall for law enforcement personnel.⁷

NEED FOR LEGISLATION

Legislation is needed to address statutory barriers to public safety improvements in Native communities. For example, the DOJ cannot link NCIC and NamUs without statutory authorization. Additionally, Tribes would like to ensure continuation of existing Administrative initiatives (e.g., DOJ's TAP pilot) and/or practices (e.g., BIA's directive requiring direct-service LEAs to input cases into NamUs) by codifying them in law.

SUMMARY OF THE BILL

This bill addresses critical public safety needs in Native communities—including urban Indian communities, Indian Country, Pub.

² For example, Congress passed the *Fix NICS Act* as part of the 2018 *Consolidated Appropriations Act* (Pub. L. No. 115-141) to require state and Tribal government to report to the federal criminal background check database. Prior to that, in 1990, Congress enacted the *National Child Search Assistance Act* (Pub. L. No. 101-647) which requires state, local, and federal law enforcement agencies to immediately input information about abducted children into the FBI's National Crime Information Center.

³ The BIA-OJS Director recently issued a directive instructing BIA direct-service LEAs to input missing persons cases into NamUs. However, because the order is a directive, enforcement may prove difficult or lacking.

⁴ INDIAN LAW & ORDER COMM'N, A ROADMAP FOR MAKING NATIVE AMERICA SAFER: REPORT TO THE PRESIDENT & CONGRESS OF THE UNITED STATES 65 (2013).

⁵ OFFICE OF THE INSPECTOR GENERAL, U.S. DEP'T OF JUSTICE, REVIEW OF THE DEPARTMENT'S TRIBAL LAW ENFORCEMENT EFFORTS PURSUANT TO THE TRIBAL LAW AND ORDER ACT OF 2010 8 (2017); U.S. DEP'T OF JUSTICE, INDIAN COUNTRY INVESTIGATIONS & PROSECUTIONS 6 (2018).

⁶ *Supra*, n.4.

⁷ U.S. COMM'N ON CIVIL RIGHTS, BROKEN PROMISES: CONTINUING FEDERAL FUNDING SHORTFALL FOR NATIVE AMERICANS 48 (2018).

L. 280 states, and Alaska—by bridging LEA data gaps and improving Tribal public safety resources.

Title I addresses inefficiencies in federal criminal databases, increases Tribal access to federal criminal databases, improves public data on missing and murdered Indigenous women cases, and increases transparency around public safety staffing level data in Indian Country.

Title II promotes more efficient recruitment of BIA law enforcement officers, provides Tribes with resources to improve cross-jurisdiction public safety coordination, and mitigates against federal law enforcement personnel mishandling evidence in Indian Country cases.

LEGISLATIVE HISTORY

On June 13, 2019, Senators Udall, Murkowski, Cortez Masto, McSally, Tester, and Smith introduced S. 1853, the *Bridging Agency Data Gaps and Ensuring Safety for Native Communities Act*. The Senate referred the bill to the Committee on Indian Affairs. On June 19, 2019, the Committee held a legislative hearing on S. 1853. The Committee received testimony from the DOJ Office of Tribal Justice and the BIA–Office of Justice Services. Both administration witnesses expressed their desire to continue working with staff on the bill, and to provide further technical assistance on the substance of the legislation. The Committee also received testimony in support of the bill from the Chief Justice of the Central Council Tlingit and Haida Indian Tribes of Alaska, and the Secretary of the United South and Eastern Tribes.

On December 11, 2019, the Committee met at a duly called business meeting to consider S. 1853. Senator Udall filed one amendment in the nature of a substitute to S. 1853. The Committee accepted the amendment and passed S. 1853 favorably, as amended.

Representative Haaland introduced a House companion bill, H.R. 4289, on September 11, 2019. H.R. 4289 was subsequently referred to the House Committees on Natural Resources, the Judiciary, Energy and Commerce, and Oversight and Government Reform for further consideration. No further action has been taken on H.R. 4289 at this time.

AMENDMENT SUMMARY

Following extensive input and technical assistance from the DOJ, the Department of the Interior, Tribes, and Native organizations, Senator Udall drafted a substitute amendment to S. 1853, which the Committee adopted by voice vote. The amendment makes substantive, clarifying, and technical updates to the bill.

The specific clarifying changes include—

- Changes the “Relevant Tribal Stakeholder” to a “Relevant Tribal Organization”.
- Renames the “Tribal Access Program” (TAP) to the “Tribal Civil and Criminal Information Access Program” (TCCIAP).
- Incorporates “as appropriate” in sections 101(a), 101(c), and 103(b)(3) to ensure executive privilege concerns related to the sharing of criminal case information are not compromised unintentionally by the bill.
- Renames NamUs “Tribal liaison” established in section 102 a “Tribal facilitator”.

- Changes “on or near Indian land” to “adjacent” to ensure no confusion arises related to which lands are covered by the bill.
- Clarifies that federal law enforcement agencies are only responsible for entering cases in federal databases that they investigate.
- Clarifies that the NamUs Tribal Facilitator is only responsible for reporting summary data on cases of interest to Tribes he or she can identify in NamUs.
- Clarifies that the Attorney General has the ability to transfer the unused funds from the specified DOJ’s Office of Violence Against Women meant to supplement the TCCIAP directly to the TCCIAP account.

The specific substantive changes include—

- Replaces the terms “murder” and “manslaughter” (and all associated terms) with the term “death investigation” to ensure the capture of more relevant data.
- Adds a definition for “unclaimed remains cases of interest to Indian Tribes.”
- Requires the NamUS Tribal Facilitator to coordinate with the Executive Office for U.S. Attorneys and the National Indian Country Training Initiative).
- Increases the authorization level for the TCCIAP from \$3,000,000 for five years to \$5,000,000 for two years and \$7,000,000 for three years.
- Authorizes Tribes to use federal criminal databases for administrative background purposes, giving them parity with state and local governments.
- Amends the BIA–OJS’s annual unmet needs reporting requirement to require more specific information on investigation staffing needs.
- Requires GAO to review—
 - DOJ’s Indian Country law enforcement staffing needs reporting; and
 - Tribal law enforcement agencies evidence collection needs as part of the study mandated in section 203.
- Requires states that wish to receive coordination grants authorized under section 202 to enter into data sharing agreements with the Tribes.

SECTION-BY-SECTION (AS REPORTED)

Section 1: Short title

The bill is called the “*Bridging Agency Data Gaps and Ensuring Safety for Native Communities Act*” or “*BADGES for Native Communities Act*”

Sec. 2. Definitions

This section provides for definitions to be used throughout the bill.

TITLE 1—BRIDGING AGENCY DATA GAPS

Section 101. Federal Law Enforcement Database Reporting Requirements

This section requires the Attorney General (AG) to undertake actions needed to have all missing persons and unidentified remains cases entered into federally-maintained law enforcement databases automatically entered into NamUs. It requires the AG to ensure this information is transmitted with the permission of the law enforcement agency (LEA) handling the case, and with appropriate safeguards to insure sensitive information is not compromised. These actions to connect the databases must be undertaken within two years of enactment of S. 1853.

Additionally, this section requires BIA direct-service officers, FBI agents, and any other federal law enforcement agencies with jurisdiction in Indian Country to report missing persons and unidentified remains cases of interest to Indian Tribes to NamUs during the above-mentioned two-year period following enactment of S. 1853.

Finally, this section requires the BIA–OJS Director and the FBI Director to appoint facilitators to coordinate with the NamUs Tribal Facilitator established under section 102. These facilitators will ensure relevant cases of interest to Indian Tribes are correctly reported to NamUs. Facilitators will conduct outreach to state and local LEAs that exercise jurisdiction over Indian country under Pub. L. 83–280 authority to encourage increased use of NamUs for cases of interest to Indian Tribes.

Section 102. National Missing and Unidentified Persons System Tribal Liaison

This section requires the NIJ Director to appoint at least one Tribal facilitator, charged with ongoing Tribal outreach, to serve as a NamUs “point of contact” for Tribes regarding relevant cases of interest, and coordinating with the BIA and FBI.

This section further requires the Attorney General, acting through the NIJ Director, to produce annual publicly available reports that describe the activities of the NamUs Tribal facilitator(s), and summarize NamUs data trends on cases of interest to Indian Tribes.

Section 103. Law Enforcement Data Sharing with Indian Tribes

This section codifies DOJ’s Tribal Access Program pilot, renamed as the Tribal Civil and Criminal Information Access Program (TCCIAP).

To support the operation of the TCCIAP, this section authorizes \$5,000,000 for fiscal year (FY) 2021–2022, and \$7,000,000 for FY2023–2025. Section 103 also authorizes DOJ to transfer and repurpose unused funds from certain accounts at the Office of Violence Against Women to supplement the TCCIAP.

Finally, this section authorizes Tribes to use federal criminal databases for administrative background purposes, giving them parity with state and local governments.

Section 104. Report on Indian Country Law Enforcement Personnel Resources and Need

This section modifies the BIA–OJS’s existing “unmet needs” reporting requirements, created by the *Tribal Law and Order Act of 2010*.⁸ Section 104 of S. 1853 provides that the BIA–OJS “unmet needs” report shall include additional staffing categories and evidence storage and processing infrastructure needs.

Additionally, this section directs the AG to report on the number of law enforcement personnel in the FBI, DEA, U.S. Marshalls, ATF, and U.S. Attorneys’ Offices assigned to work on criminal investigations and prosecutions in Indian Country. It directs the Comptroller General to assess the accuracy and impacts of the reports produced by the AG in compliance with this section.

TITLE II—ENSURING SAFETY FOR NATIVE COMMUNITIES

Section 201. Demonstration Program on Bureau of Indian Affairs Employment Background Checks

This section authorizes a five-year demonstration program to allow BIA to conduct its own background and security clearance checks for newly hired law enforcement personnel.

Section 202. Missing and Murdered Response Coordination Grant Program

This section authorizes a five-year DOJ grant program to support state, Tribal, and non-profit organization coordination efforts related to cases of interest to Indian Tribes.

Section 203. GAO Study on Federal Law Enforcement Agency Evidence Collection, Handling, and Processing

This section directs the Comptroller General to review BIA and FBI evidence collection, handling, and processing for cases originating in Indian Country. It also requests the Comptroller General to look for similar evidence collection issues encountered by Tribal LEAs and state and local LEAs that have assumed federal jurisdiction over certain reservations (i.e., “P.L. 280” states).

Section 204. Bureau of Indian Affairs and Tribal Law Enforcement Officer Counseling Resources Interdepartmental Coordination

This section directs DOJ and the Department of Health and Human Services to work with the BIA–OJS Director to ensure BIA and Tribal police have access to federal resources for post-traumatic stress disorder and other line-of-duty related mental health traumas.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated May 5, 2020, was prepared for S. 1853:

⁸See Indian Arts and Crafts Amendments Act of 2010, Pub. L. No. 111–211, tit. II §211(b), 124 Stat. 2258, 2264–2265 (2010) (codified at 25 U.S.C. 2801 et seq. (2010)).

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE
Washington, DC, May 5, 2020.

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. 1853, the BADGES for Native Communities 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.

At a Glance			
S. 1853, BADGES for Native Communities Act			
As ordered reported by the Senate Committee on Indian Affairs on December 11, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	55	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 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			
The bill would			
<ul style="list-style-type: none"> • Facilitate access to national crime information databases with tribal law enforcement officials and NamUs⁹ • Codify the Tribal Access Program • Authorize grants to improve tribal law enforcement agencies' capacity to hire more officers and respond to cases of missing and murdered Indians 			
Estimated budgetary effects would primarily stem from			
<ul style="list-style-type: none"> • Spending of amounts authorized in the bill 			
Detailed estimate begins on the next page.			

⁹ NamUs is a national information clearinghouse and resource center for cases of missing, unidentified, and unclaimed people. The organization is funded and administered by the Department of Justice's (DOJ's) National Institute of Justice and managed through a cooperative agreement with the University of North Texas. NamUs received a \$5.5 million grant from DOJ in 2019.

Bill summary: S. 1853 aims to improve coordination between federal law enforcement agencies within the Department of Justice (DOJ) and the Bureau of Indian Affairs (BIA) and their counterparts in tribal governments. The bill would facilitate access for tribal law enforcement officials to national crime information databases, would require greater sharing and input of information on criminal cases affecting Indians into those databases, and would authorize grants to improve tribal law enforcement agencies' capacity to hire more officers and respond to cases of missing and murdered Indians.

Estimated Federal cost: The estimated budgetary effect of S. 1853 is shown in Table 1. The costs of the legislation fall within budget functions 450 (community and regional development) and 750 (administration of justice).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 1853

	By fiscal year, millions of dollars—						
	2020	2021	2022	2023	2024	2025	2020–2025
Tribal Access Program:							
Authorization	0	5	5	7	7	7	31
Estimated Outlays	0	3	4	6	7	7	27
Enhanced Information Sharing with NamUs^a:							
Estimated Authorization	0	4	4	3	3	3	17
Estimated Outlays	0	4	4	3	3	3	17
Coordination Grants:							
Authorization	1	1	1	1	1	0	5
Estimated Outlays	*	1	1	1	1	1	5
BIA Law Enforcement Demonstration Program:							
Estimated Authorization	0	*	*	1	1	1	3
Estimated Outlays	0	*	*	1	1	1	3
Other Provisions:							
Estimated Authorization	0	1	1	1	*	*	3
Estimated Outlays	0	1	1	1	*	*	3
Total Changes:							
Estimated Authorization	1	11	12	12	12	11	59
Estimated Outlays	*	9	10	12	12	12	55

BIA = Bureau of Indian Affairs; * = between zero and \$500,000.

^aNamUs is a national clearinghouse and resource center for information on missing, unidentified, and unclaimed people.

Basis of estimate: For this estimate, CBO assumes that S. 1853 will be enacted during fiscal year 2020 and that the authorized and estimated amounts will be appropriated for each fiscal year. Estimated outlays are based on historical spending patterns for similar programs and activities and on CBO's analysis of information provided by federal agencies. CBO estimates that implementing S. 1853 would cost \$55 million over the 2020–2025 period.

Tribal Access Program: Section 103 of the legislation would authorize the Tribal Access Program, a program administered by DOJ to provide tribal law enforcement agencies with access to national information systems about crimes for federally authorized purposes. The bill would authorize the appropriation of \$5 million annually for 2021 and 2022, and \$7 million annually over 2023–2025, to continue program operations. CBO estimates that implementing this provision would cost \$27 million over the 2020–2025 period.

Enhanced Information Sharing with NamUs: S. 1853 would require DOJ within two years of enactment to share information be-

tween the agency's national crime information databases and the National Missing and Unidentified Persons System (known as NamUs), an information clearinghouse funded by DOJ.

Using information from DOJ about the costs of operating the agency's crime information databases, CBO expects that providing access to NamUS would require technology upgrades and security enhancements, three additional employees to oversee system maintenance and coordinate with NamUs, and contractor support. Over the 2020–2025 period, CBO estimates that it would cost DOJ \$17 million to implement the provision. That cost includes one-time costs for technology upgrades and about \$3 million each year for personnel, system maintenance, and grants.

Coordination Grants: Section 202 would authorize the appropriation of \$1 million annually over the 2020–2024 period for DOJ to make grants to tribal governments to investigate missing persons cases, input information into the NamUs system, and improve coordination among law enforcement on such cases. CBO estimates that implementing that provision would cost \$5 million over the 2020–2025 period.

BIA Law Enforcement Demonstration Program: Section 201 would authorize BIA to carry out a five-year program to conduct background checks and make security clearance determinations for law enforcement positions within the bureau. Using information from BIA, CBO expects that the agency would need four new employees to conduct background checks under the program at an average annual cost of about \$120,000 per employee. The bill also would require the Government Accountability Office (GAO) to report within 18 months of enactment on the efficacy of the program. In total, CBO estimates that implementing this section would cost \$3 million over the 2020–2025 period.

Other Provisions: Several other provisions in S. 1853 would result in additional costs for federal agencies, including various reporting requirements. Notably, the bill would require GAO to report on unmet staffing needs for federal law enforcement agencies that conduct criminal investigations in Indian country. The bill also would require GAO to examine DOJ's procedures for collecting, handling, and processing evidence and the barriers to improving those practices among federal, state, and tribal law enforcement. Using information about the cost of other GAO studies, CBO estimates that those studies and other requirements in S. 1853 would cost about \$3 million over the 2020–2025 period. Any spending would be subject to the availability of appropriated funds.

Pay-As-You-Go considerations: None.

Increase in long-term deficits: None.

Mandates: None.

Estimate prepared by: Federal Costs: Jon Sperl; Mandates: Rachel Austin.

Estimate reviewed by: Kim P. Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; H. Samuel Papenfuss, Deputy Director of 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. 1853 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 1853.

CHANGES IN EXISTING LAW

On February 6, 2019, the Committee unanimously approved a motion 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.

