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AMENDING THE TRIBAL LAW AND ORDER ACT OF 2010 AND THE INDIAN
LAW ENFORCEMENT REFORM ACT TO PROVIDE FOR ADVANCEMENTS IN
PUBLIC SAFETY SERVICES TO INDIAN COMMUNITIES, AND FOR OTHER
PURPOSES

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MAY 6, 2019.—Ordered to be printed
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Mr. HOEVEN, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 210]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 210) to amend the Tribal Law and Order Act of 2010 and the Indian Law Enforcement Reform Act to provide for advancements in public safety services to Indian communities, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The *Tribal Law and Order Act Reauthorization and Amendments Act of 2019*, S. 210, builds on the improvements to criminal justice systems serving Indian communities that were enacted in the *Tribal Law and Order Act of 2010* (TLOA). The sponsors of the bill intend it to provide additional tools for law enforcement officials to reduce crime, overcrowded jail conditions, and recidivism as well as address justice for Indian youth. It also seeks to clarify the responsibilities of Federal, state, tribal, and local governments with respect to crimes committed in Indian Country. The bill extends the authorization of various programs in the *Tribal Law and Order Act of 2010* until 2024 and contains other provisions to improve justice within Indian Country.

NEED FOR LEGISLATION

Testimony received at the Committee on Indian Affairs' hearings, roundtables, and meetings indicates that the rates of murder, rape, and burglary in Indian country have diminished since the passage

of the TLOA but that the overall levels of violent crime have increased while the levels of property crime have fluctuated. Additionally, the overall levels of crime still remain high on several Indian reservations. Continued enhancements for public safety are necessary to provide additional tools for law enforcement officials to reduce crime and recidivism, tackle overcrowded jail conditions, and address justice for Indian youth.

BACKGROUND

The TLOA was introduced on April 2, 2009, in the 111th Congress. It was incorporated into H.R. 725, the *Indian Arts and Crafts Act Amendments* (which had passed the House of Representatives on January 19, 2010, and was pending in the Senate). On June 23, 2010, H.R. 725 was amended with the text of the TLOA and passed by the Senate. The amended bill, H.R. 725, was passed by the House of Representatives on July 21, 2010, and became Public Law No. 111–211 on July 29, 2010.

Passed in response to the public safety crisis in Indian communities, the 2010 law reflected the efforts of Congress and Indian tribes to develop a comprehensive approach to improving the efficiency and effectiveness of criminal justice systems in Indian Country.¹ Its purpose was to increase the capacity of tribal governments and their law enforcement agencies to better coordinate with Federal and state agencies and to better manage public safety concerns within Indian Country.

The Senators who drafted the law intended the TLOA to reduce violent crime, drug trafficking, and rates of drug and alcohol addiction, combat sexual and domestic violence against American Indian and Alaska Native women; and, standardize interagency information sharing among Federal, state, and tribal stakeholders. It also encouraged the hiring, training, and support of more tribal and Federal law enforcement officers to assist in preventing and addressing unacceptably high rates of crimes in Indian communities.

Since the enactment of the TLOA, the Committee has held three hearings and one roundtable on the implementation of the law.² While some reductions in crime rates have occurred, the information from the Department of Justice’s (DOJ’s) Bureau of Statistics indicates that levels still remain high.³ The following chart contains a summary of the information provided by the Bureau.

¹ See also S. Rep. No. 111–93, at 1 and 4 (2009).

² *Tribal Law and Order Act One Year Later: Have We Improved Public Safety and Justice Throughout Indian Country?* Hearing Before the S. Comm. on Indian Affairs, 112th Cong. (2011). *The Indian Law and Order Commission Report: A Roadmap for Making Native America Safer*, Hearing Before the S. Comm. on Indian Affairs, 113th Cong. (2014). *Tribal Law and Order Act (TLOA)—5 Years Later: How Have the Justice Systems in Indian Country Improved?* Hearing Before the S. Comm. on Indian Affairs, 114th Cong. (2015). *The Tribal Law and Order Act 5 Years Later: Next Steps to Improving Justice Systems in Indian Communities. Roundtable Before the S. Comm. on Indian Affairs*, 114th Cong. (2016).

³ *Tribal Crime Data Collection Activities, 2012*. Bureau of Justice Statistics, Department of Justice (2012), at 5. *Tribal Crime Data Collection Activities, 2015*. Bureau of Justice Statistics, Department of Justice (2015), at 8 and 12. The number of tribal law enforcement agencies reporting to the Uniform Crime Reporting Program in 2010 was 143 and in 2013, the figure rose to 158. Steven Perry, *Tribal Crime Data Collection Activities, 2015*. Bureau of Justice Statistics, Department of Justice (2015), at 1. Reporting is entirely voluntary for tribal and BIA agencies so that key information from the non-reporting tribes would not be reflected and, thus, the crime rates may be understated.

Type of Offense	2010, 143 Tribes	2013, 158 Tribes	2017, 152 Tribes ⁴
Murder/Manslaughter	133	79	74
Rape	852	812	556
Robbery	280	309	273
Aggravated Assault	4,267	4,200	6,667
Total Violent Crimes: ⁵	5,532	5,400	7,570
Burglary	4,990	5,461	2,803
Larceny-theft	10,495	14,643	11,295
Motor Vehicle theft	2,228	2,816	2,176
Arson	818	801	275
Total Property Crime	18,531	23,721	16,549

The TLOA required the following key reports:

- Tribal Court Sentencing Guidelines and Process, which the Bureau of Indian Affairs (BIA) completed in 2011;
- Long Term Plan to Build and Enhance Tribal Justice Systems, which the DOJ and the Department of the Interior (DOI) completed in August, 2011;
- Tribal Prisoner Pilot Program Progress, which the DOJ completed in 2014;
- Annual Crime Statistics Report by the Bureau of Justice Statistics (BJS);
- Annual Report on the BIA Office of Justice Services spending and unmet needs;
- Annual Indian Country Investigations and Prosecutions reported by the United States Attorney General;
- A study of the Indian Health Service's capability to collect and secure domestic and sexual assault evidence, which the U.S. Government Accountability Office (GAO) completed in 2012;
- Community Oriented Policing Services Grants Report, which DOJ published in December, 2010; and
- A Roadmap for Making Native America Safer, published by the TLOA-established Indian Law and Order Commission in 2013.

Other reports regarding public safety in Indian Country have provided additional information for consideration in the development of S. 210. Specifically, the DOJ Office of the Inspector General (DOJ-OIG), and the GAO, published four additional reports related to public safety in Indian Country since the TLOA's enactment. These key supplementary reports include:

- Review of the Department's Tribal Law Enforcement Efforts Pursuant to the Tribal Law and Order Act of 2010, completed by the DOJ-OIG in 2017;
- Human Trafficking: Action Needed to Identify the Number of Native American Victims Receiving Federally-Funded Services, completed by the GAO in 2017;

⁴United States Department of Justice, Federal Bureau of Investigation. (September 2018). *Crime in the United States, 2017*. Table 11. Retrieved November 30, 2018, from <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/about-cius>.

⁵The U.S. Attorneys' Offices data for CY 2011 indicate that just under 37 percent (1,041) of all Indian Country submissions for prosecution (2,840) were declined by the *U.S. Attorneys' Offices. U.S. Department of Justice Indian Country Investigations and Prosecutions, 2011-2012*. Department of Justice (2012), at 5. The data for CY 2013 show that 34% (853) of all Indian Country submissions for prosecution (2,542) were declined for prosecution. According to the Federal Bureau of Investigation reports, all the cases that had been denied for prosecution were denied because no evidence could be found regarding foul play. *U.S. Department of Justice Indian Country Investigations and Prosecutions, 2013*. Department of Justice (2013) at 7.

- Human Trafficking: Information on Cases in Indian Country or that Involved Native Americans, completed by the GAO in 2017; and
- Native American Youth: Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency Highlights, completed by the GAO in 2018.

2011 Long Term Plan to Build and Enhance Tribal Justice Systems report

The *Long Term Plan to Build and Enhance Tribal Justice Systems report* intended to obtain information on alternatives to incarceration for jails and other public safety buildings, critically assess tribal public safety infrastructure, and review institutional methods to develop alternatives to incarceration.

After publication of this report, both the DOJ and the BIA engaged in additional actions or studies regarding incarceration and alternatives. For example, the Bureau of Justice Assistance (BJA) completed a study of strategies to validate an offender risk assessment tool called *Level of Service Inventory-Revised (LSI-R)* for use in tribal justice systems.⁶

Tribal leaders have encouraged establishing culturally sensitive alternatives to incarceration that would allow offenders to remain close to their Native communities, focus on treating the root causes of criminal behavior, and emphasize rehabilitation rather than retribution. The DOJ now provides resources, training, and capacity building for tribes to implement and develop these intervention efforts (e.g., alcohol/offender monitoring devices and related equipment) as incarceration alternatives.⁷

The Committee recognized in the TLOA, and in S. 210, that these alternatives must be combined with active prevention efforts to begin addressing the crime rates in Indian communities. To that end, the bill encourages various approaches to reduce recidivism. For example, S. 210 combines early crime prevention efforts through school and summer programs for Native youth and data-driven research on key trends in tribal jail populations. While these types of programs hold promise, all efforts included in the TLOA and S. 210 will need to be further assessed for long-term benefits and efficacy.

Annual U.S. Department of Justice: Indian Country investigations and prosecutions

Section 212(B) of the TLOA requires the Federal Bureau of Investigation (FBI) and the Attorney General to submit an annual report to Congress on terminated or declined investigations and prosecutions in Indian Country. The reports should outline the following information: the types of crimes alleged, the status of accused as Indian or non-Indian, the status of victim as Indian or non-Indian and, the reasons for deciding against referring the in-

⁶An LSI-R identifies problem areas in an offender's life and predicts his or her risk of recidivism. Evidence-based practices to reduce recidivism stress the importance of assessing the individual on risk, needs, and responsibility of the offender to rehabilitation practices, as a result the LSI-R for Tribal justice systems was a basic step to enhance tribal justice systems. Crime and Justice Institute, *Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention*. Boston, MA: Crime and Justice Institute and U.S. Department of Justice (2004).

⁷<https://www.bja.gov/Publications/TLOA-TJP-Webinar-Summary.pdf>, 2 (last reviewed December, 2016).

investigation for prosecution, declining to prosecute, or terminating a prosecution.

In CY2014, the FBI closed 2,064 Indian Country cases—an increase of 7 cases from CY2013.⁸ The most common reason for case closure was that the investigation concluded no Federal crime had occurred. Most notably, the report also highlighted the difficulties in prosecuting sex crimes in Indian Country.⁹

In CY2017, the FBI reported a 12.5 percent increase in total closed investigations over CY2016 statistics.¹⁰ Of the 2,210 FBI Indian Country investigations closed in CY2017, the FBI closed 68 percent for Federal, state, or tribal prosecution.¹¹ However, the U.S. Attorney Office’s (USAO) declination rate of 37 percent for Indian Country matters remained relatively steady with all previous years reported.¹² Since 2011, the rates have ranged between a low of 31 percent to a high of 39 percent.¹³ According to the 2017 report, “[t]he most common reason for declination by USAOs was insufficient evidence.”¹⁴

The Committee remains concerned about the lack of progress made by USAOs to address declinations, particularly when USAOs link many declinations to causes of insufficient evidence for a prosecution. Additionally, the Committee seeks further clarification and detail from the DOJ and the Executive Office of U.S. Attorneys regarding the causes of these underlying limitations for prosecution. For example, if the Federal response to the crime scene is delayed for so long that the crime scene and evidence becomes contaminated or destroyed, then improvements are necessary to prevent similar future problems. The Committee, however, is encouraged that “[t]he Department is committed to continuing to improve these communications”¹⁵ between the DOJ and tribes to improve law enforcement and case coordination.

It is further notable that the FBI does not solicit or integrate information from the Bureau of Indian Affairs or tribal governments for this annual report. As a result, the total numbers in the report do not include many of the misdemeanor crimes still occurring in Indian Country¹⁶ and impacting recidivism, which remains high in Indian communities.¹⁷ The DOJ should engage with the Indian tribes regarding how to best capture, evaluate, and report this information to provide a better understanding and comprehensive view of public safety trends in Indian Country.

Report on enhanced tribal-court sentencing authority

Section 234(b) of the TLOA requires the Attorney General and the Secretary of the Interior, no later than four years after the en-

⁸ U.S. Department of Justice *Indian Country Investigations and Prosecutions, 2013*. Department of Justice (2013) at 11.

⁹ These problems stem from a number of challenges, some of which are outlined in the 2014 report. U.S. Department of Justice *Indian Country Investigations and Prosecutions, 2014*. Department of Justice (2014) at 36–37.

¹⁰ U.S. Department of Justice *Indian Country Investigations and Prosecutions, 2017*. Department of Justice (2017) at 3.

¹¹ Id. at 10.

¹² Id. at 3.

¹³ Id. CY 2017—37%, CY 2016—34%, CY 2015—39%, CY 2014—34%, CY 2013—34%, CY 2012—31%, CY 2011—38%.

¹⁴ Id. at 4.

¹⁵ Id. at 20.

¹⁶ Id. at 11.

¹⁷ Id. at 2.

actment of the TLOA, to submit a report to Congress on the effectiveness of enhanced tribal court sentencing authority in curtailing violence and improving the administration of justice on Indian lands. In addition, Section 234(b) requires the report to include further guidance on the enhanced authority at the levels provided by TLOA.¹⁸

As of January 2015, only nine tribes have opted to exercise the enhanced sentencing provisions of TLOA.¹⁹ However, several others were in the process of gaining enhanced sentencing authority.

Tribal Prisoner Pilot Program progress report

Section 234(c) of the TLOA creates the Bureau of Prisons (BOP) Tribal Prisoner Pilot Program. In this pilot program, the BOP may accept and house Indian prisoners sentenced by tribal courts for violent offenses within the Bureau's facilities. From November, 2010, to November, 2014, the BOP received requests for six tribal inmates from three Indian nations to participate in the prisoner pilot program under TLOA. BOP accepted all six offenders and transferred them to appropriate Federal facilities.

The information in the report indicated that an extension of this program would continue to assist in reducing overcrowding within tribal jails. However, the Committee believes that any program extension should require an assessment of the services available to those prisoners and the effectiveness of those services is necessary as part of any program extension.

Annual U.S. Department of Justice: Tribal crime data collection activities report

Section 251(g) of the TLOA requires the Bureau of Justice Statistics (BJS) to annually report on data collected relating to crimes in Indian Country and to support tribal participation in national records and information systems as described in the TLOA. The ability to access and comprehend data of tribal crimes continues to advance as more tribal law enforcement agencies participate in the FBI's Uniform Crime Reporting Program—increasing from only 12 tribes in 2008 to a high of 158 in 2014, although the numbers decreased slightly to 152 in 2017.

The 2015 report indicated a 3.3 percent decrease in total inmates in Indian Country jails from 2012 to 2013 midyear totals, while the 2016 to 2018 report indicated a 1.2 percent increase in total number of inmates held in Indian Country jails between the midyear 2015 and 2016.²⁰ The number of jails or detention centers being utilized in Indian Country increased from 68 facilities in 2004 to 80 in 2016.²¹ According to the 2016 to 2018 report, “[t]he occupied bed space on the most crowded day in June declined from 118 [percent] in 2000 to 83 [percent] in 2016.”²²

At midyear 2014, state and local jails housed 10,400 American Indian and Alaska Native inmates, who accounted for 1.4 percent

¹⁸*Tribal Law and Order Act Report on Enhanced Tribal-Court Sentencing Authority*, Department of Justice, at 6.

¹⁹Christian Folsom-Smith, *Enhanced Sentencing in Tribal Courts*, The National Tribal Justice Center, (2015) at 8.

²⁰*Tribal Crime Data Collection Activities, 2016–2018*, Bureau of Justice Statistics, Department of Justice (2018) at 4.

²¹*Tribal Crime Data Collection Activities, 2016–2018*, Bureau of Justice Statistics, Department of Justice (2018) at 4.

²²*Id.* at 5.

of total inmate jail populations. Most American Indian and Alaska Native inmates were located in the western states.²³

To improve future DOJ tribal crime reporting accuracy, the BIA and the DOJ provided training to and improved the data collection and sharing systems for tribal justice officials.²⁴ Preliminary information from Indian tribes and the Federal agencies indicate that these improved systems appear to hold promising benefits for public safety. The bill, S. 210, provides for further improvement of these data collection and sharing systems.

Indian Health Service: Continued efforts needed to help strengthen response to sexual assaults and domestic violence report

Section 266(b) of the TLOA required, no later than one year after enactment of the Act, the Comptroller General to report to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources of the House of Representatives on the capabilities of the Indian Health Service (IHS) to collect and perform sexual assault and domestic violence post-exams and collections for criminal prosecution in remote Indian reservations and Alaska Native villages.

The report concluded that the ability of IHS hospitals to collect and preserve medical forensic evidence from patients in cases of sexual assault and domestic violence varies from hospital to hospital. Of the 45 hospitals in the IHS network, 26 reported they are able to perform medical forensic exams on site for victims of sexual assault, while the remaining 19 hospitals choose to refer sexual assault victims to other facilities.²⁵

Before March 2011, the IHS did not have an agency wide standardized plan on how to conduct these services. The agency has reportedly made progress to improve their capacity for these services by instituting a network wide standard. According to the IHS, systemic issues such as funding for appropriate training and equipment, distances to rural communities on reservations, staff burn-out, and high turnover are challenges to the long-term viability of this type of care in many hospitals.

In addition, the GAO report highlighted the inability of IHS to keep records on the frequency of forensic exams and the number of staffers who have the appropriate training or certification to conduct such exams. The GAO further found that “the March 2011 sexual assault policy does not address how its hospitals should respond in cases of discrete domestic violence without a sexual component or in cases of child sexual abuse.”²⁶

Though the GAO concluded its work on this report in 2012, data from DOJ show that domestic violence, sexual assault, and aggravated or simple assault continue to account for a large portion of

²³ *Tribal Crime Data Collection Activities, 2015*, Bureau of Justice Statistics, Department of Justice (2015) at 1.

²⁴ The Department of Justice established the tribal access to criminal databases on a pilot basis. See <http://www.justice.gov/tribal/tribal-access-program-tap> (last reviewed December 1, 2015). The Department Budget Request for FY2016 had proposed changes to the Working Capital Fund in its Justice Management Division to allow Indian tribes to reimburse the fund for expenses related to law enforcement databases.

²⁵ U.S. Gov't Accountability Office, GAO-12-29, *Indian Health Service: Continued Efforts Needed to Help Strengthen Response to Sexual Assaults and Domestic Violence 2* (2011).

²⁶ *Id.* at 47.

incarcerations in Indian country.^{27 28} This trend indicates that these communities still need resources for continued work on appropriate and adequate responses to these types of crimes.

Community Oriented Policing Services Grants

Administered by the DOJ, Community Oriented Policing Services (COPS) grants in Indian Country focus primarily on activities for combating drugs, substance abuse and mental health-related programs, and increasing the capacity of the tribal justice system overall. Section 243(3) of the TLOA required the Attorney General to provide a report to Congress describing the extent and effectiveness of the COPS grants in Indian communities. The report provided data on the grant programs that assist Indian tribes through program activities, training, and technical assistance.

From 1994 to 2009, DOJ awarded more than \$400 million in COPS grants to over 2,000 tribal grant recipients consisting of Indian tribes. In FY2010, the last year data is available in the report, DOJ awarded \$48.6 million in grants to 141 entities. However, with only 23 officer positions funded through FY2010 COPS grants, it appears these tribal grantees used the majority of COPS funds for non-officer related expenditures.

The purposes of the grants continue to serve much needed areas of public safety such as combatting drug abuse. Better data systems, developed in part by the provisions relating to data collection and sharing system improvements in S. 210, would be useful in evaluating the effectiveness of these grants.

Indian Law and Order Commission

The TLOA authorized the creation of the Indian Law and Order Commission. The Commission began its work in late summer 2011 and issued its final report entitled *A Roadmap for Making Native America Safer* on November 12, 2013.

The TLOA required the Commission to examine:

- Jurisdiction;
- Tribal and Federal incarceration systems;
- Tribal and Federal juvenile justice systems;
- The impact of the *Indian Civil Rights Act of 1968*; and
- Other subjects relevant to achieving the purposes of the

TLOA.

The Act further required the Commission to develop recommendations on necessary modifications and improvements to justice systems at the Federal, state, and tribal levels to:

- Simplify jurisdiction in Indian Country;
- Improve juvenile justice services and programs;
- Adjust tribal penal authority, including detention alternatives;
- Enhance the use of Federal magistrates in Indian Country;
- Change the tribal and Federal detention systems; and
- Address other issues that would reduce crime in Indian

Country.

The Commission's findings that Native American youth are over-represented in both Federal and state juvenile justice systems and

²⁷ *Tribal Crime Data Collection Activities, 2016–2018*, Bureau of Justice Statistics, Department of Justice (2018) at 5.

²⁸ *Id.*

receive harsher sentences than other youth in these systems is especially alarming given that the Federal system offers no special juvenile division (i.e., no special juvenile court judges, probation system, and no juvenile detention, diversion, or rehabilitation facilities) and, generally, that there is no requirement that juvenile justice systems contact an incarcerated Indian child's tribe for services or any other reason.

To address the juvenile justice-specific findings in the report, the Commission issued four primary recommendations. These recommendations include:

- Tribes be allowed to opt-out of the Federal juvenile justice system or have a right to consent before the U.S. Attorney files charges against an Indian child;
- The funding structures for Native youth be reorganized into a block grant rather than individual grant programs;
- Federal and state systems maintain proper records of tribal youth in their custody and a single Federal agency coordinate data, needs, and make recommendations for Native youth; and
- Federal, state, and tribal governments improve cooperation on the care and services for the Native youth in the juvenile justice systems.

DOJ–OIG Review of the Department's Tribal Law Enforcement Efforts Pursuant to the Tribal Law and Order Act of 2010 report

In December 2017, the DOJ–OIG issued its *Review of the Department's Tribal Law Enforcement Efforts Pursuant to the Tribal Law and Order Act of 2010*. The DOJ–OIG “conducted this review to assess the steps the Department and its components have taken to implement these TLOA requirements.”²⁹ The review concluded that the Department “ha[d] taken some steps to carry out TLOA's mandates”³⁰, but it still fell short in many areas of responsibility, assistance, oversight, and coordination.

Of particular note, the OIG found that “there is no Department-level entity that oversees component activities or coordinates these efforts to fulfill TLOA mandates.”³¹ Without such oversight, “the Department cannot ensure that it is prioritizing its Indian [C]ountry responsibilities or meeting these important requirements.”³²

In addition, the OIG found that “funding and resources for Indian [C]ountry prosecutions have decreased since TLOA's implementation.”³³ Moreover, the Department's communication with and training for Indian tribes was not consistent or sufficient as TLOA contemplated.³⁴ The DOJ–OIG further found that “crime data in Indian [C]ountry remains unreliable and incomplete, limiting the Department's ability to engage in performance based management of its efforts to implement its TLOA responsibilities.”³⁵

²⁹ Office of the Inspector General, Department of Justice, *Review of the Department's Tribal Law Enforcement Efforts Pursuant to the Tribal Law and Order Act of 2010*. (2017) at i.

³⁰ *Id.*

³¹ *Id.* at 13.

³² *Id.*

³³ *Id.* at 18.

³⁴ *Id.* at 29 and 32.

³⁵ Office of the Inspector General, Department of Justice, *Review of the Department's Tribal Law Enforcement Efforts Pursuant to the Tribal Law and Order Act of 2010*. (2017) at i.

While the 2017 DOJ Indian Country Investigations and Prosecutions report indicates that “[i]t is the Department’s position that prioritization of initiatives in Indian [C]ountry, including the effort to build capacity in Tribal courts, will eventually lead to enhanced public safety for Native Americans,”³⁶ the DOJ–OIG findings suggest implementation of this position is inconsistent. As such, the Committee recognizes the Department’s position but remains concerned about the DOJ–OIG’s findings.

Accordingly, the Committee amended S. 210 to address the issues identified by the DOJ–OIG. Most notably, the legislation would require the Attorney General, acting through the Deputy Attorney General, to coordinate and provide oversight for all DOJ responsibilities for public safety in Indian communities. The Committee believes elevated coordination efforts at the DOJ are necessary to facilitate better responses to crime and improve public safety in Indian communities.

GAO reports on Native American youth

Senators Hoeven and Barrasso requested that the GAO examine data regarding Native American youth in Federal, state, and tribal justice systems as well as the Federal resources available to Indian tribes to help address juvenile delinquency. The GAO issued its report on September 5, 2018. This report is the first comprehensive review of the status of Native youth in these systems. It lays the groundwork for a subsequent GAO study currently underway that will examine the effectiveness of the Federal programs available to help Indian tribes address juvenile delinquency.

To complete the 2018 report, the GAO examined Federal, state, local, and tribal arrest, adjudication, and confinement data from 2010 through 2016.³⁷ The GAO noted that there is no centralized source of information regarding youth in these justice systems. Moreover, these systems do not track the Native-status, including tribal membership or membership eligibility, of youth in a consistent manner.

While much of the tribal data was incomplete, the GAO found that the number of Native youth in the Federal, state, and local systems declined from 2010 through 2016 for all phases of the juvenile justice process (i.e., arrest, adjudication, and confinement).³⁸ The data limitations did not allow the GAO to conclude why these declines occurred.

However, the GAO consulted with various tribal and Federal experts to ascertain possible reasons for such declines. These experts suggested that the movement toward restorative, instead of punitive, justice could be a possible reason for such declines. In fact, according to the report, “a number of states have worked out civil diversion agreements with local tribes which provide opportunities for the tribe to practice restorative justice with delinquent youth instead of confining them.”³⁹ In addition, the perspectives offered

³⁶ U.S. Department of Justice Indian Country Investigations and Prosecutions, 2017. Department of Justice (2017) at 4.

³⁷ The GAO reports that 2016 was the most recently available complete year data was available for their review.

³⁸ U.S. Gov’t Accountability Office, GAO–18–591, Native American Youth: Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency Highlights (2018).

³⁹ U.S. Gov’t Accountability Office, GAO–18–591, Native American Youth: Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency 30 (2018).

by the experts the GAO interviewed suggested that the declines could result from the lack of consistent tracking or reporting of the tribal status of the youth.

Pursuant to the *Juvenile Justice and Delinquency Prevention Act*, states must identify and assess racial disparities in their justice systems, which would require them to, at a minimum, inquire regarding the racial identity of youth entering their systems. However, from 2013 to 2016, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) did not enforce that requirement.⁴⁰ As a result, the GAO was ultimately unable to determine to what degree inconsistent tracking attributed to such decline.

Title II of S. 210 would help address this inconsistent tracking. The bill requires the Secretary of the Interior, the Attorney General, and the OJJDP Administrator to coordinate to develop a means for collecting data on offenses committed by Indian youth, including information regarding the tribal affiliation or membership.

Despite the inconsistent tracking, the GAO found that Native youth were more involved in the state or local systems than the Federal system. There were 105,487 arrests, and these courts received about 86,400 delinquency cases from 2010 to 2014. Native youth involvement was most prevalent in 10 states for arrests from 2010 to 2016: Alaska, Arizona, Minnesota, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Washington, and Wisconsin. Of these states, Arizona and South Dakota had the highest numbers of Native youth involvement. The GAO also noted that several risk factors made the Native youth more susceptible to being involved in these justice systems. These risk factors include substance abuse and high rates of poverty.

Native youth were involved in the Federal system at rates higher than other youth. Moreover, the involvement of these youth was for more serious crimes such as sex offenses, than other youth. Consequently, the terms of confinement were more onerous for Native youth. The DOJ officials interviewed by the GAO indicated that the nature of Federal jurisdiction in Indian lands and for major crimes contributed to this sentencing disparity.

The GAO also reviewed Federal grant resources and cooperative agreement resources at the DOI, DOJ, and the Department of Health and Human Services (HHS) related to the risk or protective factors for youth involvement in the juvenile justice system for FY2015 to FY2017. The GAO found that Indian tribes are eligible for 122 grants to address juvenile delinquency, including 73 from the DOJ and 49 from the HHS.

The GAO found that a significant amount of juvenile justice money did not ultimately go to Indian tribes. The GAO calculated that the federal government made \$1.2 billion available from these grants over the two year period reviewed, but only awarded \$207.7 million to Indian tribes and tribal organizations (\$106.5 million from the DHHS and \$101.2 million from the DOJ).⁴¹ Additionally, the GAO found that Tribes received most of these funds from 27 tribal specific grants at these Departments, suggesting Tribes were

⁴⁰ <https://chronicleofsocialchange.org/youth-services-insider/ojjdp-racial-disparities-pass-might-continue/28488> (last reviewed September 24, 2018).

⁴¹ U.S. Gov't Accountability Office, GAO-18-591, *Native American Youth: Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency* 57 (2018).

unsuccessful competing with states and other entities for larger grant programs.

To determine the challenges in applying for the Federal funds or common weaknesses in unsuccessful applications, the GAO sought the perspectives of Indian tribes, tribal organizations, and the DOJ. Most of these officials indicated that the lack of a grant writer left the Indian tribes without the ability to apply for and receive these grant funds. The Indian tribes indicated that access to Departmental program officials for questions or technical assistance was helpful in improving grant applications. Another noteworthy challenge Indian tribes faced in accessing these additional funds was the lack of data and limited ability to collect data required by the Departments to apply for certain juvenile justice grants.

Making this challenge even more difficult is the spread of requirements to propose evidence-based approaches for Federal grant applications. Indian tribes have sought to employ more restorative justice approaches based on traditional and cultural practices, which often lack evidence-based reviews of their effectiveness. However, Indian tribes also encounter difficulty when attempting to use or advance these approaches or initiatives as part of their application due to the limited availability of existing research on their effectiveness.

The bill, S. 210, takes action to address this challenge. Title II of the *Tribal Law and Order Reauthorization and Amendments Act of 2019* requires the Secretary of the Interior, the Attorney General, and the OJJDP Administrator to consult with Indian tribes “regarding the means by which traditional or cultural tribal programs may serve or be developed as promising or evidence-based programs.”

It is unclear from the report the extent to which recommended methods to reduce bureaucratic demands on Indian tribes exist in these programs. One method that fostered administrative efficiencies and reduced costs is the integration approach modeled by the “477 program” with Federal workforce development programs for Tribes.⁴² This program combines several related programs and streamlines the application, budget, and reporting processes, thereby saving Indian tribes the cost and time to prepare individual applications, budgets, and reports for each program.

The *Tribal Law and Order Reauthorization and Amendments Act of 2019* seeks to build upon this more efficient approach for public safety-related programs. This bill would require the Secretaries of the Interior, HHS, and the Attorney General to consult with Indian tribes to determine the feasibility of integrating public safety and behavioral health related programs to improve services for Indians, including juveniles.

On September 26, 2018, the Committee held an oversight hearing on this GAO Report.⁴³ Of particular note, the DOI Principal Deputy Assistant Secretary for Indian Affairs testified in support of notice to Indian tribes when a tribal member juvenile comes in

⁴² Indian Employment, Training and Related Services Demonstration Act of 1992, Pub. L. No. 102-477, 106 Stat. 2302 (1992).

⁴³ *Justice for Native Youth: The GAO Report on “Native American Youth Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency,” Hearing Before the S. Comm. on Indian Affairs, 115th Cong. (2018).*

contact with another jurisdiction's juvenile justice system.⁴⁴ Likewise, Judge Abinanti, Chief Justice of the Yurok Tribal Court, further testified in support of promoting education and tribal culture as key components of building resiliency in tribal youth and preventing recidivism.⁴⁵

GAO Reports on Human Trafficking on Native Americans in the United States

In 2017, the GAO issued two reports related to the human trafficking of Native Americans in the United States⁴⁶:

- *Human Trafficking: Action Needed to Identify the Number of Native American Victims Receiving Federally-Funded Services*, GAO-17-325 (March 30, 2017); and
- *Human Trafficking: Information on Cases in Indian Country or that Involved Native Americans*, GAO-17-624 (July 24, 2017).

The first report, GAO-17-325 studied:

- The extent to which Federal agencies collect and maintain data on investigations and prosecutions of human trafficking in Indian Country or of Native Americans regardless of location;
- Whether Federal grant programs are available to help address human trafficking in Indian Country or of Native Americans regardless of location; and
- The number of Native American victims who have received assistance through such grant programs.⁴⁷

According to the report, for FY2013 to FY2016, the GAO found evidence of 14 Federal investigations and two Federal prosecutions of human trafficking offenses in Indian Country.⁴⁸ In comparison to the United States as a whole during that same period, data showed over 6,100 Federal human trafficking investigations and approximately 1,000 Federal human trafficking prosecutions.⁴⁹ The GAO report stated that the data for Indian Country does not represent the total number of human trafficking cases in Indian Country because the crime is likely underreported.

During the FY2014–FY2016 period, the DOJ, HHS, and the Department of Homeland Security administered at least fifty grant programs to address human trafficking in Indian Country or of Native Americans.⁵⁰ These programs allow funding to be used for:

- Collaboration and partnerships;
- Data, research, and evaluation;
- Provision of services directly to victims;
- Public awareness; and
- Training or technical assistance.⁵¹

⁴⁴ Id. (statement of John Tahsuda, Principal Deputy Assistant Secretary, U.S. Department of the Interior).

⁴⁵ Id. (statement of Hon. Abby Abinanti, Chief Judge, Yurok Tribal Court, Yurok Tribe of the Yurok Reservation).

⁴⁶ U.S. Gov't Accountability Office, GAO-17-325, *Human Trafficking: Action Needed to Identify the Number of Native American Victims Receiving Federally-Funded Services* (2017); U.S. Gov't Accountability Office, GAO-17-624, *Human Trafficking: Information on Cases in Indian Country or that Involved Native Americans* (2017).

⁴⁷ U.S. Gov't Accountability Office, GAO Rep. No. 17-325, *Human Trafficking: Action Needed to Identify the Number of Native American Victims Receiving Federally-Funded Services* 2-3 (2017).

⁴⁸ Id. at 17.

⁴⁹ Id.

⁵⁰ Id. at 21.

⁵¹ Id. at 22.

The GAO found that “the number of Native American human trafficking victims who received services through these programs is unknown because agencies generally did not require grantees to report the Native American status of victims served.”⁵² Additionally, even when reporting requirements are present, the numbers tend to be aggregate crime statistics that do not identify the specific crime against the victim. As such, the grantee data are not useful in determining how many Native American victims are served by these programs.⁵³

The report noted, “According to the 2013–2017 Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States, expanding human trafficking data collection and research efforts for vulnerable populations, which include Native Americans, is an area for improvement for the [F]ederal government.”⁵⁴ Additionally, the Report noted the fact that knowledge regarding a victim’s status as a Native American “can be helpful to ensure culturally appropriate practices are made available.”⁵⁵ As the GAO report states, “the absence of data collection by granting agencies regarding the Native American status of human trafficking victims served hinders their ability to determine whether their victim assistance goals are being met.”⁵⁶

As it relates to funding and services, the GAO made recommendations for executive action. The GAO believes the Directors of the Office on Violence Against Women (OVW) and the Office for Victims of Crime (OVC), and the OJJDP Administrator within the DOJ should “require grantees to report the number of human trafficking victims served using grant funding, and as appropriate, the Native American status of those victims.”⁵⁷ Collecting demographic information while protecting victim privacy is a useful approach to learn the extent and effect of human trafficking in Indian Country and of Native Americans.

The second GAO report, GAO–17–624, addressed the following:

- “[T]he extent to which tribal and major city Law Enforcement Agencies (LEAs) have encountered human trafficking in Indian Country or of Native Americans;
- “Factors affecting the ability of LEAs to identify and investigate this specific human trafficking; and
- “Availability of services to Native American victims of human trafficking.”⁵⁸

The GAO surveyed all known 203 tribal LEAs, 68 major city LEAs, and 315 victim service providers for this report.

Reasons given by the LEAs for why human trafficking goes unreported, regardless of ethnicity, include: victim fear of retaliation, victim trauma, embarrassment, feelings of shame, distrust of law enforcement, and drug addiction. The LEAs further stated they believe Native American victims are more reluctant to report being trafficked due to the factors previously listed above as well as the families of the victims discouraging cooperation.⁵⁹

⁵² Id. at 24.

⁵³ Id.

⁵⁴ Id. at 27.

⁵⁵ Id. at 28.

⁵⁶ Id.

⁵⁷ Id. at 29.

⁵⁸ U.S. Gov’t Accountability Office, GAO–17–624, Human Trafficking: Information on Cases in Indian Country or That Involved Native Americans 1 (2017).

⁵⁹ Id. at 13 (2017).

In the process of completing its report, the GAO found that some Indian tribes have enacted tribal statutes to address human trafficking or related criminal acts that could form the foundation of a human trafficking crime, including prostitution, child sex abuse, or sexual assault.

The second human trafficking GAO report notes that the most frequently identified barriers to providing services to Native American victims of human trafficking were inadequate funding or resources, lack of personnel, lack of emergency shelter, and lack of legal aid resources.⁶⁰ The GAO report notes that there are Federally-developed training programs to aid service providers who work with Native American human trafficking victims, but improvements in the effectiveness in these programs are in order to improve cost efficiencies and better use of resources.

THE TRIBAL LAW AND ORDER REAUTHORIZATION ACT

To continue the public safety improvements facilitated by the TLOA, S. 210 aims to reauthorize the provisions within TLOA from FY2020 to FY2024, and to secure improvements related to inter-agency coordination and information sharing, among other things.

Principles

The bill, S. 210, is built upon the fundamental principles of reducing recidivism and improving justice for Indian youth, among others. For example, one report indicated that “[y]outh contact with the justice system matters because it can have profound negative impacts on a youth’s mental and physical well-being, as well as negatively impact their current and future education and employment.”⁶¹ This report further highlighted that “research on juvenile corrections has found that confinement can negatively affect youth in custody and lead to further involvement in the juvenile and adult criminal justice systems rather than interrupting the offending cycle or facilitating rehabilitation.”⁶²

In nearly every Committee hearing on public safety-related matters, the Committee received testimony that drug and alcohol abuse were contributing factors in most nearly every crime committed in Indian communities. Moreover, according to one report, the OJJDP data indicate that “Native American youth are more likely to face conviction in adult court, especially for drug-related crimes.”⁶³ Clearly, reducing recidivism would require significant efforts in addressing drug and alcohol abuse.

To that end, S. 210 is intended to require more efforts, coordination, and participation from the HHS agencies in addressing such

⁶⁰Id. at 20.

⁶¹The Complex Maze of the Juvenile Justice System in Wisconsin and Its Impact on Youth of Color. Kids Forward. 1 (2018) (Holman, B., & Ziedenberg, J. (2011). The dangers of detention: The impact of incarcerating youth in detention and other secure facilities. Justice Policy Institute. Retrieved (by report authors) from http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf).

⁶²The Complex Maze of the Juvenile Justice System in Wisconsin and Its Impact on Youth of Color. Kids Forward. 1 (2018) (quoting Development Services Group, Inc. (2010). Correctional facilities. Literature Review: A product of the Model Programs Guide. Washington, D.C.: Office of Juvenile Justice Delinquency Prevention. Retrieved (by report authors) from https://www.ojjdp.gov/mpg/litreviews/Correctional_Facilities.pdf).

⁶³Id. at 5 (2017). Easy access to juvenile populations: 1990–2016. Office of Juvenile Justice and Delinquency Prevention. Retrieved (by report authors) from https://www.ojjdp.gov/ojstatbb/ezapop/asp/profile_selection.asp).

substance abuse and recidivism.⁶⁴ If successful, preventing recidivism in a Native community can reduce a host of costs (financial and otherwise) and increase public safety in Indian country.

Improving justice for Indian youth

The TLOA contained important requirements to improve justice for Indian youth such as the development of a long-term plan for the construction, renovation, and operation of Indian juvenile detention and treatment centers as well as the use of alternatives to detention for juvenile offenders. It also authorized Federal agencies to use certain grant funding for Indian youth judicial-related services, including public defenders, appointed defense counsel, guardians ad litem, and court-appointed advocates for juveniles.

On July 15, 2015, the Committee held a hearing on *Juvenile Justice in Indian Country: Challenges and Promising Strategies*.⁶⁵ Additionally, on September 26, 2018, the Committee held a hearing on *Justice for Native Youth: The GAO Report on “Native American Youth Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency.”*⁶⁶ These hearings highlighted several recommendations for improving justice for Indian youth, such as increasing Federal and tribal resources available to address recidivism rates for Indian youth.

The Indian Law and Order Commission report and the Attorney General’s Advisory Committee on American Indian/Alaska Native Children Exposed to Violence report both found that Indian children are exposed to higher rates of violence than other children.⁶⁷ This disturbing finding compounds the unacceptably disproportionate rate of incarceration of Indian youth. These data underscore that Native children are more likely to be exposed to trauma after trauma, seemingly without appropriate intervention or services.

Building upon the requirements in TLOA and the recommendations of the two reports and hearings, the predecessor bills, S. 1953 (115th Congress) and S. 2920 (116th Congress), provided for extensive enhancements to the *Juvenile Justice and Delinquency Prevention Act of 1974* and other laws which affect Indian juveniles. The authors of these provisions based them upon tribal recommendations, which Tribes had proposed in 2008 when Congress was working to reauthorize the *Juvenile Justice and Delinquency Prevention Act of 1974*.

For example, S. 2920 would have amended the *Juvenile Justice and Delinquency Prevention Act of 1974* to include an Indian representative on state advisory groups which address juvenile justice policy. The predecessor bill also required in state plans for funding that notice be provided to Indian tribes when one of their tribal

⁶⁴This requirement is consistent with the recommendations that were highlighted in testimony before the Committee during the hearing on juvenile justice. See *Juvenile Justice in Indian Country: Challenges and Promising Strategies, Hearing Before the S. Comm. on Ind. Affairs*, 114th Cong. (2015).

⁶⁵*Juvenile Justice in Indian Country: Challenges and Promising Strategies, Hearing Before the S. Comm. on Ind. Affairs*, 114th Cong. (2015).

⁶⁶*Justice for Native Youth: The GAO Report on “Native American Youth Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency,” Hearing Before the S. Comm. on Indian Affairs*, 115th Cong. (2018).

⁶⁷See Attorney General’s Advisory Committee on American Indian/Alaska Native Children Exposed to Violence: Ending Violence So Children Can Thrive, Department of Justice (2014); See also Addie Rolnick, *Untangling the Web: Juvenile Justice in Indian Country* (2016). 19 N.Y.U. J. Legis. & Pub. Pol’y 49, (2016), <http://ssrn.com/abstract=2779767>.

member juveniles comes in contact with the juvenile justice system of the state or local unit of government. These concepts were carried forward in S. 1953, and again in S. 210.

During the 114th and 115th Congresses, the Senate and the House of Representatives considered several proposals to reauthorize the *Juvenile Justice and Delinquency Prevention Act of 1974*. While each Chamber included a few modified tribal recommendations included in its respective bills, these reauthorizations left a majority of the tribal proposals out.

In response to the discussions regarding the tribal proposals in the context of the *Juvenile Justice and Delinquency Prevention Act of 1974* reauthorization during the 115th Congress, the sponsors of S. 1953 amended the bill. The amendments, which are reflected in the current bill, S. 210, eliminated the requirements for state plans to implement certain actions and, instead, set forth amendments to the *Indian Law Enforcement Reform Act*. These amendments are a more flexible approach to improving justice for Native youth by requiring coordination among agencies to consult with Indian tribes and find a means to develop or incorporate many of the tribal recommendations into juvenile justice systems.

This bill would also requires a more robust consultation by the OJJDP Administrator. In addition, the OJJDP Administrator must include the recommendations from the Coordinating Council on Juvenile Justice and Delinquency Prevention (Council) regarding improving service delivery to Indian communities in the Office's annual report to Congress as the TLOA required that an Indian representative be appointed to the Council.

LEGISLATIVE HISTORY

On January 24, 2019, Senator Hoeven introduced S. 210, the *Tribal Law and Order Reauthorization and Amendments Act of 2019*. The Senate referred the bill to the Committee on Indian Affairs. On January 29, 2019, the Committee considered S. 210 at a duly called business meeting. By voice vote, the Committee ordered the bill, without amendment, favorably reported to the Senate. Senator McSally joined as a co-sponsor on February 4, 2019. Senator Barrasso joined as a co-sponsor on February 5, 2019. Senator Cramer joined as a co-sponsor on March 14, 2019.

115th Congress. Senator Hoeven, along with Senators Barrasso and McCain, introduced S. 1953, *Tribal Law and Order Reauthorization and Amendments Act of 2016* on October 5, 2017. Senator Murkowski joined as a co-sponsor on October 25, 2017. On October 25, 2017, the Committee held a legislative hearing on the bill at which officials from the DOI and DOJ testified. The witnesses raised no objections to the bill. Senator Daines joined as a co-sponsor on October 30, 2017.

On February 14, 2018, the Committee held a duly called business meeting to consider S. 1953. Committee members filed five amendments to the bill. Chairman Hoeven offered a substitute amendment, Senator Udall offered one amendment, and Senators Smith and Daines offered one amendment. The respective sponsors of the remaining amendments withdrew them at the business meeting. The Committee favorably ordered the bill reported, as amended, by voice vote.

The Senate took no further action on the bill, and no member introduced a companion bill in the House of Representatives.

114th Congress. During the 114th Congress, the Committee held an oversight hearing on the TLOA on December 2, 2015, and a roundtable on the TLOA on February 25, 2016. On May 11, 2016, then-Chairman Barrasso, along with Senator McCain, introduced S. 2920, the *Tribal Law and Order Reauthorization and Amendments Act of 2016*.

The Committee held a legislative hearing on S. 2920 on May 18, 2016, at which the Director of the BIA, Mr. Michael S. Black, testified in support of the bill with recommendations for modifying the bill. The Director of the Office of Tribal Justice, Mr. Tracy Toulou, testified on behalf of the DOJ in support of the goals of the bill, and recommended some changes throughout the bill.

On June 22, 2016, the Committee held a duly called business meeting to consider S. 2920. Chairman Barrasso offered one substitute amendment to address the recommendations from the DOI and DOJ, the Federal Defenders Organization, tribal organizations, and Indian tribes. The Committee adopted the substitute amendment by a voice vote. Senator McCain offered an additional amendment to add an assessment of unmet staffing needs for health care, behavioral health, and tele-health needs at tribal jails to the BIA annual unmet needs and spending report. The Committee also adopted this amendment by a voice vote. The Committee then ordered the bill, as amended, reported favorably to the Senate by a voice vote.

The Senate took no further action on the bill, and no member introduced a companion bill in the House of Representatives.

AMENDMENTS

The current bill, S. 210, largely reflects the amendments made to the predecessor bills. The current bill includes a new provision regarding a demonstration program regarding personnel background investigations for applicants for law enforcement positions in the Bureau of Indian Affairs in Section 101(c) of the bill. In addition, the provisions regarding public defense counsel in Indian Country were modified to require collaboration and consultation with Indian tribes in Section 112.

During the 115th Congress, The Committee considered three amendments to S. 1953, at the duly called business meeting held on February 14, 2018. Senator Hoeven filed a substitute amendment, *ROM18075*. Senators Daines and Smith filed one amendment, *AEG18091*. Senator Udall offered one amendment, *AEG18086*.

ROM18075. Chairman Hoeven developed the substitute amendment after discussions with the DOJ and the DOI, and tribal leaders and justice officials. The key provisions are as follows:

(1) The amendment would strike the provisions requiring the withholding of funding from the BIA and the DOJ due to the failure to submit required annual reports in a timely manner (*e.g.*, BIA's unmet needs and spending reports and the DOJ's prosecutions and declinations reports). In lieu thereof, for the DOJ, the Attorney General, through the Deputy Attorney General, is required to oversee and ensure additional accountability for efforts for a

comprehensive approach to public safety in Indian communities including timely submission of reports.

(2) For background checks for tribal law enforcement hires, the BIA is required to complete them within sixty days after the receipt of a complete background check application. An extension of no more than thirty days may be authorized upon written request by the BIA to the Indian tribe. In current law, the BIA had to complete the check within sixty days of receiving the request, even if the applications were incomplete. Current law allows for extensions, but there is no deadline.

(3) The amendment would provide for more flexible time frames for consultation and resulting actions since three Federal Departments will need to coordinate and engage with Indian tribes.

(4) The amendment would provide for more clarity and technical corrections as recommended by the DOJ for the following:

- Designating which programs should be evaluated for a “477-like” program,⁶⁸ which allows for streamlining budgets and reporting requirements and a single audit, and on what processes the Departments should consult with Indian tribes;
- Revising “tribal liaison” titles for the Federal Public Defenders Officer to “tribal coordinator”; and
- Making the provision of certain information consistent with Federal law to ensure victim privacy and consistency with Constitutional, practical, or confidentiality limits.

(5) The amendment would extend the BOP programs to hold tribally-sentenced individuals for violent crimes in Federal facilities for up to 9 years, which correlates with the sentencing caps authorized in the TLOA. This program may be extended for a prisoner whose underlying tribal sentence has not expired.

(6) For Native youth, the amendment would:

- Include HHS as an additional department, along with DOI and DOJ, that must coordinate and develop solutions on juvenile justice issues for Native youth;
- Clarify the types of data that must be collected regarding Native juveniles (*e.g.*, the offenses, whether the youth was in pre-adjudication detention, removed from a home, or placed in secure confinement, the extent of compliance for state notice to Indian tribes for removal from homes for status offenses as required by Federal law);
- In consultation and coordination with Indian tribes, include in the research and evaluation requirements conducted by the Interior Secretary, Attorney General, and OJJDP Administrator, the structure and needs of tribal juvenile justice systems, the characteristics and outcomes for youth in those systems, and recommendations for improvement of those systems; and
- Set a time frame for implementing and reporting on improvements, processes, and other activities reviewed and developed to improve justice for Native youth not later than three years after enactment of the bill as well as recommendations, if any, for ensuring such implementation.

⁶⁸See Indian Employment, Training and Related Services Demonstration Act of 1992, Pub. L. No. 102-477, 106 Stat. 2302 (1992).

(7) As recommended by the DOI, the amendment would authorize the BIA law enforcement officers to take an individual into protective custody and transport the individual to an appropriate mental health facility under limited circumstances, as determined by a tribal court of competent jurisdiction, and to be covered by *Federal Tort Claim Act* liability. Standards for education, experience, and other relevant qualifications are required for these officers. This amendment authorizes \$1.5 million to implement this section.

(8) As recommended by the DOI, the amendment clarifies that law enforcement officers employed by Indian tribes that have contracted or compacted under the *Indian Self-Determination and Education Assistance Act* may enforce Federal law, upon completion of training, passage of background investigations, receipt of specific certifications from the BIA—provided the sponsoring Indian tribe has policies and procedures that meet or exceed the BIA’s for the program, service, function, or activity. Under this section of the amendment, these officers will be deemed Federal law enforcement officers and receive *Federal Tort Claim Act* coverage. The Interior Secretary shall develop procedures for credentialing these officers.

AEG18091. This amendment would authorize the Attorney General to transfer funding from the OVW previously authorized and appropriated for certain violence against women prevention and tracking activities to the TAP. The TAP allows participating Indian tribes to access certain crime databases to help fulfill their law enforcement responsibilities.

AEG18086. This amendment improves certain reporting requirements within the bill in three ways.

It would require the Attorney General to consult every five years, beginning one year after enactment of S. 1953, with Indian tribes regarding improvements to the annual prosecutions and investigations declination reports.

For the victim trafficking reports, this amendment would also prohibit mandating a victim to provide personally identifiable information and a service provider from denying services to a victim for not disclosing such information.

For research and evaluation requirements for the juvenile justice report required under the bill, the amendment would require the following additional items to be examined and appear in the report: educational opportunities and attainment of Indian juveniles, potential links to recidivism, and delayed educational opportunities while incarcerated.

SECTION-BY-SECTION ANALYSIS OF BILL AS ORDERED REPORTED

Section 1. Short title

The short title is the “*Tribal Law and Order Act Reauthorization and Amendments Act of 2019.*”

Section 2. Findings

This section contains several findings including that:

- The *Tribal Law and Order Act of 2010* was enacted to address accountability and enhance law enforcement responses in Indian community;

- Drug and alcohol abuse is a key contributing factor to violence and crime in Indian Country and substance abuse prevention and treatment would help reduce recidivism rates in Indian Country; and
- Crimes rates on some reservations have risen and jails continue to operate in overcrowded conditions.

Title I—Tribal Law and Order

Section 101. Bureau of Indian Affairs law enforcement

This section adds additional requirements for the annual Bureau of Indian Affairs unmet needs and spending report and background check processes, including a demonstration program for personnel background investigations for applicants for law enforcement positions in the BIA. This section also authorizes the Secretary to establish applicable rental rates for quarters and facilities for employees of the BIA Office of Justice Services. This section also extends the *Indian Alcohol and Substance Abuse Prevention and Treatment Act* of 1986 and public safety grants through FY2024.

Section 102. Amendment to add EOD authority

This section authorizes the Secretary of the Interior to authorize BIA law enforcement officers to execute emergency civil orders of detention to take an individual into protective custody for emergency mental health purposes and transport the individual to the nearest mental health facility when requested by a tribal court or an employee authorized by state or tribal law. These BIA law enforcement officers shall be covered by the *Federal Tort Claims Act*. The BIA and Indian Police Academy shall establish appropriate standards to carry out this section. Not later than 180 days, the BIA shall enter agreements with state and tribal mental health officials that outline processes to carry out this section, where BIA provides the primary law enforcement for an Indian tribe. This section authorizes \$1.5 million for the BIA to implement this section.

Section 103. Detention services

This section requires the IHS to be responsible for medical care and treatment of detained Indians at BIA or tribal detention centers, without regard to the individual's domicile. The BIA and IHS are required to enter a Memorandum of Agreement to implement this section.

Section 104. Tribal law enforcement officers

This section states that law enforcement officers employed by Indian tribes that have compacted or contracted under the *Indian Self Determination and Education Assistance Act* shall have authority to enforce Federal law within the area under tribal jurisdiction if they have completed the required training, passed an adjudicated background investigation, received BIA certification, and the Indian tribe has adopted the required policies and procedures that meet or exceed the same or similar policies of OJS. These officers shall be deemed Federal law enforcement officers for enforcing Indian Country crime statutes, consideration as an eligible officer under 5 USC, ch. 81, subchapter III, and *Federal Tort Claim Act* coverage. The Secretary of the Interior shall develop procedures for

credentialing these officers. These tribal officers attending state or equivalent training programs shall be required to attend the Indian Police Academy bridge program.

Section 105. Oversight, coordination, and accountability

This section would require the Attorney General, acting through the Deputy Attorney General, to coordinate and provide oversight for all DOJ responsibilities for public safety in Indian communities.

Section 106. Integration and coordination of programs

This subsection requires, no later than eighteen months after enactment, the Attorney General and the Secretaries of the Interior and DHHS to consult with Indian tribes regarding the feasibility of integrating and consolidating Federal law enforcement, public safety, substance abuse, and mental health programs designed to support tribal communities, similarly to the integrated job-training and related programs under Public Law No. 102-477. These agencies are required to identify applicable programs. A required joint report is to be submitted to Congress on the findings under this section no less than one year after enactment of this Act.

This section requires improving interagency cooperation, by requiring the Attorney General to evaluate and report to respective Congressional committees on DOJ programs regarding current requirements encouraging intergovernmental cooperation, the benefits and barriers to intergovernmental cooperation, and recommendations for incentivizing such cooperation between state, local, and tribal governments. This section also requires the Attorney General, and the Secretaries of Interior and DHHS to enter a Memorandum of Agreement to cooperate, confer, transfer funds and information on matters relating to detention of inmates and reducing recidivism and a separate Memorandum of Agreement to develop, share, and implement effective strategies to improve re-entry of Indian inmates into Indian communities. They are further required to submit a report to Congress not later than four years after enactment of this Act regarding implementation of these Memoranda of Agreement under this section.

Section 107. Data sharing with Indian tribes

This section requires the Attorney General to establish a Tribal Access Program to enhance the ability of tribal governments to access, enter, and obtain information from Federal criminal databases. It further requires the Attorney General, to the extent permitted by law, to share a report with an Indian tribe that is created from the analysis of information submitted by the Indian tribe to the Federal criminal information database. It also authorizes the Attorney General to use unobligated funds or certain other remaining funding balances for the Tribal Access Program.

The Attorney General is also required to ensure technical assistance and training is provided to Indian law enforcement so they can access the national crime databases. This provision transfers the responsibility from the BIA to the DOJ. The FBI is required to coordinate with the BIA to ensure Indian tribes have the appropriate credentials (an ORI identification number) to be able to input their data into the national crime databases.

This section also directs the Attorney General to consult with Indian tribes regarding the required Annual Declination Reports to improve data collection, the information reporting process, and information sharing.

Section 108. Judicial administration in Indian country

This section directs the Director of the BOP to maintain the pilot program established by the *Tribal Law and Order Act of 2010* allowing certain tribally-convicted persons to serve their time in Federal prisons. The pilot program would be extended for up to nine years after the date of enactment of this Act and may be extended for a prisoner whose underlying tribal sentence has not expired, but no extension shall exceed the maximum sentence time under the *Tribal Law and Order Act of 2010*.

This section also requires consultation with Indian tribes by the BOP, BIA, IHS, OJJDP, and the Substance Abuse and Mental Health Services Administration regarding Indian juvenile justice and incarceration.

Section 109. Federal notice

This section authorizes the appropriate United States Attorney's Office to give notice of the conviction, and other pertinent information, of an enrolled member of a Federally-recognized Indian tribe convicted in the respective Federal District court to the Indian tribe (or appropriate tribal justice official) of the tribal member.

Section 110. Detention facilities

This section amends 25 U.S.C. 2802 and 3613 to allow an Indian tribe with an *Indian Self-Determination and Education Assistance Act* contract or compact to use its available detention funding to provide for alternatives to detention as agreed upon with the Secretary of Interior, acting through the BIA Office of Justice Services.

This section also reauthorizes funds for the Secretary of the Interior and the Attorney General to construct and staff juvenile detention centers and for the Attorney General to carry out programs for incarceration on Indian lands.

Section 111. Reauthorization for tribal courts training

This section reauthorizes funds for Indian tribal justice technical and legal assistance training, technical assistance, and civil and criminal legal assistance grants from FY2020 to FY2024.

Section 112. Public defenders

This section requires, less than one year after enactment that the Director of the United States Courts shall collaborate and consult with Indian tribes to develop working relationships and communication with tribal leaders and their communities while providing technical assistance and training. It provides a Sense of Congress that the Director of the Administrative Office of the United States Courts and the Attorney General should work together to ensure districts that contain Indian Country have sufficient resources for adequate criminal defense representation for Indian Country defendants.

The tribal coordinator will communicate with tribal leaders and tribal communities and provide technical assistance and trainings

regarding criminal defense techniques and strategies, forensics, and reentry programs. The Sense of Congress is that, in evaluating the performance of tribal coordinators and as part of the funding formula, the Administrative Office of the United States Courts should take into consideration the multiple duties of the tribal coordinators. The Sense of Congress is also that the Director of Administrative Office of the United States Courts and the Attorney General ensures that Indian Country has sufficient resources for adequate representation.

Section 113. Offenses in Indian country: trespass on Indian land

This section establishes a new Federal offense for violating an exclusion order issued by a tribal court.

Section 114. Resources for public safety in Indian country; drug trafficking prevention

This section maintains the Shadow Wolves drug trafficking prevention program within the Bureau of Immigration and Customs Enforcement and authorizes the Commissioner of U.S. Customs and Border Protection to transfer funds to the Director of the BIA for road maintenance and repair under the Director's jurisdiction. This section also reauthorizes funds for international illegal narcotics trafficking eradication on certain Indian reservations from FY2020 to FY2024.

Section 115. Substance abuse prevention tribal action plans

This section amends the *Indian Alcohol and Substance Abuse and Prevention and Treatment Act of 1986* to add the Secretary of the Department of Agriculture and the Secretary of the Department of Housing and Urban Development to the current inter-departmental agencies that are required to enter the Memorandum of Agreement for substance abuse prevention and reauthorizes funds for the tribal action plans and training.

Section 116. Office of Justice Services spending report

This section includes an assessment of unmet staffing needs for health care, behavioral health, and tele-health needs at tribal jails to be added to the needs report for tribal and BIA justice agencies that is submitted to appropriate committees of Congress at each fiscal year.

Section 117. Trafficking victims protection

This section amends the *Trafficking Victims Protection Act* to require that the Secretary of DHHS and the Attorney General, in consultation with the Secretary of Labor submit to Congress a report of certain grants awarded under 22 U.S.C. 7105 that lists the total number of entities that directly serve tribal communities or are Indian tribal governments or tribal organizations. The report must also include the total number of health care providers that participated in training supported by the pilot program under 22 U.S.C. 7105 who are IHS employees.

Section 118. Reporting on Indian victims of trafficking

This section instructs the Directors of the OVW, the OVC, and the OJJDP Administrator to require each grantee to report on the

number of human trafficking victims served with grant funding, and whether the victims were members of an Indian tribe. This section provides that nothing in this section shall require an individual victim to report any personally identifiable information and the grantee shall not deny services to a victim for declining to provide such information. This section also requires the Attorney General to report annually to Congress on the data collected.

TITLE III—JUSTICE FOR INDIAN YOUTH

Section 201. Federal jurisdiction over Indian juveniles

This section amends 18 U.S.C. 5032 to allow the Attorney General to defer to tribal jurisdiction over an Indian juvenile before proceeding with the matter in Federal court. It is similar to the deferral to state courts in current law.

Section 202. Reauthorization of tribal youth programs

This section reauthorizes funds for summer youth programs for Bureau of Indian Education and tribal schools, emergency shelters for Indian youth from FY2020 to FY2024.

Section 203. Justice for Indian youth

This section amends the *Indian Law Enforcement Reform Act*. It directs the Secretaries of Interior and DHHS, Attorney General, and the OJJDP Administrator to:

- Coordinate to assist Indian tribes in addressing juvenile offenses through technical assistance, research, and information sharing on effective programs and practices;
- Consult with Indian tribes bi-annually on strengthening the government-to-government relationship, improving juvenile delinquency programs, improving services, improving coordination among Federal agencies to reduce juvenile offenses, delinquency, and recidivism, developing cultural programs as promising or evidence-based programs, and other matters for Indian youth;
- Facilitate the incorporation of tribal cultural practices into juvenile justice systems;
- Conduct certain research and evaluation related to Indian juveniles; and
- Develop a means for collecting data, a process for informing Indian tribes when one of their juvenile members comes into contact with a state or local juvenile justice system, and partnerships with Bureau of Indian Education schools.

This section requires the Attorney General and the OJJDP Administrator to issue a tribal consultation policy not later than one year after enactment of this Act. In addition, not later than three years after enactment of this Act, the OJJDP Administrator shall submit a report on the consultation and recommendations for implementing this section as well as the recommendations of the Council related to Indian youth. Not later than three years after enactment of this Act, the OJJDP Administrator shall implement the processes, improvements, and other activities under this section.

Section 204. Coordinating council on juvenile justice and delinquency prevention

This section adds the Director of the IHS and the Assistant Secretary for Indian Affairs to the Council.

Section 205. Grants for delinquency prevention programs

This section reauthorizes grants to support and enhance tribal juvenile delinquency prevention services and the ability of Indian tribes to respond to and care for juvenile offenders through FY2024.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 210, as calculated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 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. 210, the Tribal Law and Order Reauthorization and Amendments Act of 2019.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

Bill summary: S. 210 would amend the Tribal Law and Order Act of 2010 and the Indian Law Enforcement Reform Act. It would establish or reauthorize various programs and offices within the Bureau of Indian Affairs (BIA), the Department of Justice (DOJ), and the Judiciary concerning public safety in Indian communities.

Estimated Federal cost: The estimated budgetary effect of S. 210 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. 210

	By fiscal year, millions of dollars—						
	2019	2020	2021	2022	2023	2024	2019–2024
Indian Law Enforcement, Courts, and Detention Facilities:							
Authorization	0	152	150	150	150	150	752
Estimated Outlays	0	66	104	124	138	150	582
Prevention of Alcohol and Drug Abuse and Juvenile Delinquency:							
Authorization	0	58	58	58	58	58	290
Estimated Outlays	0	23	38	47	53	58	219
Other Programs:							
Estimated Authorization	40	28	29	28	29	29	143
Estimated Outlays	0	12	19	22	25	28	106

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 210—
Continued

	By fiscal year, millions of dollars—						2019– 2024
	2019	2020	2021	2022	2023	2024	
Total Changes:							
Estimated Authorization	0	238	237	236	237	237	1,185
Estimated Outlays	0	101	161	193	216	236	907

Basis of estimate: For this estimate, CBO assumes that S. 210 will be enacted late in fiscal year 2019 and that the necessary amounts will be appropriated for each fiscal year starting in 2020. Estimated outlays are based on historical spending patterns for similar programs.

S. 210 would specifically authorize the appropriation of about \$1 billion over the 2020–2024 period for BIA and DOJ to carry out the bill’s provisions. The Congress provided \$370 million for similar purposes in 2018.

In addition, using information from BIA, DOJ, and the Administrative Office of the U.S. Courts (AOUSC), CBO estimates that appropriations totaling \$143 million over the five-year period also would be necessary to implement additional provisions of the bill.

Indian law enforcement, courts, and detention facilities: CBO estimates that implementing the provisions of S. 210 that would authorize funding for Indian law enforcement, courts, and detention facilities would cost \$582 million over the 2020–2024 period and an additional \$170 million after 2024.

For each year through 2024, the bill would authorize the following annual appropriations:

- \$58 million for BIA to aid tribal justice systems;
- \$40 million for DOJ to make grants to Indian tribes to hire, train, and equip law enforcement officers;
- \$35 million for DOJ grants to Indian tribes for the construction and maintenance of detention facilities and tribal justice centers; and
- \$17 million to construct, renovate, and staff juvenile detention centers on Indian lands.

The bill also would authorize the appropriation of \$1.5 million in 2020 for BIA to establish standards for and train BIA law enforcement officials in the process of taking people into protective custody for mental health reasons.

Prevention of alcohol and drug abuse and juvenile delinquency: CBO estimates that implementing the provisions of S. 210 that concern programs to reduce alcohol and drug abuse and juvenile delinquency on tribal lands would cost \$219 million over the 2020–2024 period and an additional \$71 million after 2024.

For each year through 2024, the bill would authorize the following annual appropriations:

- \$25 million for DOJ to make grants for local and tribal delinquency prevention programs;
- \$17 million for BIA to construct, renovate, and staff emergency shelters for Indian youth who abuse alcohol or illegal substances;
- \$7 million for BIA to make grants to Indian tribes to create curricula aimed at preventing alcohol and drug abuse;

- \$5 million for BIA to implement summer youth programs to prevent substance abuse; and
- \$4 million for BIA to combat illegal narcotics trafficking on tribal land.

Other programs: The bill would authorize the appropriation of whatever amounts are necessary for the following programs. In addition, S. 210 would require the agencies to implement the provisions detailed below. CBO used information from the different agencies about the cost of similar activities, or the amount of recent appropriations, to estimate the costs of those provisions.

Grants for tribal courts training: S. 210 would reauthorize two DOJ programs that provide grants to improve tribal courts and to provide technical and legal assistance to tribes. In 2018, about \$19 million was allocated for those programs. CBO estimates that continuing those programs through 2024 would cost \$69 million over the 2020–2024 period.

Training related to substance abuse and illegal narcotics: S. 210 would reauthorize a program that provides training to tribal law enforcement about substance abuse and illegal narcotics. In 2018, about \$22 million was allocated for all Indian police and judicial training by BIA. CBO estimates that about \$2 million of that amount was used for training about substance abuse and illegal narcotics. Assuming that level of training continues, CBO estimates that implementing this provision would cost \$10 million over the 2020–2024 period.

Public Defenders: The bill would require offices of federal public defenders whose districts include tribal lands to appoint one assistant federal public defender to serve as a tribal liaison and to ensure that each district has adequate representation for tribal members. Using information from the AOUSC, CBO estimates this provision would require about 20 additional full-time employees and additional funding for travel, technology, and training. CBO estimates that implementing the provision would cost \$20 million over the 2020–2024 period.

Reports, Consultation, and Pilot Program: The bill would require agencies to report on various activities, consult with Indian tribes, and run a pilot program on background checks for applicants to law enforcement positions within BIA. In total, CBO estimates, implementing these provisions would cost \$7 million over the 2020–2024 period.

Uncertainty: Section 103 would require the Indian Health Service (IHS) to be responsible for the medical care and treatment of all Indians detained or incarcerated in a BIA or tribal detention or correctional center, without regard to where a person resides. According to BIA, IHS routinely provides a variety of medical services to incarcerated Indians. Confusion occasionally arises regarding whether a local IHS clinic is required to treat someone from outside the local tribal area, which can result in delays in providing care to a small number of individuals. CBO has concluded that this provision is intended to remove the confusion over IHS's responsibility to care for nonlocal inmates and would not require additional care to be provided. On that basis, CBO estimates that the provision would have no significant cost.

However, IHS believes that the provision could be interpreted to require it to provide significantly more care to inmates of BIA de-

tention centers than it does currently, and could require additional clinic hours and medical personnel. In that scenario, the provision could have higher costs than CBO estimates.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending and revenues. S. 210 would make it a federal crime to violate an order from a tribal court that excludes a person from tribal land because of certain previous criminal convictions or civil adjudications. Because those prosecuted and convicted under S. 210 could be subject to criminal fines, the federal government might collect additional amounts if the legislation is enacted. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent without further appropriation action. CBO expects that any additional revenues and subsequent direct spending would not be significant in any year because the legislation would probably affect only a small number of cases.

Increase in long-term direct spending and deficits: None.

Mandates: S. 210 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

However, the bill would provide several benefits to Indian tribes. S. 210 would authorize programs and grants to address tribal public safety, offender incarceration, alcohol and substance abuse, and treatment and prevention of juvenile delinquency. It would create tribal liaisons in offices of federal public defenders, and those liaisons would coordinate the cases of defendants who are accused of federal crimes on Indian land. The bill would direct DOJ to share information from criminal databases with Indian tribes, and it would require the Office of the U.S. Attorney to notify tribes when an enrolled member is convicted in a district court. The bill also would benefit tribes by extending a pilot program to allow offenders convicted in tribal courts to be held in Bureau of Prisons facilities. Any costs to tribal governments would result from complying with conditions of federal assistance.

Estimate prepared by Federal Costs: Mark Grabowicz (Department of Justice); Jon Sperl (Department of the Interior, Judiciary); Robert Stewart (Indian Health Service). Mandates: Rachel Austin.

Estimate reviewed by: Kim Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; Chad Chirico, Chief, Low-Income Health Programs and Prescription Drugs Cost Estimates Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 210.

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. 210 will have a minimal impact on regulatory or paperwork requirements.

CHANGES IN EXISTING LAW (CORDON RULE)

On February 6, 2019, the Committee on Indian Affairs unanimously approved a motion by Chairman Hoeven to waive the Cordon rule. 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.

