

S. 465 AND S. 2695

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED EIGHTEENTH CONGRESS
SECOND SESSION

—————
MAY 1, 2024
—————

Printed for the use of the Committee on Indian Affairs



U.S. GOVERNMENT PUBLISHING OFFICE

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S. 465 AND S. 2695

WEDNESDAY, MAY 1, 2024

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:57 p.m. in room 628, Dirksen Senate Office Building, Hon. Brian Schatz, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BRIAN SCHATZ, U.S. SENATOR FROM HAWAII

The CHAIRMAN. Good afternoon. Today's legislative hearing focuses on two important public safety bills, S. 465, Building Agency Data Gaps and Ensuring Safety, BADGES, for Native Communities Act, introduced by Senator Cortez Masto and Senator Hoeven, and S. 2695, Parity for Tribal Law Enforcement Act, introduced by Senators Cantwell and Mullin.

Each bill addresses key areas of need, addressing the missing and murdered indigenous people crisis, and improving tribal law enforcement officer recruitment and retention in Indian Country. We heard just how critical these needs are at our public safety listening session last month. Over 600 people listened in, and commenters overwhelmingly listed MMIP and law enforcement officer recruitment and retention challenges as among their top priorities.

S. 465 will help to address this crisis in a number of ways, primarily by increasing tribal access to the National Missing and Unidentified Persons System and improving systems for collecting and sharing criminal justice data in Indian Country.

This legislation would also help to address Indian Country's unmet need for tribal law enforcement offices by authorizing the BIA to conduct its own background checks and provide culturally appropriate mental health services to address officer burnout.

S. 2695 would address the challenges of tribal law enforcement officer recruitment and retention by authorizing officers acting under Tribe's 638 contract or compact to enforce Federal law within the tribe's jurisdiction and make them eligible for Federal benefits, including death and injury, retirement, and pension benefits.

I would like to extend my welcome to the testifiers today. Are there any opening statements from members of the Committee?

**STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Mr. Chairman, if I could just submit something for the record. I do want to express my thanks for Tulalip Police Chief Chris Sutter for being here. He has served the Tulalips since 2019, so 26 years. We are going to hear a lot about the challenges on the I-5 corridor.

I will submit the rest of my statement for the record. But clearly, Indian Country needs more help in law enforcement. Thank you. And I thank my colleague from Oklahoma for working with me on this very important legislation.

[The prepared statement of Senator Cantwell follows:]

PREPARED STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Thank you Chair Schatz and Vice Chair Murkowski for holding this important hearing.

I want to thank the witnesses for being here today, especially Tulalip Police Chief Chris Sutter.

Chief Sutter has served as the Tulalip Tribes Chief of Police since 2018 after serving as the Assistant Chief of Police for the City of Vancouver, Washington for 26 years.

Serving the Tulalip Tribe, which is located just north of Seattle along the I-5 corridor, Chief Sutter has extensive experience leading complex law enforcement operations and programs that address some of the toughest issues tribal communities face today.

Including the Murdered and Missing Indigenous Women and People epidemic and the Fentanyl crisis.

One of the biggest challenges he encounters is having enough Tribal law enforcement officers, investigators, and personnel to keep tribal and non-tribal members on the Tulalip reservation safe.

In recent years, the Tulalip Tribes have lost 50 percent of their law enforcement workforce.

Chief Sutter will tell you the reason why he cannot retain law enforcement personnel is because he cannot offer benefits comparable to local, state, and federal law enforcement agencies.

Even when the Tribe can offer competitive salaries and recruits a new trainee, often that recruit will receive law enforcement training at significant cost to the Tribe and then take that training to a neighboring law enforcement agency that can provide them long-term benefits.

What Chief Sutter is experiencing in his role as Police Chief of the Tulalip Tribes is being experienced by tribes all around the country—impacting their ability to respond to and prevent domestic violence, MMIWP cases, and drug related incidents.

The Colville Tribe, located in rural Northeast Washington state, has an average of only three tribal police officers on duty to patrol 2,300 square miles.

In one instance, a Colville Tribal patrol officer received a call on a domestic violence incident more than two and half hours away.

He was the only officer on duty. And by the time he arrived, the house was dark and no one answered the door. They never heard from the victim after follow-up attempts.

Tribes—large and small, urban and rural—in my state are on the frontlines battling the devastating fentanyl crisis.

According to the Centers for Disease Control and Prevention, Native Americans and Alaska Natives in Washington state die of opioid overdoses at five times our state average.

Many of these tribes also do not have the law enforcement capacity needed to both respond to emergency situations and tackle intricate crime webs that are supplying the fentanyl to Tribal members.

With BIA public safety programs funded hundreds of millions of dollars below what tribes need, tribal leaders need other ways to bolster their public safety programs and get more law enforcement personnel serving their communities.

This is why Senator Mullin and I introduced S, 2695, the Parity for Tribal Law Enforcement Act.

This bill will help tribes recruit and retain law enforcement officers by allowing tribes that contract or compact for law enforcement services to offer Federal death and injury, retirement and pension benefits.

This means that tribes can compete with local, state and federal law enforcement agencies and keep law enforcement recruits to serve their communities and make meaningful impacts on some of the incredible public safety challenges Indian Country faces today.

Thank you, Chief Sutter, for traveling to Washington, D.C. to testify on how the Parity for Tribal Law Enforcement Act is critical to improving public safety.

And thank you President Macarro and Assistant Secretary Newland for your support of this important legislation.

The CHAIRMAN. Senator Mullin?

**STATEMENT OF HON. MARKWAYNE MULLIN,
U.S. SENATOR FROM OKLAHOMA**

Senator MULLIN. I would like to thank my colleague as well. Working together is something that brings us all together with Indian Country.

Indian Country has its own challenges, and obviously sovereignty is a big issue. There is such a tremendous amount of crime that is taking place right now. We are asking our tribal law enforcement to do the Federal Government's job.

If we are going to do that, and we are going to cross-deputize them or whatever we are going to do with them, then we should at least give them the opportunity to have the same benefits. If they are going to do the job, they should have the same benefits.

That is what we are talking about here with the Parity Act. So I don't think it is controversial. While we are waiting on the Administration to, as I would say, get their act together, as we are asking the tribal law enforcement to do their job, let's just say, hey, listen, if you are going to do the job, let's get the same benefits as a Federal officer.

So I don't know if we are going to get, we shouldn't get any pushback on this. We look forward to hearing from our witnesses on this, obviously. But I think this is a commonsense piece of legislation that has brought Republicans and Democrats alike together.

So with that, I yield back.

The CHAIRMAN. Thank you, Senator Mullin.

Senator Cortez Masto.

**STATEMENT OF HON. CATHERINE CORTEZ MASTO,
U.S. SENATOR FROM NEVADA**

Senator CORTEZ MASTO. Thank you, Mr. Chair. I also want to thank you and the Ranking Member for holding this hearing on our bills today. One of them is the BADGES for Native American Communities Act that Senator Hoeven and I have introduced. It is one we have seen before.

This is important for so many within our Native American communities when it comes to supporting our law enforcement officers there who are severely hindered in their ability to address the crisis of not just MMIW, but drug trafficking, other violent crimes that are devastating our tribes.

This legislation, this bipartisan legislation, would support BIA law enforcement recruitment and retention, while also improving our response to the missing persons cases and increasing resources

for tribal law enforcement. I can't stress enough; we have heard so often how BIA is understaffed and under resourced. We need to provide these essential resources.

So I look forward to the hearing on the BADGES Act as well. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Any other opening remarks? If not, we will welcome our witnesses.

First, we have the Honorable Bryan Newland, who spends a lot of time with us, and we appreciate it. He is the Assistant Secretary for Indian Affairs at the Department of Interior. We are also pleased to welcome the Honorable Mark Macarro, President of the National Congress of American Indians. We really appreciate your work for your own tribe and for Indian Country overall. And Mr. Chris Sutter, welcome, Chief of Police of Tulalip Tribal Police Department in Tulalip, Washington.

I want to remind our witnesses that your full written testimony will be made part of the official hearing record, which is our polite way of saying, please speak for five minutes or less.

Assistant Secretary Newland, please proceed with your testimony.

STATEMENT OF HON. BRYAN NEWLAND, ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. NEWLAND. Thank you, Mr. Chairman. I got the memo on the time, too.

Good afternoon, Chairman and Vice Chair Murkowski, members of the Committee. I want to thank you for the opportunity to present the Department of Interior's views on this legislation today, S. 465, and S. 2695. The Department supports S. 2695, and we support the goals of S. 465, the Bridging Agency Data Gaps and Ensuring Safety for Native Communities Act. We have to defer to the Department of Justice on provisions in that bill pertaining to its programs.

S. 465 and S. 2695 align with important Administration priorities to improve public safety and justice in Indian Country. The United States has a trust relationship and a trust responsibility to each of the 574 federally recognized tribes, and this relationship charges the United States with the highest obligation to protect the physical safety and wellbeing of Indian tribes as well as Indian and Alaska Native people.

The Bureau of Indian Affairs plays a crucial role in meeting this obligation. We support increased investment in tribal justice systems, and especially for tribal law enforcement officers.

S. 465 amends the annual reporting requirement in the Indian Law Enforcement Reform Act to include the staffing needs for criminal investigators, medical examiners, coroners, and forensic investigators. It also requires adding the infrastructure and capital needs for tribal police and court facilities, such as evidence storage and processing, to the required data for the annual report.

There is a funding and staffing gap that must be addressed to guarantee that tribal justice systems can fully serve their communities. Adding data on the need for criminal investigators, medical

examiners, coroners and forensic investigators will demonstrate how important these positions are to tribes.

S. 465 would also establish a five-year demonstration program that allows the BIA Office of Justice Services to speed up background investigations and security clearance processes for law enforcement officers. Currently, our Office of Justice Services assists tribes in conducting background investigations for tribal law enforcement positions. We welcome the demonstration program, and strongly support this provision.

Section 204 of that bill establishes counseling resources to maintain the mental health and wellness of BIA and tribal law enforcement officers. Tribal law enforcement officers often respond to dangerous situations that can cause traumatic stress. These much-needed resources would help ensure access to important mental health resources for job-related stress.

S. 2695 amends the Indian Law Enforcement Reform Act to allow tribal law enforcement officers acting under the tribe's contract or compact to enforce Federal law within their reservation and jurisdiction. To exercise this authority, tribal officers must complete training and background requirements that are equivalent to employees of BIA law enforcement.

This bill also makes those tribal law enforcement officers eligible for Federal law enforcement benefits, including retirement, pension, death and injury benefits. The Department believes that extending these Federal benefits to tribal law enforcement officers will help tribes recruit and retain officers which will lead to improved public safety.

Secretary Haaland has made improving public safety in Indian Country and addressing the missing and murdered indigenous peoples crisis a top priority for the Department. The Department supports the goals of these bills, and we look forward to working with the Committee and Congress to continue to address public safety needs in Indian Country.

I want to thank you again, Mr. Chairman and members of the Committee, for the opportunity to appear today. I look forward to answering any questions you may have.

[The prepared statement of Mr. Newland follows:]

PREPARED STATEMENT OF HON. BRYAN NEWLAND, ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good afternoon, Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony on S. 465 and S. 2695.

S. 465, Bridging Agency Data Gaps and Ensuring Safety (BADGES) for Native Communities Act

Section 102 would amend the annual reporting requirements concerning unmet BIA and Tribal staffing needs under the Indian Law Enforcement Reform Act, as amended by the Tribal Law and Order Act (25 U.S.C. §2802(c)(16)(C)), to include criminal investigators, medical examiners, coroners, and forensic investigators. Section 102 would also add infrastructure and capital needs for Tribal police and court facilities, including evidence storage and processing, to the required data for the annual report.

Section 201 would establish a five-year demonstration program that allows the Secretary, in coordination with the Director of BIA, to conduct or adjudicate personnel background investigations and security clearances for BIA law enforcement officers (LEOs). The BIA OJS currently assists Indian Tribes in conducting back-

ground investigations for Tribal LEOs and welcomes the demonstration program as it would assist BIA in eliminating one of the biggest obstacles to recruitment—the lengthy background investigation process—and result in the expedited hiring of qualified LEOs. The Department strongly supports this provision.

Section 204, titled “BIA and Tribal Law Enforcement Officer Counseling Resources Interdepartmental Coordination,” would require the Secretary of Health and Human Services, the Attorney General, and the Director of BIA OJS to ensure that Federal training materials and mental health wellness programs are available for Indian Country LEOs. These much-needed resources would help ensure that BIA and Tribal LEOs have access to the mental health resources they need when they experience occupational stress.

The Department supports the goals of S. 465 as they align with important Administration priorities of improving public safety and justice in Indian Country. The Department defers to the Department of Justice on provisions pertaining to its programs.

S. 2695, Parity for Tribal Law Enforcement Act

S. 2695 would amend the Indian Law Enforcement Reform Act to provide that Tribal LEOs acting under a Tribe’s contract or compact under the Indian Self Determination and Education Assistance Act would have the authority to enforce Federal law within the Tribe’s jurisdiction provided they complete training and background requirements that are equivalent to the requirements that apply to employees of the BIA OJS. Additionally, under the bill, the Tribe would have to have adopted policies and procedures that meet or exceed those of the BIA OJS for the same compacted or contracted program, service, function, or activity.

Importantly, the bill would also provide that Tribal LEOs acting under a contract or compact are eligible for benefits applicable to Federal LEOs, including Federal death and injury, retirement, and pension benefits. Tribes often struggle to recruit and retain LEOs across Indian Country, particularly in remote areas. The provision of Federal benefits to Tribal LEOs will help immensely with Tribes’ ability to recruit and retain LEOs and provide for the overall safety of their communities.

Under the leadership of Secretary Haaland, improving public safety in Indian Country and addressing the Missing and Murdered Indigenous Peoples crisis is a top priority for the Department. The Department supports S. 2695 as a means to strengthen public safety and justice in Indian Country.

Conclusion

Chairman Schatz, Vice Chairman Murkowski, and members of the Committee, thank you for the opportunity to provide the Department’s views.

The CHAIRMAN. Thank you very much.
Mr. Macarro, please proceed.

**STATEMENT OF HON. MARK MACARRO, PRESIDENT,
NATIONAL CONGRESS OF AMERICAN INDIANS**

Mr. MACARRO. [Greeting in Native tongue.] Good afternoon, Chair Schatz, Vice Chair Murkowski, and all the members of the Senate Committee on Indian Affairs. I am honored to be here today.

My name is Mark Macarro. I am the Chairman of the Pechanga Band of Indians in California, and I also have the honor of serving as President of the National Congress of American Indians.

On behalf of NCAI, I want to thank you for this opportunity to provide testimony on Senate Bill 465, the BADGES for Native Communities Act, and Senate Bill 2695, the Parity for Tribal Law Enforcement Act, two bills that address important public safety concerns in our communities.

As I testify before you today, during the National Murdered and Missing Indigenous Women and Relatives Week of Action, I can think of no better action on behalf of our murdered and missing relatives than to support the passage of these two bills.

There are crisis-level unmet funding and resource needs across Indian Country in law enforcement, tribal courts, victim services, and health care, including access to behavioral health services, just to name a few. These exist in part because tribal nation governments are the only sovereigns in this Country that cannot fully prosecute and imprison all the criminals jeopardizing safety in our own territories.

In addition, there is a massive shortage of resources for public safety in Native communities. In February of this year, the BIA Office of Justice Programs released a report that noted public safety in Indian Country was only being funded at 13 percent of the quantifiable need. The combined results of constraints on our sovereignty, coupled with massive needs in funding and resources has produced communities which are disproportionately affected by violence.

The American Indian and Alaska Native rates of murder, rape, and violent crime are all higher than the national averages for other groups. Innovate solutions are needed to address these ongoing public safety issues. I believe that the two pieces of legislation that are the focus of this hearing have a real chance to positively impact tribal nations.

The Parity for Tribal Law Enforcement Act offers an opportunity to help bridge the law enforcement gap in tribal communities. If passed, the law would impact tribal nations that have contracts or compacts pursuant to the Indian Self-Determination and Education Assistance Act, allowing for tribal control of any or all law enforcement functions.

For tribal nations with contracts or compacts, tribal police who meet certain qualifications would be able to enforce Federal law within the tribal nation's jurisdiction. Such a possibility could significantly increase the effectiveness of law enforcement and safety in our communities.

Also of critical importance, the statute would deem a tribal law enforcement officer as a Federal law enforcement officer for the purposes of certain Federal laws, including for injury and death, retirement and pension benefits if they are acting under such an authorized compact or contract.

Now, turning our attention to S. 465, the BADGES for Native Communities Act, it takes several much-needed actions to improve data collection and dissemination regarding public safety in Native communities. According to the National Crime Information Center, in 2016 there were 5,712 reports of missing American Indian and Alaska Native women and girls, but only 116 cases were logged within the National Missing and Unidentified Persons System.

Under S. 465, a tribal facilitator would be appointed to coordinate missing and unidentified persons cases with tribal nations and provide training and technical assistance to tribal nations, tribal organizations, victim service advocates, coroners, and tribal justice officials on how to report and utilize the system.

Until the National Missing and Unidentified Persons System adequately accounts for American Indian and Alaska Native victims, we will never know the scope of the problem or how to fix it.

In sum, I want to again express NCAI's support for passage of both S. 465 and S. 2695. If passed, these two bills will be an important step in addressing systemic inequalities that permeate public safety throughout our communities. They will help immeasurably with the United States Government's trust and treaty obligations to tribal nations in the United States.

I want to thank everybody on this Committee for the invitation to speak here today. I look forward to answering any questions you may have.

[Phrase in Native tongue.]

[The prepared statement of Mr. Macarro follows:]

PREPARED STATEMENT OF HON. MARK MACARRO, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

I. Introduction

Good afternoon, Chair Schatz, Vice Chair Murkowski, and to all the members of the Senate Committee on Indian Affairs.

It is an honor to be with you today. My name is Mark Macarro. I am the Chairman of the Pechanga Band of Indians and also have the honor to serve as the President of the National Congress of American Indians. NCAI, as you may be aware, was founded 80 years ago and is the oldest, largest and most representative American Indian and Alaska Native organization serving the broad interests of tribal governments and their citizens. On behalf of NCAI, I want to thank you for this opportunity to provide testimony on two bills that address important public safety concerns in our communities.

For the reasons I will discuss during my allotted time today, NCAI is in support of Senate Bill 465, *the BADGES for Native Communities Act*, and NCAI is also in support of Senate Bill 2695, *the Parity for Tribal Law Enforcement Act*. Because both pieces of legislation address significant public safety issues in a manner that empowers Tribal Nations to work with the federal government to improve public safety outcomes, NCAI urges Congress to pass each bill and for the President to sign them into law.

II. Background

In the first major speech I gave as NCAI's President this past February, I highlighted how we must give serious attention to the public safety needs of our communities. There are unmet needs across Indian Country in law enforcement, tribal courts, victim services, and healthcare—including access to behavioral health services—just to name a few. While there are many reasons for the current state of public safety in tribal communities, we must acknowledge that the lack of respect and parity given to tribal sovereignty is a starting point. At the core of being sovereign is the ability of the sovereign to enact, enforce, and interpret its own laws and be governed by them. And while the United States publicly states a continued recognition of tribal sovereignty, the fact remains that we, as Tribal Nation governments, are the only sovereigns in this country that cannot fully prosecute and imprison all of the criminals jeopardizing safety in our own territories.

In addition, we also know that there is a massive shortage of resources for Native communities when it comes to public safety. In February of this year, the Bureau of Indian Affairs Office of Justice Programs released its "Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country". Looking at Fiscal Year (FY) 2021, data was analyzed with respect to law enforcement (including P.L. 280 States), detention/correction programs, and tribal courts. Based on the data collected, the Office of Justice Programs noted that while approximately \$446 million was spent on public safety in Indian Country, there was still an estimated unmet need of approximately \$3 billion. To put this another way, the Bureau of Indian Affairs' public safety and justice funding for Indian country was less than 13 percent of the total actual need.¹

The combined results of constraints on our sovereignty coupled with massive needs in funding and resources, has produced communities which are disproportion-

¹Bureau of Indian Affairs, Office of Justice Services. *Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country, 2021*. (Washington, DC, 2024). https://www.bia.gov/sites/default/files/media_document/2021_tloa_report_final_508_compliant.pdf

ately affected by violence. The American Indian and Alaska Native (AI/AN) rates of murder, rape, and violent crime are all higher than the national averages, and AI/AN women are the most frequent victims. For example, a 2016 National Institute of Justice study found that 84 percent of American Indian and Alaska Native women have experienced violence in their lifetime, and over half have experienced sexual violence.² Similarly, Native Americans experience much higher rates of substance abuse compared to other racial and ethnic groups, and with the ongoing fentanyl and opioid crisis, our tribal governments are struggling to protect our own people.

Unfortunately, there is no shortage of anecdotes or statistics backing up the claim that public safety in Indian Country needs immediate meaningful attention. Over the past decade alone, NCAI has developed more than two dozen consensus-based resolutions focusing on public safety issues including violence against women, missing and murdered Indigenous people, law enforcement, and criminal jurisdiction, among others.³

In response to the collective voices of tribal leaders and advocates for Indian Country, a real dialogue is emerging about what innovative solutions exist to these ongoing public safety issues. Today, I am pleased to say that the two pieces of legislation that are the focus of this hearing have a real chance to positively impact Tribal Nations and to make them safer places for everyone.

III. NCAI Supports S. 2695—Parity for Tribal Law Enforcement Act

The Parity for Tribal Law Enforcement Act is an innovative solution to the ongoing law enforcement needs of Indian Country. As this Committee is aware, the ability of tribal law enforcement officers to arrest and enforce non-tribal laws and/or to enforce certain types of criminal laws against non-Native persons is limited. The consequences of the criminal jurisdictional maze that exists in Indian Country is well-documented and often results in criminals escaping arrest, detention, and prosecution.

The Parity for Tribal Law Enforcement Act offers an opportunity to help fill a portion of the law enforcement gap in tribal communities. If passed, the law would impact Tribal Nations that have contracts or compacts pursuant to the Indian Self-Determination and Education Assistance Act allowing for tribal control of any or all law enforcement functions. For Tribal Nations with such contracts or compacts, tribal police—who meet certain qualifications—would be able to enforce federal law within the Tribal Nation’s jurisdiction. Such a possibility has the potential to significantly impact the effectiveness of law enforcement and the safety of our communities.

Also of critical importance, the statute would deem a tribal law enforcement officer who is acting under an authorized contract or compact as a federal law enforcement officer for the purposes of certain federal laws, including for injury and death, retirement, and pension benefits.

In 2022, NCAI passed a resolution entitled *Supporting Federal Pension and Retirement Benefits to Tribal Law Enforcement Officers*, which noted that even “Tribal Nations that are able to pay competitive tribal law enforcement officer salaries still often struggle with recruitment and retention because tribal law enforcement officers do not have access to federal pension and retirement benefits and, in most cases, state pension and retirement benefits.”⁴ And while more will be needed in the long-term to ensure that well-qualified officers are policing our communities, this provision is a meaningful step forward.

Finally, it is worth noting that the S. 2695 has clear criteria that must be met in order for an officer to be provided authority to enforce federal laws. Specifically, the legislation puts into place training requirements, the need for a background check, and certification criteria that will be developed by the Secretary of the Interior. The requirement that the certification criteria be developed after government-to-government consultation with Tribal Nations and input from tribal law enforcement agencies ensures that meaningful safeguards will be developed that can be effectively implemented throughout Indian Country.

²US Department of Justice, National Institute of Justice. *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey*, by A.B. Rosay. (Washington, DC, 2016) <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf>

³“Resolutions Related to VAWA/MMIW,” The National Congress of American Indians, accessed April 15, 2024. <https://www.ncai.org/section/vawa/advocacy/resolutions-related-to-vawa-mmiiw>

⁴NCAI Resolution #ANC-22-032, *Supporting Federal Pension and Retirement Benefits to Tribal Law Enforcement Officers* (available at <https://ncai.assetbank-server.com/assetbank-ncai/action/viewAsset?id=1965>).

While no single piece of legislation will change public safety in our communities overnight, the Parity for Tribal Law Enforcement Act has the potential to produce real improvements. As such, NCAI supports the goals and policies of the Parity for Tribal Law Enforcement Act and urges this Committee and the Congress to pass it into law.

IV. NCAI Supports S. 465—BADGES for Native Communities Act

Turning our attention to S. 465, the BADGES for Native Communities Act takes several much-needed actions to improve data collection and dissemination regarding public safety in Native communities.

According to the National Crime Information Center, in 2016 there were 5,712 reports of missing AI/AN women and girls, but only 116 cases were logged within the National Missing and Unidentified Persons System.⁵ Under S. 465, a tribal facilitator would be appointed to coordinate missing and unidentified persons cases with Tribal Nations, and provide training and technical assistance to Tribal Nations, tribal organizations, victim services advocates, coroners, and tribal justice officials on how to report and utilize this system. Until the National Missing and Unidentified Persons System adequately accounts for American Indian and Alaska Native victims, we will never know the scope of the problem or how to fix it.

The tribal facilitator would also help with unidentified and unclaimed remains cases of interest to Tribal Nations, to help identify deceased and return them to their tribal homelands so they may be buried with their ancestors. In many reported incidents, the pain of losing a loved one was exacerbated by improper or culturally insensitive treatment of the case or remains. For example, in the case of Kaysera Stops Pretty Places, the family did not consent to the coroner's decision to cremate her body.⁶ While preventing the occurrence of MMIW should be the primary goal, further steps must be taken to ensure that when crimes occur, both families and the victim are supported in a culturally appropriate way. The tribal facilitator provided for in the BADGES Act would likely help reduce culturally insensitive incidents like the one I've just mentioned.

This legislation, if passed, would result in the collection of more data that could be used to determine future funding and areas for future legislative improvement. By tracking how many Department of Justice employees work on issues related to Indian Country, how many hours are worked, and the unmet needs in staffing, repair of correctional facilities, infrastructure and capital, and technology, elected leaders—both of Tribal Nations and in Congress—will better understand what policy actions can be taken in the future to further improve public safety in Native communities.

In consultations, NCAI resolutions, and the recently released Not Invisible Act Commission Report, tribal leaders and stakeholders have repeatedly raised concerns about the difficulty to recruit, train, and retain tribal law enforcement.⁷ One of the most formidable challenges in keeping tribal communities safe is building adequate law enforcement systems. Without these systems, Tribal Nations cannot fully exercise the Special Tribal Criminal Jurisdiction (STCJ) provisions of the Violence Against Women Act (VAWA). One of the barriers to the development of effective law enforcement agencies is the lack of support for the mental and emotional health of officers. The BADGES Act would help to address this problem by providing culturally appropriate mental health and wellness training to BIA and tribal law enforcement officers, thus leading to greater officer retention.

In sum, NCAI supports the goals and policies of the BADGES for Native Communities Act and urges this Committee and the Congress to pass it into law.

V. Conclusion

I want to thank everyone on this Committee, again, for today's hearing. And I want to thank you for the invitation to speak here today. On behalf of NCAI, I want to again express our support for the passage of both S. 465 and S. 2695. If passed, these two bills will be an important step in addressing systemic inequalities that permeate public safety throughout our communities, and they will help fulfill the United States' government's trust and treaty obligations to Tribal Nations. Thank you.

⁵ "Missing and Murdered Indigenous People Crisis," US Department of the Interior, accessed April 15, 2024. <https://www.bia.gov/service/mmu/missing-and-murdered-indigenous-people-crisis>

⁶ Segura, C. *MMIP-Kaysera Stops Pretty Places*. (2023, September 1). Cahuilla Consortium. <https://www.cahuillaconsortium.org/blog/mmip-kaysera-stops-pretty-places>

⁷ US Department of the Interior, Not Invisible Act Commission. *Not One More: Findings & Recommendations of the Not Invisible Act Commission*. (Washington, DC, 2023) https://www.justice.gov/d9/2023-11/34%20NIAC%20Final%20Report_version%2011.1.23_FINAL.pdf

Senator CORTEZ MASTO. [Presiding.] Thank you.

As you can see, we are in the middle of votes, so Senators will be coming and going.

Chief Sutter, please.

STATEMENT OF CHRIS SUTTER, CHIEF OF POLICE, TULALIP TRIBES

Mr. SUTTER. Good afternoon, Chairman Schatz, Vice Chair Murkowski, and members of the Committee. My name is Chris Sutter, and I am the Chief of Police for the Tulalip Tribes.

I am pleased to testify today on behalf of the Affiliated Tribes of Northwest Indians in support of S. 2695, the Parity for Tribal Law Enforcement Act. The Parity Act would allow tribal officers to participate in the Federal retirement and benefits programs that Federal officers currently enjoy. This would provide a significant and immediate positive recruitment and retention impact on ATNI member tribes and Indian tribes nationally.

For years, tribes have recruited and trained new officers only to see them leave for law enforcement positions with State and county and municipal police departments that offer more attractive benefits. Indian tribes face unique challenges providing law enforcement services to their tribal communities compared to non-Indian law enforcement departments.

In recent years, Tulalip has lost 50 percent of our officer workforce due to recruitment by other local law enforcement agencies, putting extreme strain on our operations. When I ask my fellow officers why they are leaving, 90 percent of the time the answer is, for a retirement and pension plan.

This is not a unique pattern to Tulalip. I serve on the International Association of Chiefs of Police, Indian Country Section Committee. At a recent meeting, the committee identified recruitment, hiring, and retention of officers as one of our biggest challenges that impacts the tribes' ability to address our law enforcement needs.

There are many negative consequences when we lose officers to other jurisdictions. One of the consequences is financial. When tribes hire new officers, they will complete the BIA Indian Police Academy, and possibly other State law enforcement academies, at a significant cost. Best practices usually require approximately one year on the job before they are able to respond to routine calls on their own.

The Tulalip Tribal Police Department invests more than \$130,000 for training and salaries for new hires in their first year. When they leave, we have to pay these costs again, and it takes months to find a qualified candidate, as we have to compete with local jurisdictions for the same candidates.

Other consequences are the failure to maintain community relations. There is often a deep level of mistrust between law enforcement and tribal members who live on Indian reservations. In the past, calling a non-tribal police department for emergency assistance often led to revictimization if there was any response at all.

We simply cannot be effective in carrying out our duties when we don't know the community and the community doesn't know us.

Also, when officers leave their jobs for neighboring jurisdictions, it negatively impacts the tribe's ability to provide specialty policing services and carry out complex investigations. The fentanyl epidemic has become one of the most critical issues in tribal communities, and investigating and preparing cases that the U.S. Attorney's office will prosecute requires experienced personnel.

MMIP and Violence Against Women Act cases also require experienced officers and detectives who have established trust and rapport with the tribal communities that they serve. Again, officer turnover impairs a tribe's ability to address these and other crimes that require experienced personnel.

We need this legislation passed to increase our ability to retain trained and skilled police officers which will help us provide public safety for both tribal and non-tribal persons in our community. Tribal police officers are putting their lives on the line every day to protect their tribal communities.

These duties often include apprehending armed drug traffickers and other violent criminals and performing the public safety work of the Federal Government. Tribal officers currently perform these duties without the same benefits that Federal officers received. The Parity Act would change this and put tribal officers on the same benefit level as Federal officers.

ATNI urges the Committee to take whatever steps are necessary to ensure its enactment into law as soon as possible. We look forward to continuing to work with the Committee on this important national issue.

I would be happy to answer any questions the Committee may have.

[The prepared statement of Mr. Sutter follows:]

PREPARED STATEMENT OF CHRIS SUTTER, CHIEF OF POLICE, TULALIP TRIBES

Good afternoon, Chairman Schatz, Vice-Chair Murkowski, and members of the Committee. My name is Chris Sutter, and I am the Chief of Police for the Tulalip Tribes. I am pleased to testify today on behalf of the Affiliated Tribes of Northwest Indians (ATNI) in support of S. 2695, the "Parity for Tribal Law Enforcement Act" (the "Parity Act"). This bill will provide Indian tribes with a critical tool to address recruitment and retention challenges for law enforcement officers, and ATNI urges the Committee to pass it quickly.

Founded in 1953, ATNI is a non-profit organization that represents 57 tribal governments from Washington, Oregon, Idaho, southeast Alaska, northern California, and western Montana.

The Tulalip Tribes is a member of ATNI and is located on a 22,000-acre Reservation bordering the Interstate 5 corridor, 35 miles north of Seattle. Forty percent of the Tulalip reservation is in non-Indian fee status due to the history of allotments, and more than 10,000 non-Indian residents live on the reservation.

ATNI member tribes were directly involved in developing the bill with Congressman Dan Newhouse (R-WA), who introduced the House version of the bill together with Congressman Derek Kilmer (D-WA). In February 2022, ATNI passed the first tribal organization resolution supporting the bill, which the National Congress of American Indians adopted at its 2022 mid-year convention. ATNI is grateful to Senators Maria Cantwell and Markwayne Mullin for introducing the legislation in the Senate and for the Committee for holding this hearing.

ATNI strongly supports the Parity Act because it would allow tribal law enforcement officers to participate in the federal retirement and benefits programs that federal law enforcement officers currently enjoy. This would provide a significant positive recruitment and retention impact for ATNI member tribes and Indian tribes nationally, that for years have recruited and trained officers at significant expense only to see them leave for law enforcement positions with state and county police departments that offer more attractive benefits.

Recruitment and Retention Challenges and Consequences

Indian tribes face unique challenges providing law enforcement services to their tribal communities. Some tribes, like the Tulalip Tribes, provide law enforcement services for thousands of visitors, both Indian and non-Indian, that enter their tribal lands each day. Other ATNI member tribes are in rural areas, like the Colville Tribes, which has an average of only three tribal police officers on duty to patrol the nearly 2,300 square mile Colville Reservation in eastern Washington.

What nearly all ATNI tribes share in common, however, is the difficulty in recruiting and retaining law enforcement officers. While some ATNI member tribes, like the Tulalip and Chehalis Tribes, can offer salaries that are commensurate with our neighboring jurisdictions, we simply cannot compete with the benefits that those jurisdictions offer. Because federal appropriations for tribal law enforcement programs address only a fraction of the actual need, other tribes struggle to provide competitive wages and must use whatever tribal dollars they can afford to compete to retain the tribal officers that they have.

Because of this, there is an ongoing pattern in Indian country where tribes recruit and train officers only to see them leave for jobs with neighboring jurisdictions that offer more attractive benefits. In recent years, the Tulalip Tribes has lost 50 percent of its officer workforce due to recruitment by other local law enforcement agencies, putting extreme strain on its operations. This pattern is not unique to Tulalip, and results in ongoing negative consequences for all tribal law enforcement agencies.

One of the consequences is financial. When tribes hire new officers, the officers must complete the Bureau of Indian Affairs' (BIA) law enforcement academy, or state law enforcement academies, at a significant financial cost. For tribes in Washington state that may also enforce state laws, the officer must also complete an additional state equivalency academy. To complete the academies and obtain the requisite training to adhere to best practices, new hires usually require approximately one year on the job before they are able to respond to routine calls on their own. The Tulalip Tribal Police Department invests more than \$130,000 for training and salaries for new hires in their first year. Most tribes can quantify these costs and they may be higher or lower depending on the geographic location of the tribe. When these officers leave, tribes must pay these costs again should they be able to find suitable replacements.

Another consequence of tribal officers leaving for neighboring jurisdictions is failure to maintain continuity and community relations. For tribes, it is critical that officers know the community and that the community knows them. There is often a deep level of mistrust between tribal members who live near non-Indian jurisdictions where, in the past, calling a non-tribal police department for emergency assistance often led to revictimization, if there was a response at all. Most tribes would agree that tribal officers are most effective in carrying out their duties when they are known to, and familiar with, the people that they serve. It can take years to build the type of trust necessary to overcome past law enforcement trauma. This obviously cannot occur if there is a high rate of turnover for tribal officers.

Finally, when officers leave for jobs in neighboring jurisdictions, it negatively impacts tribes' ability to provide specialty policing services and carry out complex investigations, which in most cases are based on intimate knowledge on the officers' part of the community and its residents. The fentanyl epidemic has become one of the most critical issues in tribal communities and investigating and preparing cases that U.S. Attorneys' offices will prosecute requires experienced personnel. Missing and Murdered Indigenous People and Violence Against Women Act cases similarly require experienced officers and detectives who have established trust and rapport with the tribal communities that they serve. Again, officer turnover significantly impairs tribes' abilities to address these and other crimes that require experienced personnel.

The Parity Act Would Provide a Critical Tool to Retain Officers

As introduced, most of the text of the Parity Act was derived from section 104 of the "Tribal Law and Order Reauthorization and Amendments Act," which this Committee favorably reported in both the 115th and 116th Congresses.

Most, if not all, Indian tribes in the Pacific Northwest have contracted the law enforcement function from the BIA under the Indian Self-Determination and Education Assistance Act (ISDEAA). BIA data indicates that there are 234 tribal law enforcement programs nationally and that more than 90 percent of those programs have been contracted by the respective tribes under ISDEAA.

When tribes contract or compact law enforcement under ISDEAA, the law enforcement officers are tribal, not federal, employees. In contrast, for those relatively small number of tribes for which the BIA provides direct law enforcement services, those officers are federal employees and receive federal pension and retirement ben-

efits by default. In contrast, tribal law enforcement officers in most states enforce the same laws and have the same duties as federal officers but do not receive federal benefits.

As introduced, the Parity Act would allow tribal law enforcement officers employed by tribal governments under ISDEAA instruments to be treated as federal law enforcement officers under certain provisions of the U.S. Code, including federal law enforcement officer benefits programs in chapters 81 and 84 of title 5. It would also allow tribal officers to be considered federal law enforcement officers for purposes of enforcing federal criminal laws without being required to obtain Special Law Enforcement Commissions provided they meet certain training, background investigation, and other requirements, and are certified to enforce federal laws by the BIA.

The Parity Act is intended as an opt-in for Indian tribes. Tribal officers have varied backgrounds and years of service, often in other state or local jurisdictions or with the federal government. A small number of states have, under state law, allowed tribal officers to participate in state law enforcement retirement systems. Arizona is one such state. An officer that has several years of service as a law enforcement officer in a non-Indian jurisdiction in one of these states before working as a tribal officer in the same state may wish to keep participating in the state retirement program.

By providing tribal officers with access to federal law enforcement benefits, the Parity Act would also open the door for tribes to attract law enforcement officers that may be employed by the federal government but may wish to work for an Indian tribe while continuing to accrue federal benefits. It would also make working for Indian tribes an option for those federal law enforcement officers that have reached the federal mandatory retirement age of 57 but desire to continue working as a law enforcement officer for a few more years. In both cases, the federal law enforcement officers could work for tribal police departments without losing their retirement benefits or having to start anew in a different retirement program. This would equally apply to individuals who are leaving the U.S. military, which several ATNI member tribes have employed as tribal officers upon those individuals leaving active duty.

As the Committee considers the Parity Act, ATNI strongly urges the Committee to incorporate the amendments to the bill that the House Natural Resources Committee adopted when it approved the House version of the bill (H.R. 4524) on March 12, 2024. ATNI member tribes developed those amendments in consultation with tribal stakeholders and the Administration.

In addition to technical and clarifying changes, those amendments also allow tribal officers whose salaries are funded in whole or in part by the Community Oriented Policing Services (COPS) grant and other Department of Justice grant programs to be eligible to accrue federal law enforcement benefits. This is important because it would allow tribes in Alaska and other Public Law 280 states where there is a very limited BIA law enforcement program presence to benefit from the Parity Act's provisions.

ATNI strongly supports the Parity Act and urges the Committee to take all necessary steps to ensure its enactment into law as soon as possible. We look forward to continuing to work with the Committee on this important national issue.

Thank you for inviting ATNI to provide testimony on the Parity for Tribal Law Enforcement Act.

Senator CORTEZ MASTO. Thank you, and thank you to the panel of witnesses today.

We will begin now with questions from the Senate Committee members. Senator Luján?

**STATEMENT OF HON. BEN RAY LUJÁN,
U.S. SENATOR FROM NEW MEXICO**

Senator LUJÁN. Thank you, Madam Chair. I appreciate that.

Chief Sutter, in your written testimony you highlighted an ongoing problem in Indian Country where tribes will train and recruit officers who work for the tribe for a short period of time, only to leave for other jurisdictions with better benefits. One of the effects of such high turnover is failure to maintain continuity in community relations. In turn, officers are unable to carry out complex in-

vestigations, such as drug trafficking or cases of missing and murdered indigenous persons.

Chief Sutter, can you elaborate on how high turnover rates hamstringing the ability of tribal law enforcement to effectively crack down on fentanyl trafficking?

Mr. SUTTER. The fentanyl epidemic has hit Indian Country very hard, at least five times greater than the percentage of the non-tribal community. We have lost many, many tribal members to this epidemic.

To combat these illegal organized criminal organizations importing fentanyl onto the reservations, it is staffing heavy. We have had to form our own drug task force. We have to have trained, experienced officers with the department to be able to fill those specialty positions to really address the fentanyl epidemic.

I believe that the Parity Act will greatly help with our retention which will also then help stabilize our workforce and provide experienced, trained officers to then provide that specialty, high level detective work that is required.

Senator LUJAN. I appreciate that, sir.

President Macarro, back in March I led a letter to the Department of Justice on the high rates of tribal prosecutorial declinations. According to the Justice Department's own findings, Native American women are two to three times more likely than women of any other race to experience violence, stalking, or sexual assault. Yet the Department declines to prosecute about half of those cases.

One provision of the BADGES Act would increase tribal access to the National Missing and Unidentified Persons System by requiring tribal facilitators to conduct ongoing tribal outreach and serve as a point of contact for tribes and law enforcement agencies. Tribal facilitators would also be required to conduct training and information gathering to improve the resolution of missing persons cases in order to collaborate more.

President Macarro, can you tell me more about the benefits of having a tribal collaboration initiative working with family members and tribes?

Mr. MACARRO. Thank you for the question. As I mentioned briefly in my previous remarks, data from 2016 showed that only about 2 percent of reporting American Indian and Alaska Native women and girls were actually logged within NAMUS, the National Missing and Unidentified Persons System.

So under the proposed BADGES bill, a tribal facilitator would be appointed to coordinate missing and unidentified persons cases with tribal nations, and provide training and technical assistance to tribal nations, tribal organizations, victim service advocates, coroners and tribal justice officials on how to report and utilize the system.

The additional capacity provided by the tribal facilitator will first and foremost help to adequately account for the actual number of American Indian and Alaska Native victims, which then can help inform future policy decisions about where to allocate resources to try and protect our communities better.

Now, the tribal facilitator position, through its coordinating duties, can also assist in the sharing of information between tribal nations, the Federal Government, and other relevant agencies,

services, and their data bases. The importance of having dedicated staff to assist in such coordination efforts has the potential to greatly impact our collective long-term effectiveness in dealing with the MMIP crisis.

I also want to note that the tribal facilitator will also help with unidentified and unclaimed remains cases of interest to tribal nations, to help identified deceased and return them to their tribal homelands so they may be buried with their ancestors. In many reported incidents, the pain of losing a loved one was exacerbated by improper or culturally insensitive treatment of the case or remains.

While preventing the occurrence of MMIP should be the primary goal, further steps must be taken to ensure that when crimes occur, both families and the victims are supported in a culturally appropriate way. The tribal facilitator provided for in the BADGES Act would likely help reduce culturally insensitive incidents like the one I have just mentioned.

Thank you.

Senator LUJÁN. I very much appreciate that, President Macarro.

Assistant Secretary Newland, that takes me to my next question. In November, the Not Invisible Act Commission published recommendations on how to increase intergovernmental coordination to address the missing and murdered indigenous persons crisis.

The commission found that there is limited data being shared between the Department of Justice, the Department of Interior, and other Federal agencies like DHS and the FBI. This can lead to demographic miscalculations, inconsistent practices in collecting tribal affiliation, and general underreporting of the crime.

In March, I asked the Department of Justice what their policy is for coordinating and information sharing with the Bureau of Indian Affairs. I am still waiting for that response. I hope they are tuning in today.

I would like to ask you a similar question. My question, Assistant Secretary Newland, is how would you characterize coordination and communication between the DOJ and DOI on the missing and murdered indigenous person crisis? Where is there room for improvement?

Mr. NEWLAND. Thank you, Senator. There is always room to do better. Clearly, the numbers show that.

What I can say is that we have taken some concrete steps to make sure that we are coordinating. One of the things we have done is execute an interagency agreement between the FBI and the Bureau of Indian Affairs for the first time in more than 30 years. That agreement lays out some of the details about how FBI and BIA law enforcement will coordinate on cases, including some issues relating to data reporting.

Up at my level and with our team and departmental leadership from the Department of Justice, we have regular meetings on MMIP/MMIW issues and the work that we are doing. We coordinated the response, the Not Invisible Act Commission, together, hand in hand.

There are a lot of challenges on the ground when it comes to reporting data. A lot of the things that you hear, Senator, are challenges that people just aren't always, they are not always intuitive

about who is Native and who isn't. Some people don't know to remember to ask that question. That also leads to some data issues.

There are things that we are trying to do to make sure we are coordinating better with the Department of Justice on this. We formalized our relationship, or renewed that formalization. We are talking at leadership levels and making this a priority.

I do think this legislation will help.

Senator LUJÁN. There was a train derailment in New Mexico recently, a few days ago. If I could ask one question of Chief Sutter. Over the weekend, a freight train carrying propane derailed and caught fire and exploded near Gallup, New Mexico, partly on the Navajo Nation. Nearby residents were forced to evacuate their homes.

Now, Gallup is right on the edge of the Navajo Nation in New Mexico, and this was on the Mexico-Arizona border. So the Navajo Nation in New Mexico and in Arizona.

Some nearby did not receive any sort of emergency alert on their phones. We have been trying to get this straightened out for missing and murdered within the Department of Justice, within the FCC, legislation has been passed, has been sent to the President. But now we have another derailment carrying propane, an explosion, things were caught on fire. There were efforts to evacuate.

Yes or no, on a macro level, are there adequate resources for tribal communities to communicate and issue emergency alerts during a crisis?

Mr. SUTTER. No, we have a lot of room for improvement.

Senator LUJÁN. I appreciate that very much, and look forward to working with the Committee leadership to get this addressed. Thank you.

Senator CORTEZ MASTO. Senator, thank you. You highlighted some important issues that we still need to focus on. Obviously, there are gaps in data gathering and information sharing. I appreciate your comments.

I also appreciate, Assistant Secretary Newland, because I am going to focus on you right now, as you well know, the Not Invisible Act, there was a report that came from it that Senator Luján talked about. And there were recommendations in that report. Some of them administratively can be implemented. But some of them are requiring Congressional action. I actually have legislation that I am looking at right now implementing some of those recommendations.

The BADGES Act will address some of that data gathering, isn't that correct?

Mr. NEWLAND. I believe so, Senator, yes.

Senator CORTEZ MASTO. And let me ask you this. A subject that we talk about, the BADGES Act, and you touched on this a little bit, the extended waiting period that BIA law enforcement officers face during their background checks oftentimes deters applicants from even going through the process. I hear this constantly in the State of Nevada as well. The BADGES Act would create that five-year demonstration program that would allow BIA to adjudicate their own background checks for officer candidates.

Assistant Secretary, do you support this program? Can you speak to how this will help improve that officer recruitment?

Mr. NEWLAND. Absolutely. I support this pilot project, Senator. It is always difficult when you are trying to carry out your mission when you are dependent on somebody else to complete your mission. That is where we are when it comes to background checks, because we have not been able to do that ourselves.

Allowing us to have ownership of this process and making sure that the buck stops with us I think will also, and the fact that Indian Affairs' mission is narrower than some of the other folks who do these background checks will allow us to be more efficient and speedier with it.

Senator CORTEZ MASTO. Would this somehow lower that threshold for somebody to overcome a background check or security background and clearance just because BIA is providing this background?

Mr. NEWLAND. No.

Senator CORTEZ MASTO. Let me ask you this. The BADGES Act would seek to evaluate Federal law enforcement practices for handling and processing evidence in cases in Indian Country. This is one of the issues that comes up over and over again when we try to dig into why so many violent crimes against Native people aren't prosecuted.

Can you talk about the long-term impact in a tribal community when serious crime goes unprosecuted?

Mr. NEWLAND. Senator, I see I have two and a half minutes. I could probably speak at great length about this. In a lot of communities that I have visited in this job, and colleagues I have spoken to when I served in tribal leadership, one of the things that I hear a lot of is that people seem to know that there is no accountability if they come into tribal communities and commit bad acts.

So people who are intent on carrying out violence or sexual abuse or domestic violence know that their odds of getting away with it are higher in Indian Country. When we don't prosecute these cases and we don't make them a priority, it sends that signal to people who are intent on doing harm. But Senator, it also sends a signal to people who live in those communities and people across Indian Country that, your safety and your well-being and your lives matter less.

I don't think that that is consistent with our trust obligation to Indian people, when we are not prosecuting cases in Indian Country that we prosecute elsewhere. It says a lot. And that is something we are all committed, I think, to improving.

Senator CORTEZ MASTO. Then finally, we all know this, and there was mention of this, but I hear this constantly, BIA law enforcement staffing shortage. It is there. There is a challenge there. It is caused by a number of issues, we know, from a lack of Federal support to the unique challenges facing officers in rural communities.

Again, the BADGES Act would help hopefully address that shortage. But with a BIA shortage, let me ask, Chief Sutter, you have seen this in communities. Not every Native American community has an opportunity to hire their own law enforcement task force. Some have to rely on BIA as the only source of law enforcement. If they are understaffed and they have a large geographic area to

cover, it is pretty much guaranteed they are not going to be able to cover all of the crime that happens.

I am curious how you have addressed some of the communities in your State that don't actually have law enforcement in your work with BIA.

Mr. SUTTER. In the Pacific Northwest, we only have one BIA agent assigned to a drug task force. We have 29 federally recognized tribes in the State. We have neighboring tribes close to Tulalip that have had so many drug overdose deaths and cartels bringing drugs onto their reservation that we offer mutual aid support between the tribes.

But the staffing and the critical shortage of officers makes it very, very difficult. It is a very real problem, the officer staffing issue, both at the BIA and for those that contract or compact, to provide our own tribal law enforcement services.

Senator CORTEZ MASTO. Thank you. I appreciate the testimonies today. Thank you, Mr. Chairman.

The CHAIRMAN. [Presiding.] Thank you.

I just have a couple of questions for Secretary Newland. Tell me how a tribal facilitator will help BIA officers to solve MMIP cases.

Mr. NEWLAND. Thank you, Mr. Chairman. The first thing is, as has been much discussed at this hearing, is it will make sure we are getting accurate data. It helps you connect cases that might be connected. More information is always helpful to investigators.

It will also, I think, better connect Indian Country with the Department of Justice and with us on these cases. We have been working with the Department of Justice on NAMUS related issues in two instances. But I think filling those data gaps will help our investigators serve Indian Country.

The CHAIRMAN. You just answered my second question very efficiently. So thank you very much.

These are really good bills. They are bipartisan bills. They are logical bills. A lot of times when a bill is not controversial that almost means it is small, it is almost a signifier that it is not a big deal. But this is the sweet spot in legislating. This is both a big deal, and will make a real impact, but it is also not a subject of terrible controversy.

So I am very hopeful we will be able to mark these up, and enact them into law. Thank you very much.

If there are no more questions for our witnesses, members may also submit follow-up written questions for the record. The hearing record will be open for two weeks and I want to thank all the witnesses for their time and their testimony.

This hearing is adjourned.

[Whereupon, at 3:33 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. FRANK STAR COMES OUT, PRESIDENT, OGLALA SIOUX TRIBE

My name is Frank Start Comes Out, and I am the President of the Oglala Sioux Tribe. I also serve as the President of the Great Plains Tribal Chairmen's Association, which is composed of 16 tribes in the Great Plain Region.

I would like to begin by thanking the members of this Committee, especially the bills' sponsors before you, for your interest in tribal law enforcement. Indian Country is facing a law enforcement crisis, which is leaving communities devastated and community members injured and, in some cases, dead. Until now, the lack of adequate law enforcement in Indian Country has gotten far too little attention. In fact, I fear that it will take a mass casualty event to draw the attention Indian Country needs to address this issue.

S. 465, BADGES for Native Communities Act

While creating better coordination and a better national database of "Missing and Murdered and Unidentified Persons" and an improved Congressional reporting system will be helpful, it will not, in my opinion, address the real problem we are facing across Indian Country today. When a person goes missing, the on-site officer must act immediately to determine where the person was, who they were with, and the circumstances surrounding their last witnessed event. None of these things can be done effectively by someone that tribal community members do not feel comfortable talking to or from FBI or BIA agents who are away from the community.

This is why the Oglala Sioux Tribe has proposed to contract its percentage of the Missing and Murdered funding currently provided by Congress. A tribal proposal which, to date, the BIA has openly denied, arguing instead for its current unproductive national program. Last year, we had over 350 cases of missing persons, and the BIA's MMI program was not helpful in any of them.

Most of our Missing and Murdered cases either occur on the Reservation or involve someone from the Reservation. Creating a data and reporting system that comes after the incident is a good step, but by the time the data is inputted, the missing person is likely unrecoverable. We want to locate them unharmed and alive, and this system will not get that job done.

Unmet needs reporting requirements. I would be less than candid if I failed to note that, in my opinion, we do not need more reports. Instead, we need this Congress to take seriously the unmet needs reports it already receives. When the Tribal Law and Order Act of 2010 was passed, it called for an annual unmet needs report, we already prepare and send those reports to Congress. Congress has simply not acted on those reports. Those unmet needs are taken out of the current OJS Law Enforcement Handbook and standard police practices in rural towns across the United States, which we agree with. Thus, we see no reason to change them or study them again.

Background check requirements. Please be aware that Oglala and I believe all other Tribes with "638" contracts have long been providing their own tribal background checks and adjudications according to federal standards, but that is not the problem. What is delaying these background checks is a lack of funding/staffing at tribal courts, which need to provide background check information on whether the applicant has lived or traveled regularly within their jurisdiction in the last five years. So, better automation and staffing at tribal courts will do a lot more than other federal systems.

Special Law Enforcement Commission. An additional problem with applicants who have already had their background checked according to federal standards, graduated from a federal or state police academy, and taken the BIA's law enforcement course still have to prepare yet another unnecessary set of paperwork to qualify for an OJS SLEC certification. All that second certification does is re-check the information already in the federal database. This is a total waste of precious time and resources. Congress can easily fix this problem by simply ordering that an indi-

vidual who meets the requirements above is automatically classified as an SLEC officer. After all, these federal requirements are already in place under existing law.

Salary and Fringe benefits. One of the things that is not well understood is that the least expensive part of a tribal law enforcement budget is the salaries and fringe. The big costs are replacement equipment, travel, gasoline, training, and travel, none of which the tribes have any control over. Third-party vendors and the national marketplace set these costs, especially under the existing federal procurement rules we must abide by. Every year, these costs go up, but our federal appropriations simply do not keep up with this inflation.

Think back to what you could have bought, a new car or a gallon of gas ten years ago compared to today. The cost of a police car is now over \$65,000, and you cannot police a Reservation our size, 3.1 million acres, and about the size of Connecticut without reliable transportation. Again, these unmet needs are not luxury items; we already have police cars with well over 150,000 miles on their odometers, and our equipment lists are incorporated as mandatory items in our 638 contracts. This inflation, coupled with our practical need for these items, is causing a large part of the current law enforcement crisis in Indian County. My officers are already making far less than a federal employee in an equivalent position, and performing yet another study of what is needed seems like a way for the OJS to spend more money on itself rather than the problem.

Unfunded Mandate. To refresh your memory on something important, let us look back to the late 1990s when Congress ordered the creation of the BIA Office of Justice Services in the original Indian Law Enforcement Act. Creating BIA-OJS without additional appropriations allocated to carry out these new tasks created an unfunded mandate. There was no needs assessment or special appropriation. Thus, in the absence of a specific appropriation, all the BIA could do at the time was move over the money it was already providing to the Tribes under the then Tribal Priority Allocation.

Most tribes were, at that time, receiving up to 80 percent or more of their law enforcement funding from the DOJ under a separate appropriation, and you can begin to see the problem. Then, when those DOJ grants expired, the BIA, which had promised to absorb those DOJ costs in its budget, never did so. Thus, the base funding for this program and tribal courts and corrections was never based upon a reasonable estimate of what was needed; instead, it was based on an unfunded mandate imposed at a time when the federal budget was under stress. That was over 15 years ago, and that base budget has never been fixed. However, we have had 15 years of unfunded inflation.

Alternative Police Training. The State of South Dakota and most other states are willing to accept tribal police candidates at their academies if they have room. All they ask is for the federal government to chip in on their out-of-pocket costs. Unfortunately, the BIA does not allow tribes to allocate any federal funds to a state for its training program. This is a ridiculous and costly limitation, given that the state training programs are usually much closer and more tailored to the local law than any national training program. Remember, criminal jurisdiction in Indian Country is often site-specific. The current training method is not cost-effective and not a timely solution to our current training problem, which stems largely from an overworked and underfunded federal academy.

S. 2695, Parity for Tribal Law Enforcement Act

While we agree that making it abundantly clear that assaulting, resisting, impeding, or threatening the life of a tribal officer is a federal offense, we are very concerned that this particular provision does not undermine those cases currently pending in federal court. We are also very concerned about how the federal contribution to the various benefit packages that S. 2695 will be paid and whether or not it will be charged back to a BIA OJS account. We are equally concerned about how these federal matches will be calculated and when these contributions will arrive in our tribal coffers. We cannot afford to borrow any more funds to cover these additional costs while waiting to be reimbursed. We know this is not the sponsors' intent, but please allow me to explain.

When OMB gives the Secretary of the Interior, or the BIA, a target budget number for any given fiscal year, certain costs are taken off the top. Those costs include all federal contributions to tribal water settlements, all tribal Contract Support Costs and Direct Contract Support Costs, and all 105(1) leases entered into by the United States. The federal match on these benefits under S. 2695 is, or at least should be a direct contract support cost. However, as you can see from this system, we are currently paying for all CSCs, which lowers the amount the BIA can spend on the programs it provides.

Now, here is the rest of the problem. P.L. 93-638 already says that the BIA is to fund all "reasonable" Direct Contract Support Costs, but the BIA has implemented regulations that state that a "reasonable cost" is assumed to be 18 percent of salaries. Therein lies the problem. We are already at 18 percent, just paying the mandatory federal contribution to our federal and state taxes and workmen's compensation, with no pension program and no major federal contribution to our health, dental, eye, and life insurance. Each of these has to be paid at least quarterly.

So, if our Direct Contract Support budget is charged back for the federal matches on these new S. 2695 benefits, we will be well over 18 percent, detailed in current P.L. 93-638 and its implementation regulations. And yes, even if you fix this 18 percent problem, unless those Direct Contract Support and other above-listed costs are treated as mandatory spending under the Federal Budget Process, what we are doing is increasing the cost of an already underfunded BIA which is something we cannot afford to do.

You can fix this problem, but giving the BIA-CSC program new mandatory money for retirement, health insurance, etc., and letting the Tribes set up their own programs. This will make reporting easier, budgeting easier, and keeping one program from providing different benefits from those provided by other P.L. 93-638 contracts, making tribal record keeping and reporting much simpler and much less expensive.

The second problem is one of timing. Benefits must be paid to third parties at least quarterly, but the BIA reimbursements have never met this deadline. This is not altogether BIA's fault. When Congress passes and the President signs an annual appropriation, one or two federal employees in each BIA region need to (1) Figure out how many program dollars go to each Direct Service Program, (2) Figure out how many year-long program dollars go to each P.L. 93-638 contract, and what that new year-long contract amount is; (3) Figure out how new contract amount changes the estimated indirect cost amount owed by the federal government; and then an only then (4) Figure out how much Direct Contract Support money each "638" program gets.

The end result is that we at Oglala have been getting out Direct Contract Support Payments for one or two months after the fiscal year is over. So, adding to these costs means that we have to increase the amount that we have to borrow from the bank or from our tribal law enforcement program until the costs are reimbursed. These bank loan origination fees and the interest on those bank loans are what is killing us. First, this Committee needs the BIA to eliminate the 18 percent estimate for Direct Contract Support under "638" in its regulations and then amend "638" to make these costs into "mandatory federal spending under your congressional budget acts. In short, you need to ensure that these costs are not taken out of our already severely funded law enforcement budgets and that they will be paid in a timely manner. Unless all of these steps are taken, adding these costs as new unfunded mandates will leave us worse off than we are now.

Unnecessary Amendments. Finally, both S. 465 and S. 2695 call for new and unnecessary BIA/OJS policies and regulations. Both the BIA's background check and adjudication requirements were already updated when the Tribal Law and Order Act of 2010 was passed, and we see no reason to spend federal time and money updating them again. We respectfully ask this Committee to leave those things alone and instead focus on correcting our current budget problems. The BIA's last Tribal Law Enforcement Act Report indicated that the BIA Indian Law Enforcement Program is funded at around 15 percent of actual need, defined as the unmet need to bring Indian law enforcement to parity with the average non-Indian law enforcement program in the U.S. in comparably sized areas. That is 15 percent of the actual need. We all know that all Indian programs are underfunded, but most are at least funded around 50 percent of the need, not 15 percent. Especially for what everyone agrees is an essential governmental function.

At Pine Ridge and most of the large, heavily populated Reservations across the county, we are in a non P.L. 83-280 state. That means that our non-Indian State and local governments have no criminal jurisdiction over a crime committed by an Indian or a crime with an Indian victim. That is existing federal law. For Oglala, the FBI, DEA, AFT, and BIA are all over 90 miles away, and none of them are first responders, so Indian people are being hurt and killed on federally-owned land. We have taken over 150 weapons out of our BIA-funded schools since I took office. Luckily, we have not had a mass shooting at one of those same schools, but we have had stabbings.

In other words, this is very real for us, and we need your help. Today, our 911 system logs around 136,000 calls for police assistance per year, and we have only 6-8 officers per shift to answer those calls. Gun violence is at an unprecedented level, and fentanyl, heroin, and other comparable drugs are prevalent. You have al-

ready seen the Reservation/Cartel news on the national news, and all I can do is make it clear that this reporting is not exaggerated.

Guns and fentanyl are not manufactured on Pine Ridge; they are all coming from the outside. Criminals are not naïve; they will continue to gravitate to our Reservations because we have no federal law enforcement presence, even though this is federal land. So, with 136,000 calls and eight officers per shift, I ask you, am I wrong in telling a young lady not to get a protective order telling an elder not to drive at night or not telling a local non-Indian official that it is perfectly safe to send their basketball team to Pine Ridge.

Our problems are real and immediate. Please do not wait until Indian Country has a mass casualty event before you act; act now.

PREPARED STATEMENT OF THE PORT GAMBLE S'KLALLAM TRIBE

Dear Chairman Schatz, Vice-Chair Murkowski and Members of the Committee:

The Port Gamble S'Klallam Tribe (the Tribe) submits this testimony as part of the Senate Committee on Indian Affairs' (SCIA) hearing record on the Parity for Tribal Law Enforcement Act (Parity Act).¹ The Tribe has reviewed the legislation and fully supports it as we understand it. We submit these additional comments to clarify our understanding of the legislation and to describe the impact that it would have on our law enforcement and the public safety of our Reservation as well as on the surrounding non-Indian communities.

Background on the Port Gamble S'Klallam Tribe

The Port Gamble S'Klallam Tribe is a sovereign nation comprised of over 1,342 citizens located on the northern tip of the Kitsap Peninsula in Northwest Washington State. In our language, "S'Klallam" means "the Strong People," and despite having been displaced from our ancestral homelands and faced with challenges that threatened our way of life, the Tribe has survived, and thrived, because of the strength, determination, and wisdom of our ancestors.

Our ancestors negotiated the 1855 Treaty of Point No Point, which, among other things, reserved hunting, fishing, and gathering rights for our Tribe. Our people rely on the exercise of those Treaty rights to this day, for subsistence, commerce, and the continuation of our traditions and culture. In the Point No Point Treaty, the United States agreed to respect the sovereignty of our Tribe and to protect and provide for our well-being. The United States has both treaty and trust obligations to protect our lands and resources and provide for the health and well-being of our citizens.

The Port Gamble S'Klallam Tribe is a sovereign nation that predates the United States, and as such, we retain inherent rights to govern our own lands and people.² Tribal sovereignty is enshrined in the U.S. Constitution³ and in case law governing the United States' earliest relationships with Tribal Nations.⁴ It remains a fundamental characteristic of Tribal societies, essential to the continued protection of our peoples and cultures, and the bedrock of our relationship with the federal government. Respect for Tribal sovereignty, like respect for the rule of law itself, requires more than mere acknowledgement. It requires federal agencies to act in accordance with our right to make decisions affecting the lands, resources, and peoples we are responsible for governing. This includes our responsibility to govern with respect to public safety and our law enforcement officers.

Port Gamble S'Klallam Tribe Law Enforcement

The Port Gamble S'Klallam Tribe Police Department (Police Department) maintains order, investigates crime, enforces all applicable laws, and assists community members on the Reservation, while respecting the culture, jurisdiction, and sovereignty of the Tribe and its people. We have 20 commissioned officers within our Police Department. On average, these officers respond to over 900 incidents each month over a large footprint of six counties (which comprises the area where Tribal members exercise their Treaty-reserved rights at "usual and accustomed" sites), which approximately represents the entire Olympic Peninsula.

The calls that the officers respond to range from enforcing the Tribe's treaty rights, such as the enforcement of catch limits which is a federal function, to more immediate threats to public safety. Approximately 75 percent of the contact that the Police Department has is with non-Indians.

¹S. 2695—118th Congress (2023–2024).

²See, e.g., Cohen's Handbook of Federal Indian Law § 4.01 [I] (2012).

³U.S. Const., art. I, § 8, cl. 3.

⁴E.g., *Worcester v. Georgia*, 31 U.S. 515,559 (1832).

Within the past six months, the Police Department has responded to four calls involving non-Indians who posed an immediate physical threat to the Tribe, its members, and to non-Indian patrons and employees of Tribal businesses. In two of those instances, the non-Indians were found passed out in vehicles outside the Tribe's casino with drug needles in their arms and guns on the passenger seat. In both of those instances, the person was a felon restricted from carrying a firearm. In another instance, the non-Indian was found carrying 150 fentanyl pills, with a street value of roughly \$20,000. In the last instance, the non-Indian was cut-off by the casino for being inebriated and subsequently produced a firearm and pointed it at a casino employee. In all instances, the Tribal officers were the first responders and were able to prevent serious harm from occurring before handing the perpetrators over to State law enforcement.

The Tribe's Police Department, however, faces ongoing staffing problems which can make it difficult to police its vast service area and to provide the kind of immediate response on Tribal properties. These staffing problems are largely the result of the Tribe not being able to match the salaries and fringe employment benefits provided by State and Municipal police departments. Significantly, last year, for example, our Police Department lost one-third of its overall force to State, County, or local law enforcement because the Tribe was unable to match the salaries, signing bonuses, and healthcare benefits for dependents of the officers. While the Tribe has since created a schedule for providing healthcare benefits to the dependents of officers—and has recovered from last year's departures—its benefits still do not match those of the State and Municipal governments and competition remains a challenge.

Even after an officer completes training at an academy, it still takes one year and approximately \$250,000 to outfit and train that new officer to become able to respond to routine calls and handle real life situations at a level our communities expect. Importantly, that amount does not include the opportunity cost of the field training officer's time nor the other officers' overtime for training the new officer. If, after that year, the new officer leaves for a State or Municipal government because we were unable to match the fringe benefits or salaries, then the Tribe has lost that time and money and must start the process over again.

The turnover of officers also makes it difficult to build community rapport and to train officers for complex investigations where we require experienced personnel. These two difficulties manifest especially in Missing and Murdered Indigenous Peoples cases where an investigation requires experienced detectives that our community members trust.

Comments in Support of the Parity Act

The physical safety and wellbeing of our Reservation and people is of paramount importance. We support the Parity Act, provided that our understanding of it is accurate. Specifically, we understand that the benefits our eligible officers could receive under the Parity Act are benefits that they would receive as officers carrying out their normal duties under an Indian Self-Determination and Education Assistance Act contract or compact, and not benefits that accrue only while they are carrying out specific Federal law enforcement functions.

Provided our understanding of the Parity Act is correct, we support it. We support it because we need assistance in recruiting and retaining our law enforcement officers. The benefits that our Tribe can provide our law enforcement officers do not compete with State and Municipal governments. As a result, not only are we less competitive for the best candidates, but we have a higher turnover rate for our officers, which increases costs and impacts our ability to police our Reservation.

Further, the Parity Act aligns with the treaty and trust obligations of the United States as our officers are already carrying out many Federal functions on our Reservation through monitoring and enforcing our Treaty rights and they ought to be compensated as such. We understand that the situation of every Tribe is different and therefore we urge robust regional consultation in the implementation of the Parity Act so that every Tribe can maximize the benefits it provides to improve the physical safety and wellbeing of each Reservation.

Conclusion

We appreciate the opportunity to submit testimony on this important subject and we thank Chairman Schatz and this Committee for its essential work. We also extend our gratitude to Senator Cantwell, our Senator, for introducing and advocating for this important legislation. Please do not hesitate to contact us if you would like further comments on the Parity Act.

WESTERN GOVERNORS' ASSOCIATION POLICY RESOLUTION 2023-09—MISSING AND
MURDERED INDIGENOUS PERSONS

A. BACKGROUND

American Indian and Alaska Native people, particularly women, are disproportionately likely to experience violence, murder, or to go missing. This disproportionate risk is encapsulated as the Missing and Murdered Indigenous Persons (MMIP) crisis. The MMIP crisis is fueled by complex and historic underlying factors impacting indigenous communities, including: insufficient law enforcement resources, funding, and cultural understanding among non-tribal law enforcement agencies; lack of non-tribal and tribal collaboration; a shortage of personnel on historic tribal lands; substance abuse issues; historic lack of trust of non-tribal entities; and deficient housing and infrastructure. Additionally, tribal nations receive a variety of funding that can vary by state and status, including Pub. L. 280 tribes, treaty tribes, and tribes that have administrative control through Pub. L. 93-638. The Governors and states represented herein do not intend for language used to be legally binding or to be viewed as a reflection or concession of any Governor or state's position related to the reservation status of any specific tribe.

B. GOVERNORS' POLICY STATEMENT

Addressing Law Enforcement Shortages

1. Having sufficient law enforcement personnel is important to ensure timely response and adequate resources for MMIP cases. Western Governors urge the Bureau of Indian Affairs (BIA) to increase the number of tribal officers on lands under tribal and federal jurisdiction and increase the pace of hiring officers.

2. Tribal officers employed by BIA or tribes use the 638 process to self-administer federal funds to support their tribal police forces. Western Governors recommend that BIA ensure that 638 tribes receive funding equivalent to the BIA tribal police pay scale to allow 638 tribes to support officers at an equivalent level to BIA-administered tribal police forces.

3. Tribal courts and justice systems provide critical infrastructure to process and prosecute MMIP cases. Western Governors recommend appropriate, ample funding for tribal courts and justice systems.

4. While MMIP cases occur across both urban and rural Native populations, Western Governors recognize that there are specific limitations for law enforcement in rural communities. Western Governors encourage creative solutions to support the recruitment and retention of tribal officers, particularly housing programs to ensure that tribal officers can remain within their communities.

5. Currently, tribal officers can receive training from the BIA's Indian Policy Academy in New Mexico and the Indian Policy Academy Advanced Training Center in North Dakota, both of which can be a significant distance for recruits to travel for basic training. Western Governors urge BIA to expand beyond the single tribal officer training program and create regionalized law enforcement training programs that reduce the burden of training for officers.

6. Western Governors recognize diverse agreement opportunities exist, such as cross deputization, joint powers agreements, and mutual aid agreements, to assist with the speed of law enforcement response and suit the variety of systems and scenarios across the West, and support efforts to share best practices.

7. The AMBER Alert system is the only nationwide alert system for those who are missing or abducted. Across the West, states have also implemented state-specific MMIP alert systems. Western Governors support efforts to create MMIP alert systems and increase inclusion of state level systems into federal alert systems.

Support Systems

8. BIA victim services advocates provide direct services to victims and crucial assistance for victims navigating complex bureaucratic systems. Western Governors request federal funding for victim services advocates.

9. Ensuring federal staff receive cultural sensitivity training provides staff with the ability to effectively work with survivors. Western Governors urge federal agencies to implement culturally sensitive training and response courses for new employees working on all aspects of MMIP.

10. Western Governors call for greater transparency on how federal funding is allocated among tribes with 638 status and BIA administered services. Specifically, Western Governors implore the federal government to coordinate and collaborate with survivor support services at the state and tribal level so that survivors and their communities receive the maximum amount of resources.

11. To ensure wrap around services, Western Governors urge Congress to increase funding for mental and behavioral health services for survivors and their communities.

Collaboration

12. MMIP cases span across many jurisdictions, which can complicate response times. Western Governors urge federal partners to streamline emergency response communications across related federal agencies, including BIA and the Federal Bureau of Investigation.

13. The consistent collection of data across jurisdictions and each level of government is necessary to understand the scope and scale of MMIP cases. Western Governors support sharing best practices for data sharing agreements to allow for a more comprehensive view of the crisis.

14. Several western states have created their own MMIP offices to act as liaisons between tribal, state, and federal partners. Western Governors support federal efforts to develop and strengthen MMIP state-level offices and other state-level MMIP initiatives.

15. During any lapse in funding, Western Governors recommend that the federal government work collaboratively with states and tribes to ensure continuity of essential services with discretionary funding.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.

2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

This resolution will expire in June 2026. Western Governors enact new policy resolutions and amend existing resolutions on a semiannual basis. Please consult <http://www.westgov.org/resolutions> for the most current copy of a resolution and a list of all current WGA policy resolutions.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. LISA MURKOWSKI TO
HON. BRYAN NEWLAND

Question 1. BIA has increased law enforcement pay levels to match with other Federal law enforcement, and as I understand it, BIA also provides the same federal benefits to its officers as are provided to other federal law enforcement at the Department of the Interior. If the Department has taken these steps for their own law enforcement officers at BIA, why is it necessary for S. 2695 to “deem” tribal officers federal law enforcement officers when they are acting under a contract or compact for federal law enforcement functions pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA)? In other words, why can’t tribes just extend the same federal benefits BIA provides to its Tribal law enforcement officers?

Answer. Tribal law enforcement officers acting under a self-determination or self-governance contract are not eligible for federal benefits such as injury and death, retirement, and pension benefits. Consequently, Tribes provide benefits to tribal law enforcement officers through their own insurance plans or their officers are encouraged to use Indian Health Service benefits, if eligible. Some Tribes also have 401K programs as a part of their benefit package, but those do not come close to a federal law enforcement retirement under FERS. A small number of states allow Tribal law enforcement officers to utilize state retirement systems. Former state law enforcement officers who now work for Tribal law enforcement may also continue participating in the state retirement system. Furthermore, many law enforcement officers throughout their career will work for the Bureau of Indian Affairs’ (BIA) law enforcement and Tribal law enforcement departments, and in some cases, a particular Tribe may assume control of a BIA operated program, or the BIA may assume control of a Tribally-operated program. Affording law enforcement officers one seamless retirement system would enhance recruitment and retention of Indian country law enforcement officers nationwide.

Question 2. S. 2695, as introduced, provides that tribal officers shall have the authority to enforce federal law within an area under the jurisdiction of an Indian Tribe under certain circumstances, “notwithstanding any other provision of federal law.” What specific federal laws prevent the BIA from treating Tribal law enforcement officers the same as federal law enforcement officers for purposes of federal

torts, retirement and pension benefits when those Tribal law enforcement officers are acting pursuant to a contract or compact under ISDEAA? Please provide the citations for those specific provisions of federal law.

Answer. When Tribal law enforcement officers are operating under a self-determination contract or self-governance compact and are within the scope of their employment, they are deemed federal employees for Federal Torts Claims Act purposes:

With respect to claims resulting from the performance of functions during fiscal year 1991 and thereafter . . . under a contract, grant agreement, or any other agreement or compact authorized by the Indian Self-Determination and Education Assistance Act of 1975 . . . an Indian tribe, tribal organization or Indian contractor is deemed hereafter to be part of the Bureau of Indian Affairs in the Department of the Interior . . . while carrying out any such contract or agreement and its employees are deemed employees of the Bureau . . . while acting within the scope of their employment in carrying out the contract or agreement: Provided, That after September 30, 1990, any civil action or proceeding involving such claims brought hereafter against any tribe, tribal organization, Indian contractor or tribal employee covered by this provision shall be deemed an action against the United States and will be defended by the Attorney General and be afforded the full protection and coverage of the Federal Tort Claims Act.

See Pub. L. 101-512, Title III, § 314, Nov. 5, 1990, 104 Stat. 1959, as amended Pub. L. 103-138, Title III, § 308, Nov. 11, 1993, 107 Stat. 1416.

The waiver of sovereign immunity set forth in the Federal Tort Claims Act, 28 U.S.C. § 1346 (b), is subject to thirteen statutory exceptions enumerated in 28 U.S.C. § 2680. One of these exceptions, 28 U.S.C. § 2680(h), retains the sovereign immunity of the United States with respect to claims arising out of intentional torts committed by governmental employees. Under section 2680(h), the United States retains its sovereign immunity with respect to “[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.” The exception is, however, subject to the following exception-to-the-exception:

Provided, that, with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) . . . shall apply to any claim arising . . . out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this subsection, ‘investigative or law enforcement officer’ means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

See 28 U.S.C. § 2680(h).

As quoted above, section 2680(h) specifically defines an “investigative or law enforcement officer” as “any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.” *Id.* In turn, courts that have addressed whether Tribal officers operating pursuant to a 638 Contract meet the definition of federal investigative or law enforcement officer for purposes of Section 2680(h) have held that Tribal officers must have been issued a Special Law Enforcement Commission (SLEC) by the Bureau of Indian Affairs, Office of Justice Services. See e.g., *Boney v. Valline*, 597 F. Supp. 2d 1167 (D. Nev. 2009); *Gatling v. United States*, No. CV-15-08070-PCT-SMM, 2016 WL 147920, at *3 (D. Ariz. Jan. 13, 2016); *Black v. United States*, No. C13-5415RBL, 2013 WL 5214189, at *2-3 (W.D. Wash. Sept. 17, 2013); *Etsitty-Thompson v. United States*, No. 13cv00159, 2013 WL 4052621, at *3-4 (D. Utah Aug. 12, 2013); *Henderson v. United States*, 2012 WL 4498871 (D.N.M. Sept. 19, 2012); *Buxton v. United States*, No. CIV. 09-5057, 2011 WL 4528337, at *10 (D.S.D. Apr. 1, 2011), report and recommendation adopted, No. CIV. 09-5057-JLV, 2011 WL 4528329 (D.S.D. Sept. 28, 2011); *Bob v. United States*, No. CIV. 07-5068RHB, 2008 WL 818499, at *2 (D.S.D. Mar. 26, 2008); *Locke v. United States*, 215 F. Supp. 2d 1033 (D.S.D. 2002), *aff’d*, 63 F. App’x 971 (8th Cir. 2003).

Section 5323 of the Indian Self Determination and Education Assistance Act (ISDEAA) also distinguishes between Tribal and federal employees. Tribal law enforcement officers are not listed as eligible employees.

Question 3. S. 2695 is focused on assisting Tribes with parity with respect to federal law enforcement officer benefits to aid in recruitment and retention of tribal law enforcement officers when Tribes contract or compact those functions under ISDEAA. Of the \$256.4 million in BIA law enforcement appropriations expended in

FY 2021, \$99.7 million is for direct service programs and \$156.7 million is for tribally contracted or compacted programs. That means more than 60 percent of the total amount appropriated for BIA law enforcement is contracted or compacted to Tribes. For tribally contracted and compacted law enforcement, are the costs for retirement, pension, death and injury already included in the Secretarial amount of a 638 contract or compact with a Tribe? If no, why not?

Answer. The costs for those fringe benefits can be supported with PSJ budget line funding included in the Secretarial amount. Whether funds are used for that purpose is up to the Tribe. It is important to note that many Tribes use other sources of revenue to augment Federal funding for law enforcement. The 2021 Tribal Law and Order Act report indicates the current level of funding is \$3.1 billion below the calculated need.

As a result, Tribes may have to spend their own funds to make up this shortfall. Second, the Department does not dictate to Tribes how they should allocate their compacted or contracted law enforcement program funding as long as it is consistent with the purpose of the contracted program. The BIA provides a total amount of funding to Tribes, and under the flexibility of the Indian Self Determination and Education Assistance Act, they can use it for retirement, salary costs, equipment, fringe benefits or other purposes as best meets their needs.

Question 3a. What amount is currently spent on these costs out of the \$156.7 million in FY 2021 that funded tribally contracted or compacted law enforcement?

Answer. The BIA does not have data on funds used for these costs from Tribally contracted and compacted law enforcement.

Question 3b. Will allowing access to these federal benefits actually provide an increase in resources overall to Tribal law enforcement? Why or Why not?

Answer. Providing access to these federal benefits will help Tribes with the recruitment and retention of law enforcement officers. Currently, Tribal law enforcement officers do not have access to federal pension and retirement benefits and in many cases, state benefits. S. 2695 is a meaningful step forward to get more law enforcement officers in Native communities. S. 2695 will allow Tribal members and other members of the community to provide law enforcement services and work and live where they want, without having to leave the Tribal program for better benefits.