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SENATE

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TO AMEND THE VICTIMS OF CRIME ACT OF 1984 TO SECURE URGENT RESOURCES VITAL TO INDIAN VICTIMS OF CRIME, AND FOR OTHER PURPOSES

APRIL 9, 2018.—Ordered to be printed

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

R E P O R T

[To accompany S. 1870]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 1870) to amend the Victims of Crime Act of 1984 to secure urgent resources vital to Indian victims of crime and for other purposes, having considered the same, reports favorably thereon without amendment and recommends the bill do pass.

PURPOSE

The Securing Urgent Resources Vital to Indian Victim Empowerment (SURVIVE) Act, S. 1870, will improve public safety and strengthen victim resources in tribal communities by amending the *Victims of Crime Act of 1984* (VOCA) to create a grant program within the U.S. Department of Justice's Office for Victims of Crime (Office). The Director of the Office will administer grants to eligible Indian tribes in order to provide needed victims' assistance.

BACKGROUND

Congress established the Crime Victims Fund (CVF) to support services for victims of crime in 1984 with passage and enactment of the VOCA. Administered by the Office, the CVF provides funding to states, local governments, and other entities through a sys-

tem of specially designated formula and discretionary grant programs.¹

The CVF is budget neutral and funded by fines and penalties from convicted federal offenders. For a nine year period after VOCA enactment and beginning in Fiscal Year 2000, Congress placed a cap on the annual amount that can be obligated towards the following year's VOCA activities.² The annual CVF funding cap will increase from Fiscal Year 2017's \$2.573 billion to \$4.436 billion dollars for Fiscal Year 2018.³

Under the current VOCA system, tribes can only access CVF support through sub-grants or allocations received from the state in which they are located. This sub-grant system results in less than 1% of the annual CVF funding cap reaching Indian tribes, leaving crime victims in Indian country substantially underserved by the CVF. States that do award CVF sub-grants to tribes often place significant restrictions on the types of activities for which these funds may be used, which further hinder Indian tribes in their ability to provide services to victims of crime on their lands.

To address the issues of CVF resource access in Indian country and limitations on tribal-design of victim service programs for Native communities, Congress and the Department of Justice sought to provide tribes with direct access to a portion of funding provided to the CVF in a given fiscal year. Most recently, the President's Budget Request for Fiscal Year 2017 requested a 5 percent set aside of the annual CVF funding cap for Indian tribes. The *Consolidated Appropriations Act, 2018* included a one-time 3 percent set aside within the annual CVF funding cap for Indian tribes. While this funding allocation supported by Congress and the Administration serves as a first step to address tribal victim access to CVF resources, Congress should provide a more permanent solution that modifies the CVF state grant structure to better fit Indian tribes several improvements to the authorized uses for Indian tribes.

SUMMARY OF THE BILL

The SURVIVE Act, S. 1870, will provide needed victim assistance to Indian tribes by creating a 5 percent allocation from the annual CVF funding cap and establishing a grant program within the Office to distribute the 5 percent allocation among tribal grantees. The bill utilizes this grant program structure to provide more programmatic flexibility specific to the victim resource needs of Indian tribes than what is currently available under the state CVF grant program. For Indian tribes applying for a grant created under the SURVIVE Act, the Director of the Office would determine if the application meets the program requirements and award grants accordingly.

The grant program created by the SURVIVE Act parallels existing federal VOCA regulations and guidance to provide critical victim assistance, services, and infrastructure. Authorized services and infrastructure under the SURVIVE Act include, but are not limited to, domestic violence shelters; medical care; counseling;

¹See generally, Lisa N. Sacco, Cong. Research Serv., R42672, The Crime Victims Fund: Federal Support for Victims of Crime (2015).

²About OVC, *Crime Victims Fund*, Department of Justice, Office of Justice Programs, Office for Victims of Crime. Found at: <https://ovc.gov/about/victimsfund.html>.

³H.R. 1625, 115th Cong. (2018) (enacted).

legal assistance and services; and, child and elder abuse programs. Providing flexibility in the grant program will allow Indian tribes to build baseline service delivery and improve access to such resources in areas that greatly need culturally appropriate, community-specific services.

The SURVIVE Act provides significant confidentiality and privacy protections for victims of crime who seek and receive services supported by the grant program. It will require all grantees to submit annual reports to the Office, which is to conduct regular monitoring and reviews of the grant program to improve the effectiveness and efficiency of the grant program. Negotiated rulemaking between Indian tribes and the U.S. Department of Justice is also a feature of the SURVIVE Act that will give Indian tribes the opportunity to provide input into how the Office can more effectively and fully implement the grant program.

NEED FOR LEGISLATION

Data show that Indians face a higher rate of violent victimization than other population groups.⁴ Testimony received by the Committee during the 114th Congress highlighted the disparate rate of violent crime in Native communities and noted the lack of victim services infrastructure on tribal lands.⁵ Witnesses also linked lack of access to victim services infrastructure to higher rates of re-victimization and re-criminalization—linking these systemic failures to increased recidivism, under-reporting of crimes, and life-long mental and physical impacts for victims and their families.⁶

Due to the tribal-specific issues with access to the existing CVF structure discussed above, the higher rate of victimization, and lack of existing infrastructure to provide services to victims within tribal communities, legislation that provides the resources needed for victims on Indian lands that are currently not being assisted is strongly needed. The SURVIVE Act would improve the mechanism for tribal access to federal grants for crime victim assistance and ensure Indian tribes have fair access to the CVF.

LEGISLATIVE HISTORY

On September 27, 2017, Senator Hoeven introduced S. 1870. Original cosponsors of S. 1870 include Senators Barrasso, Cortez Masto, Daines, Heitkamp, McCain, Murkowski, and Tester. Senators Udall and Murray joined the bill as cosponsors on December 6, 2017, and January 9, 2018, respectively.

On October 25, 2017, the Committee held a legislative hearing on S. 1870. At the October 25th hearing, officials from the Departments of the Interior and Justice testified in favor of the bill. The three remaining witnesses on the panel—Dave Flute, Chairman, Sisseton Wahpeton Oyate of the Lake Traverse Reservation; Joel Boyd, Colville Business Councilman, Confederated Tribes of the

⁴*Criminal Victimization, 2016*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics at page 22 (December 2017). *Found at:* <https://www.bjs.gov/content/pub/pdf/cv16.pdf>; *Violence Against American Indian and Alaska Native Women and Men*, Andre B. Rosay, Ph.D., U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (May 2016). *Found at:* <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf>.

⁵Addressing the Need for Victim Services in Indian Country: Hearing before the S. Comm. on Indian Affairs, 114th Cong. (2015).

⁶*Id.*; also see Strengthening Alaska Native Families: Examining Recidivism, Reentry, and Tribal Courts in Alaska: Hearing before the S. Comm. on Indian Affairs, 114th Cong. (2015).

Colville Reservation; and Carmen O’Leary, Director, Native Women’s Society of the Great Plains—also testified in support of the bill.

On December 6, 2017, the Committee held a duly called business meeting to consider S. 1870. At this business meeting, the Committee ordered the bill to be reported favorably to the Senate by voice vote.

Representative O’Halloran introduced H.R. 4608, a companion to S. 1870, in the U.S. House of Representatives on December 11, 2017. Representatives Cole, Sinema, and Don Young joined as original cosponsors. Representatives Moore, Grijalva, Issa, Pallone, Norton, McCollum, Cramer, Pocan, Bergman, and Lujan later joined as cosponsors. The bill was referred to the House Committee on the Judiciary. On January 22, 2018, the House Committee on the Judiciary referred H.R. 4608 to the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations. No further action has been taken on the House bill at this time.

114th Congress. In the 114th Congress, Senator Barrasso introduced S. 1704, also called the SURVIVE Act. Similar to S. 1870, that bill, S. 1704, was cosponsored by Senators Daines, Heitkamp, Hoeven, McCain, Moran, Murkowski, Schatz, Tester, and Udall. No companion bill to S. 1704 was filed in the House of Representatives during the 114th Congress.

On June 10, 2015, the Committee convened an oversight hearing on Addressing the Need for Victim Services in Indian Country. At this hearing, the Administration, tribal and state officials, and a tribal court judge testified on the great need for victim services in Indian country. The Committee also received testimony in the 114th Congress on juvenile justice, substance abuse and behavioral health, reentry and recidivism, and tribal courts, also underscoring the need to provide victim services in Indian country.⁷

On December 3, 2015, the Committee held a duly called business meeting to consider S. 1704. At this business meeting, the Committee ordered S. 1704 to be reported with an amendment in the nature of a substitute. Chairman Barrasso reported S. 1704 on December 3, 2015,⁸ and it was placed on the Senate Legislative Calendar under general orders. No further action was taken on S. 1704 during the 114th Congress.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

This section states that the Act may be cited as the “Securing Urgent Resources Vital to Indian Victim Empowerment Act” or “SURVIVE Act.”

Section 2—Indian victims of crime

This section amends the Victims of Crime Act of 1984 (34 U.S.C. 20101 et seq.) to create a grant program for Indian tribes within the Department of Justice’s Office for Victims of Crime (Office).

⁷ See e.g., Id.; Examining the True Costs of Alcohol and Drug Abuse in Native Communities: Hearing before the S. Comm. on Indian Affairs, 114th Cong. (2015); Juvenile Justice in Indian Country: Challenges and Promising Strategies: Hearing before the S. Comm. on Indian Affairs, 114th Cong. (2015); Addressing the Harmful Effects of Dangerous Drugs in Native Communities: Hearing before the S. Comm. on Indian Affairs, 114th Cong. (2015).

⁸ S. Rept. 114–172.

This section directs the Office to make grants to eligible Indian tribes for a range of crime victim service activities. Funds obtained through this program may be expended over a period of five years and shall not be subject to matching requirements. Any sums that are unobligated at the end of the five-year period must be returned to the Office and made available for Indian crime victim service activities in the following fiscal year.

This section specifies that in order to be eligible to access grants under this program, an Indian tribe must submit in writing a detailed victim assistance proposal, according to listed requirements. Any Indian tribe that receives a grant under this program must also submit an annual report to the Office describing the purpose for which grant funds were used.

This section provides explicit oversight and enforcement authorities and duties to the Office, including requiring the Office to engage in regular monitoring, reviews, investigations, and audits. The Office must also ensure that all grants are subject to performance measures and enforceable agreements that allow for thorough program oversight. The Director of the Office for Victims of Crime (Director) must provide annual compliance reports on all grants awarded under this program to appropriate committees of Congress.

This section provides significant confidentiality and privacy protections for crime victims, including restrictions on reporting and sharing personally identifying information of crime victims.

This section specifies that grants awarded under this program and related administrative costs shall be supported with funds in the Crime Victims Fund (CVF). It amends Section 1402(d) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)) to require 5% of the CVF funds made available for obligation in a fiscal year to be available to the Director for the Indian tribal grant program. The Office may not use more than 4% of these funds for grant administration and technical assistance costs.

The grant program will sunset after a period of ten years.

Section 3—Regulations regarding Indian tribes

This section provides that any rule, regulation, or guidance promulgated before enactment shall have no force or effect with respect to the Indian tribal grant program established under this Act.

This section requires the Director to issue implementing regulations through negotiated rulemaking, after consultation with Indian tribes, no later than 1 year after this Act is enacted.

This section requires the Director to consult with no less than 2 Indian tribes from each Bureau of Indian Affairs region, and that small, medium, and large land-based tribes are represented during the negotiated rulemaking.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated February 8, 2018, was prepared for S. 1870:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 8, 2018.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1870, the SURVIVE Act.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

S. 1870—Securing Urgent Resources Vital to Indian Victim Empowerment Act

S. 1870 would establish a program within the Department of Justice to make grants to Indian tribes to provide services to crime victims, including medical care, counseling, and legal services. For each of the 10 fiscal years after enactment, the bill would set aside 5 percent of the amounts available in the Crime Victims Fund for those grants (spending from that fund is considered direct spending).

CBO projects that all balances and new deposits into the Crime Victims Fund will be spent under current law (mostly for existing grant programs); thus, enacting the bill would not significantly affect outlays from the fund in any year from 2018 through 2027.

Because enacting the bill would affect direct spending, pay-as-you-go procedures apply. However, CBO estimates that any such effects would be insignificant in any year. Enacting the bill would not affect revenues.

CBO estimates that enacting S. 1870 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 1870 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1870 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 1870.

CHANGES IN EXISTING LAW

In accordance with Committee Rules, subsection 12 of rule XXVI of the Standing Rules of the Senate is waived. In the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate to expedite the business of the Senate.

