



Senate Committee on Indian Affairs
Legislative Hearing to receive testimony on S. 465 & S. 2695
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Written Testimony

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% 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 disproportionately 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% 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

¹ Bureau 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

² US 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-mmiw>

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.

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.

⁴ NCAI 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>).

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.

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

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.