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NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

U.S. House Natural Resources Committee, Subcommittee for Indigenous Peoples of the United States

Legislative Hearing
Testimony of Chief Executive Officer Kevin J. Allis
National Congress of American Indians
July 22, 2020

On behalf of the National Congress of American Indians (NCAI), thank you for holding this hearing on legislation that includes tribal public safety and health. Founded in 1944, NCAI is the oldest and largest representative organization serving the broad interests of tribal nations and communities. Tribal leaders created NCAI in 1944 in response to termination and assimilation policies that threatened the existence of American Indian and Alaska Native (AI/AN) tribal nations. Since then, NCAI has fought to preserve the treaty and sovereign rights of tribal nations, advance the government-to-government relationship, and remove historic structural impediments to tribal self-determination.

To facilitate this Committee's work, NCAI submits this written testimony in support of the below bills.

H.R. 958, The Native Youth and Tribal Officer Protection Act

> *"We'll give you a head start." In 2014 a man attacked his wife in a public parking lot. He bit and hit her in a car. When she ran out of the car and rushed into a women's restroom to seek shelter, he followed her and continued to hit, punch, and kick her. The police were called. In any other case, the man would have been arrested and charged. But this assault took place on the Sisseton-Wahpeton Oyate's reservation land and the Native victim was assaulted by a non-Indian. Under federal law, neither the tribal nor the state government had jurisdiction to prosecute the man. So, the tribal and state police who responded did the best they could do. They held the man in custody and told the woman they would try to give her a "head start." Fortunately for the victim during this particular incident, the non-Indian perpetrator caused enough of a scene in the presence of the state police that he was arrested for disorderly conduct, which is considered a victimless crime that falls under state jurisdiction. Ultimately, after the enactment of VAWA 2013, Sisseton-Wahpeton Oyate was finally able to bring the man who beat his wife in the parking lot to justice. When he beat his wife again, the tribal government was able to arrest and charge the man with assault. He eventually pled guilty in tribal court.*

We share this story because it demonstrates the impact of the tribal jurisdiction provisions that were included in the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), commonly referred to as Special Domestic Violence Criminal Jurisdiction (SDVCJ). Put simply, that change in the law is saving lives. By exercising SDVCJ, many tribal nations have increased safety and justice for victims who had previously seen little of either. Implementation of VAWA 2013 has also revealed, however, places where the jurisdictional framework continues to leave victims—including children, tribal law enforcement, and victims of sexual violence, stalking, and trafficking—vulnerable.[1]

The legislation under consideration today, along with H.R. 3977, which was reported favorably by this Committee last year, responds to many of the gaps identified by the tribal nations who have implemented SDVCJ. Both of these bills would build on the success of the VAWA 2013 provision that reaffirmed the inherent sovereign authority of Indian tribal governments to exercise criminal jurisdiction over certain non-Indians who criminally violate qualifying protection orders or commit domestic or dating violence crimes against Indian victims on tribal lands.[2] NCAI has long supported full reaffirmation of tribal authority on tribal lands, and we welcome the important steps in that direction in these bills.

The Native Youth and Tribal Officer Protection Act (NYTOPA), would amend 25 U.S.C. § 1304 to remove barriers that currently prevent tribal nations from exercising their inherent tribal jurisdiction over certain non-Indians who commit crimes against Native children in Indian Country. The common scenario reported by tribal nations is that they are only able to charge a non-Indian batterer for violence against the mother, and can do nothing about violence against the children. Instead, tribal nations are left to refer these cases to state or federal authorities, who may or may not pursue them.

A recent case from the Sault Sainte Marie Tribe of Chippewa Indians illustrates how this gap in the law has real consequences for Native victims:

> *A non-Indian man in an intimate relationship with a tribal member moved in with her and her 16 year-old daughter. After the man began making unwanted sexual advances on the girl, sending inappropriate text messages, and on one occasion groping the daughter, the tribe charged the defendant with domestic abuse and attempted to tie the sexual assault against the daughter to a pattern of abuse against the mother. The tribal court dismissed the charges for lack of jurisdiction and the defendant left the victim's home. Four months later, he was arrested by city police for kidnapping and repeatedly raping a 14-year old tribal member. Unfortunately, he was ultimately allowed to plead no contest to two less serious charges and was sentenced to 11 months in jail.*

[1] Since passage of VAWA in 2013, NCAI has facilitated the Inter-Tribal Working Group on Special Domestic Violence Criminal Jurisdiction. NCAI released a comprehensive report examining implementation of VAWA 2013. NCAI, "VAWA 2013's Special Domestic Violence Criminal Jurisdiction: 5 Year Report," March 20, 2018, *available at* www.ncai.org/resources/ncai-publications/SDVCJ_5_Year_Report.pdf.

[2] 25 U.S.C. §1304.

This kidnapping and rape of a minor could have been prevented if the tribal nation had been able to exercise jurisdiction in the first case. If NYTOPA had been law, the tribal nation could have protected this victim. NYTOPA would similarly address another significant gap in VAWA 2013. Since SDVCJ is limited to domestic violence, dating violence, and protection order violations, tribal nations also lack jurisdiction to charge a non-Indian offender for crimes that may occur within the context of the criminal justice process. These crimes might include resisting arrest, assaulting an officer, witness tampering, juror intimidation, or obstruction of justice. Several tribal nations have reported assaults on their officers or bailiffs committed by non-Indian SDVCJ defendants that the tribe is unable to prosecute given the restrictions on tribal jurisdiction under federal law. Domestic violence cases are both the most common and the most lethal calls that law enforcement responds to, and the limits on tribal authority to prosecute these crimes creates an obvious public safety concern.

NCAI has adopted resolutions several times calling on Congress to adopt legislation like the Native Youth and Tribal Officer Protection Act, including most recently in NCAI Resolution ECWS-19-005. Accordingly, we strongly support passage of H.R. 958.

H.R. 6535, Coverage for Urban Indian Health Providers Act

Like all other governments, tribal nations strive to ensure the health and wellbeing of their citizens and all those who reside in their communities. As part of tribal nations' responsibilities to their communities, they provide a range of governmental services, including health and public health services.

These services are funded by the United States government due to the unique political relationship between tribal governments and the U.S. which resulted from the forced cessation of tribal nations' lands and resources. For over two hundred years, the United States has consistently maintained a government to government relationship with tribal nations whereby it has recognized a trust and treaty relationship to deliver health care to tribal citizens and safeguard tribal rights and resources. Tribal health care is delivered through a three-tiered system as follows:

> [The Indian Health Service] IHS provides health care either directly or through facilities and programs operated by Indian tribes (ITs) or tribal organizations (TOs) through self-determination contracts and self-governance compacts authorized under P.L. 93-638. IHS also provides services to urban Indians through grants or contracts to Urban Indian Organizations (UIOs). The system is referred to as the I/T/U system, and services available vary. UIOs offer outpatient services, while the IHS and the ITs may provide both outpatient and inpatient care….[3]

Currently, both IHS and tribal health programs receive Federal Tort Claims Act (FTCA) after Congress extended FTCA coverage to tribal contractors pursuant to Public Law 93-638, the Indian Self Determination and Education Assistance Act.[4] Unfortunately, UIOs were not expressly included in this FTCA extension. As a result, UIOs are forced to spend their limited resources on tort claim coverage, which has negatively impacted the scope of services that they can provide.

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[3] COVID-19 and the Indian Health Service Updated May 1, 2020, Congressional Research Service, https://crsreports.congress.gov/product/pdf/IN/IN11333

[4] 25 U.SC. § 5321 (d) and 25 U.S.C. § 458aaa-15

During the current pandemic, UIOs' resources are even more limited and many have instituted hiring freezes and reduced their services to vulnerable community members. H.R. 6535, addresses this gap by expanding FTCA coverage to UIOs.

As a result of their role in the I/T/U system, NCAI supports FTCA parity which will enable UIOs to increase the delivery of services to urban AI/ANs at a time when those services are most needed.

H.R. 6237, Proper and Reimbursed Care for Native Veterans Act

The Purchased/Referred Care (PRC) program is designed for IHS and tribally run health facilities to purchase care from external providers to help make up for the lack of specialty care providers within the Indian health system. Currently, the Veterans Administration (VA) reimburses IHS and tribally run health facilities for costs related to direct care to AI/AN veterans within IHS and tribal facilities. Unfortunately, the VA does not reimburse either entity for the cost of services provided by the PRC program. Instead, AI/AN veterans must be referred back to the VA to be referred again to a third party, or the IHS or tribally run facility must pay for the contracted services through its PRC program. This is overly burdensome, results in duplicative processes that limit access to care for AI/AN veterans, and wastes federal resources. H.R. 6237 addresses this care coordination issue by clarifying in federal statute the requirement that VA reimburses IHS and tribally run health programs for the full scope of services authorized under PRC.

NCAI supports H.R. 6237 which would amend the Indian Health Care Improvement Act to clarify that the Veterans Health Administration and the Department of Defense are required to reimburse the IHS and tribally run health programs for healthcare services provided to Native veterans through an authorized referral. Addressing this issue will increase the amount of reimbursable services and increase the amount of third party revenue that IHS and Tribally run health programs desperately rely upon for their services.

Conclusion

Thank you for the opportunity to provide testimony on this legislation, and we greatly appreciate the work of this Committee to address the many challenges and barriers faced by AI/AN communities. We look forward to working with this Committee to pass H.R. 958, H.R. 6536, and H.R. 6237 and advance other federal policies that support our tribal communities.