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SENATE

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TO ESTABLISH THE ALYCE SPOTTED BEAR AND WALTER SOBOLEFF COMMISSION ON NATIVE CHILDREN, AND FOR OTHER PURPOSES

OCTOBER 1, 2014.—Ordered to be printed

Filed, under authority of the order of the Senate of September 18, 2014

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 1622]

The Committee on Indian Affairs, to which was referred the bill (S. 1622) to establish the Alyce Spotted Bear and Walter Soboleff Commission on Native Children, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of S. 1622 is to provide for a Commission to conduct a comprehensive study on issues affecting Native children. The Commission is named in honor of Ms. Alyce Spotted Bear and Mr. Walter Soboleff. Ms. Spotted Bear was a former tribal chairwoman of the Mandan, Hidatsa, Arikara Nation in North Dakota, a passionate advocate for Native children and a recognized leader in education. Mr. Soboleff was a member of the Tlingit in Alaska as well as an educator, cultural and traditional historian, and religious leader for the Alaska Native people.

BACKGROUND

The federal government has a trust responsibility to provide for the education, health, and safety of Native children. Yet Native children are the most at-risk population in the country, facing significant disparities in these areas.

According to the Center for Native Youth, there are currently over 2.1 million American Indians and Alaska Natives (AI/AN) under the age of 24 living in the United States.¹ The National Indian Child Welfare Association (NICWA) reports that AI/AN children are overrepresented in foster care—at more than 2.1 times the general population—and 2 to 4 times the expected level are awaiting adoption, and further that AI/AN children have the third highest rate of victimization at 11.6 per 1,000 children of the same race or ethnicity.² According to NICWA, in 2009, 7,335 AI/AN children were victims of child maltreatment.³ The Substance Abuse and Mental Health Services reports that suicide is the second leading cause of death—2.5 times the national rate—for AI/AN youth in the 15 to 24 age group.⁴ And the Suicide Prevention Resource Center reports that between 1 in 9 and 1 in 5 AI/AN youth report attempting suicide each year.⁵

Another challenge for native youth is substance abuse. According to the National Survey on Drug Use and Health, 22.9 percent of AI/AN youth ages 12 and older report alcohol use, 18.4 percent report binge drinking and 16.0 percent report substance dependence or abuse. In the same group, 35.8 percent report tobacco use and 12.5 percent report illicit drug use.

One indicator for the health of a community is mortality rates. The Federal Interagency Forum on Child and Family Statistics found that AI/AN infants experience higher infant mortality rates than those of other racial or ethnic groups. For example, in 2009, the AI/AN rate of infant mortality was 8.5 per 1,000 live births; higher than the rates among White, non-Hispanic (5.3 per 1,000 live births), Hispanic (5.3 per 1,000 live births), and Asian or Pacific Islander (4.4 per 1,000 live births) infants.⁶

The Annie E. Casey Foundation KIDS COUNT—State Trends in Child Well-Being 2013 Data Book found that 37 percent of American Indian children live in poverty compared with 14 percent of non-Hispanic white children; 51 percent of American Indian children's parents lack secure employment defined as full-time, year-round employment compared with 25 percent of non-Hispanic white children and 39 percent of Latino children; American Indian teens have considerably higher rates of being neither in school nor working than their non-Hispanic or Asian or Pacific Islander counterparts; 15 percent of American Indian teens are not in school and not working; 58 percent of 3 and 4 year-old American Indian children were not attending any form of pre-school compared with 50

¹ CNAY Native American Youth 101. http://www.aspeninstitute.org/sites/default/files/content/upload/Native%20American%20Youth%20101_higres.

² 2008–2011 Child Welfare Outcomes Report to Congress. See <https://www.acf.hhs.gov/programs/cb/resource/cwo-08-11>.

³ Id.

⁴ CNAY Native American Youth 101. http://www.aspeninstitute.org/sites/default/files/content/upload/Native%20American%20Youth%20101_higres.

⁵ Id.

⁶ America's Children: Key National Indicators of Well-Being 2013. http://www.childstats.gov/pdf/ac2013/ac_13.pdf.

percent of African-American and Asian and Pacific Islander children; and 13 percent of American Indian teens abuse alcohol or drugs compared with 6 percent of African-American teens.⁷

Each of these studies indicates that the United States is failing native youth in virtually every aspect of their development, from birth to adolescence.

Indian tribal governments face numerous obstacles in responding to the needs of Native children. The lack of access to current grant opportunities, due to cumbersome bureaucracy and associated costs, stymies the efforts of Indian tribes to tackle these issues. Federal agencies lack clear implementation plans and coordinated efforts to best address the needs of Native children.

The Commission proposed by S. 1622 is named in honor of Alyce Spotted Bear—a former tribal chairwoman of the Mandan, Hidatsa, Arikara Nation in North Dakota and a passionate advocate for Native children and a recognized leader in education—and Walter Soboleff—a Tlingit from Alaska, a noted educator, cultural and traditional historian and religious leader for Alaska Native people.

Knowing how to address the unique needs of Native children, and creating safeguards and protections for them to develop in safe, supportive communities, is considered a top priority for Indian Country. Yet, we lack sufficient research and understanding on the full scope of the issues and challenges that exist.

Protecting Native children and providing them with safe and supportive communities has been a top priority identified by tribal leaders to this Committee. The collection, development, and evaluation of appropriate data is fundamental to a comprehensive assessment of the needs of Native children, who are the most vulnerable victims of the chronic underfunding of programs delivering services to Indian Country. S. 1622 would establish a Commission to facilitate such an assessment.

Finding the best methods of and coordinating the service delivery systems for these children would be a central mission of the Commission. The intent of S. 1622 and goal of the Commission is to develop recommendations to address the unique needs of Native children and to create safeguards for protecting these children. The Commission's work is also intended to build upon the efforts of other workgroups evaluating Native children's needs, such as the Attorney General's Task Force on American Indian/Alaska Native Children Exposed to Violence.

The Commission proposed by S. 1622 would develop recommendations, and issue a report on the necessary modifications and improvements to programs at federal, state, and tribal levels. These recommendations are intended to identify improvements to child welfare systems in which Native children are involved, mental and physical health systems serving Native children, and the educational and academic achievement of Native students.

LEGISLATIVE HISTORY

S. 1622 was introduced on October 30, 2013, by Senator Heidi Heitkamp (D-ND) along with Senator Lisa Murkowski (R-AK) as an original cosponsor. The following were also added as cosponsors:

⁷Kids Count—State Trends in Child Well-Being 2013 Data Book. <http://datacenter.kidscount.org/files/2013KIDSCOUNTDataBook.pdf>.

Senators Tammy Baldwin (D-WI), Max Baucus (D-MT), Mark Begich (D-AK), Richard Blumenthal (D-CT), Barbara Boxer (D-CA), Maria Cantwell (D-WA), Susan Collins (R-ME), Mike Crapo (R-ID), Dianne Feinstein (D-CA), Deb Fischer (R-NE), Al Franken (D-MN), Kirsten Gillibrand (D-NY), Kay Hagan (D-NC), Orrin Hatch (R-UT), Martin Heinrich (D-NM), Mazie Hirono (D-HI), John Hoeven (R-ND), Mike Johanns (R-NE), Tim Johnson (D-SD), Amy Klobuchar (D-MN), Barbara Mikulski (D-MD), Jerry Moran (R-KS), Patty Murray (D-WA), John Rockefeller (D-WV), Brian Schatz (D-HI), Debbie Stabenow (D-MI), Jon Tester (D-MT), John Thune (R-SD), Mark Udall (D-CO), Tom Udall (D-NM), John Walsh (D-MT), Elizabeth Warren (D-MA), and Sheldon Whitehouse (D-RI).

The bill was referred to the Committee on Indian Affairs. On April 2, 2014, the Committee held a hearing on the bill. The Department of the Interior testified in favor of the bill. On May 21, 2014, the Committee met at a business meeting to consider the bill. One amendment was offered and adopted, and the bill as amended was ordered to be favorably reported to the Senate by voice vote.

SUMMARY OF AMENDMENT

At a Committee business meeting held on May 21, 2014, Senator Heitkamp offered an amendment in the nature of a substitute. The amendment was agreed to. In addition to technical corrections, the amendment amended provisions of the bill regarding Commission appointments to make it clear that they last for the life of the Commission. It also amended the bill to require the Commission to utilize available technology to improve coordination and reduce travel costs to the maximum extent practicable. Finally, it directed the Commission to make recommendations for strategies to prevent and reduce truancy among Native children.

SECTION-BY-SECTION ANALYSIS OF BILL AS ORDERED REPORTED

Section 1. Short title

This Act may be cited as the “Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act.”

Section 2. Findings

Section 2 sets forth the findings of Congress:

- The United States has a distinct legal, treaty, and trust obligation to provide for the education, health care, safety, social welfare, and other needs of Native children;
- Chronic underfunding of Federal programs to fulfill the longstanding Federal trust obligation has resulted in limited access to critical services for the more than 2,100,000 Native children under the age of 24 living in the United States;
- Native children are the most at-risk population in the United States, confronting serious disparities in education, health, and safety, with 37 percent living in poverty;
- 17 percent of Native children have no health insurance coverage, and child mortality has increased 15 percent among Native children aged 1 to 14, while the overall rate of child mortality in the United States decreased by 9 percent;

- Suicide is the second leading cause of death in Native children aged 15 through 24, a rate that is 2.5 times the national average, and violence, including intentional injuries, homicide, and suicide, account for 75 percent of the deaths of Native children aged 12 through 20;
- 58 percent of 3- and 4-year-old Native children are not attending any form of preschool, 15 percent of Native children are not in school and not working, and the graduation rate for Native high school students is 50 percent;
- 22.9 percent of Native children aged 12 and older report alcohol use, 16 percent report substance dependence or abuse, 35.8 percent report tobacco use, and 12.5 percent report illicit drug use;
- Native children disproportionately enter foster care at a rate more than 2.1 times the general population and have the third highest rate of victimization; and
- There is no resource that is more vital to the continued existence and integrity of Native communities than Native children, and the United States has a direct interest, as trustee, in protecting Native children.

Section 3. Definitions

Section 3 defines key terms used throughout the Act.

Section 4. Commission on Native children

Section 4(a) establishes the Commission in the Office of Tribal Justice in the Department of Justice.

Section 4(b)(1) provides that there shall be 11 members to the Commission: three would be appointed by the President in consultation with the Attorney General, the Secretary of the Interior, the Secretary of Education, and the Secretary of Health and Human Services; three by the Speaker of the House in consultation with the House Committee on Natural Resources; three by the Majority Leader of the Senate, in consultation with the Senate Committee on Indian Affairs; and finally, the Minority Leaders of the House and Senate would each appoint one member.

Section 4(b)(2) determines the requirements for eligibility for Commission members. Each member is required to have expertise and experience in Indian Affairs. One member shall be an expert on Native children, and one member is required to have expertise in social science research or statistics.

Section 4(b)(3) delineates the term of appointment for each commissioner is the life of the Commission, with any vacancy being filled in the same manner in which the original appointment was made.

Section 4(c) establishes that the commissioners shall choose their own chairperson, and that she will call the initial meeting within 30 days following the appointment of the eleventh commissioner, and that, with a quorum of commissioners set at a majority, the Commission shall determine its own rules.

Section 4(d) provides for the mandatory creation of a Native Advisory Committee (NAC) composed of one representative who is at least 25 years old or older, of Indian tribes from each of the Bureau of Indian Affairs regions and one Native Hawaiian who is at least 25 years old or older. Each member of the NAC must also have ex-

perience in matters relating to the Commission's study. The NAC will provide advice and recommendations to the Commission as the Commission deems necessary. Furthermore, the NAC will have a subcommittee consisting of at least one member from each of the BIA's regions and a Native Hawaiian, each of whom shall be a Native child who has experience serving on the council of a tribal, regional, or national youth organization.

Section 4(e)(1) sets forth the requirement that the Commission produce a comprehensive study of federal, state, local, and tribal programs that serve Native children, including evaluations of: current jurisdiction of child welfare systems; barriers in applying for public and private grants; obstacles to obtaining nongovernmental support; issues relating to data collection; barriers to developing sustainable, multidisciplinary programs to assist high-risk Natives and their families; and barriers to interagency coordination.

Section 4(e)(2) determines that, in order to prevent duplication, the Commission must collaborate with other workgroups focused on similar issues, such as the Task Force on American Indian/Alaska Native Children Exposed to Violence of the Attorney. In addition, to the extent practicable, the Commission is to use available technology to reduce travel and other costs.

Section 4(e)(3) provides the Commission is to develop goals, and plans for achieving those goals, for Federal policy relating to Native children in the short-, mid-, and long-term, which shall be informed by the development of accurate child well-being measures.

In addition, the Commission is to make recommendations on necessary modifications and improvements to programs that serve Native children at the federal, state, and tribal levels that integrate the cultural strengths of the communities of the Native children and will result in the following: (i) improvements to the child welfare system; (ii) improvements to the mental and physical health of Native children, taking into consideration the rates of suicide, substance abuse, and access to nutrition and health care; (iii) improvements to educational and vocational opportunities for Native children; (iv) improved policies and practices by local school districts that would result in improved academic proficiency for Native children; (v) increased access to extracurricular activities for Native children that are designed to increase self-esteem, promote community engagement, and support academic excellence while also serving to prevent unplanned pregnancy, membership in gangs, drug and alcohol abuse, and suicide, including activities that incorporate traditional language and cultural practices of Indians and Native Hawaiians; (vi) improvements to federal, state, and tribal juvenile detention programs; (vii) expanded access to a continuum of early development and learning services for Native children from prenatal to age five that are culturally competent, support Native language preservation, and comprehensively promote the health, well-being, learning, and development of Native children; (viii) the development of a system that delivers wrap-around services to Native children in a way that is comprehensive and sustainable, including through increased coordination among Indian tribes, schools, law enforcement, health care providers, social workers, and families; (ix) more flexible use of existing Federal programs; and (x) solu-

tions to other issues that, as determined by the Commission, would improve the health, safety, and well-being of Native children.

The Commission is also required to make recommendations on improving data collection and sharing.

Section 4(f) requires the Commission to issue a report to the Congress, the President, and the White House Council on Native American Affairs on its findings and recommendations no later than three years after which all commissioners are appointed and funds are made available to carry out the requirements of the Act.

Section 4(g) establishes the powers of the Commission to hold hearings, which shall be public, and that witness expenses shall be provided for as under 28 U.S.C. 1821. Federal agencies must provide information to the Commission as requested, but State and tribal authorities are not so required. Use of the postal services shall be the same as for other federal departments and gifts may be accepted and used as they relate to the purpose of the Commission.

Section 4(h) determines that the travel expenses of commissioners shall be at the same rates as under title 5, chapter 57, subchapter I of the U.S.C. as are allowed for federal employees. Federal detailees may be used by the Commission upon approval by a two-thirds vote of the commissioners and by the respective agency head. Detailees shall suffer no impairment of their civil service status due to their detail. Further, the Attorney General shall provide physical space and on a reimbursable basis and supplies to the Commission as may be necessary to carry out its work. No commissioner, member of NAC, nor member of the Native Children Subcommittee shall be considered a Federal employee.

Section 4(i) provides that the Commission shall terminate 90 days after the submission of its report.

Section 4(j) prevents the Federal Advisory Committee Act from applying to the Commission.

Section 4(k) determines that of any unobligated amounts made available to the Secretary of the Interior, the Attorney General, the Secretary of Health and Human Services, the Attorney General shall not make more than \$2,000,000 available to the Commission to carry out this Act.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated July 7, 2014, was prepared for S. 1622:

Washington DC, July 7, 2014.

Hon. JON TESTER,
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. 1622, the Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1622—Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act

Summary: S. 1622 would establish the Alyce Spotted Bear and Walter Soboleff Commission on Native Children in the Office of Tribal Justice of the Department of Justice. The 11-member commission would be tasked with completing a study of federal and non-federal programs that serve Native American children. Under the bill, the commission would use the results of the study to develop plans and recommendations to improve those programs. S. 1622 also would allow the commission to use staff detailed from other federal agencies to complete its work and reimburse commission members for traveling expenses.

Estimated cost to the federal Government: Based on the costs of similar commissions, CBO estimates that implementing the legislation would cost about \$3 million over the 2015–2019 period, subject to appropriation of the necessary amounts, mostly to pay salaries and expenses of employees detailed to the commission.

Pay-As-You-Go considerations: Enacting S. 1622 also would affect direct spending because it would authorize the new commission to accept and spend gifts; therefore, pay-as-you-go procedures apply. However, CBO estimates that the net effect on direct spending would be insignificant. Enacting S. 1622 would not affect revenues.

Estimated impact on state, local, and tribal governments: S. 1622 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

Estimated impact on the private sector: None.

Estimate prepared by: The estimate was prepared by Martin von Gnechten.

Estimate approved by: The estimate was approved by Theresa Gullo, 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. 1622 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 1622.

ADDITIONAL VIEWS OF VICE CHAIRMAN BARRASSO

The *Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act*, S. 1622, establishes a Commission within the Department of Justice to conduct a comprehensive study of Federal, state, local, and tribal programs that serve Native children. The Commission is required to develop goals (and plans for achieving those goals) for Federal policy relating to Native children—including both Indian and Native Hawaiian children.

There are many opportunities for the agencies providing these programs to work together in a more effective manner for these children. For example, the Indian Law and Order Commission, established by the *Tribal Law and Order Act*, provided an extensive review of several key issues and recommendations relating to Native American children to consider. Likewise, the Attorney General established the Task Force on American Indian and Alaska Native Children Exposed to Violence to examine the scope of violence impacting Native American children and make recommendations to address it. In addition, the White House Council on Native American Affairs can promote interagency coordination to address Native children's issues.

We must be confident that policies are implemented effectively to support and protect Native children. That begins with recognizing important distinctions underlying these policies.

The overarching purpose of the bill is to lead to improvements in the quality of life for Native children through the various policies, programs, and services provided by the Federal, state, local, and tribal governments. This very same premise was the basis for the Department of the Interior's Advanced Notice of Proposed Rulemaking (ANPR) on reestablishing a government to government relationship with the Native Hawaiians. See *Procedures for Reestablishing a Government-to-Government Relationship With the Native Hawaiian Community*, 79 Fed. Reg. 35296, 35298, June 20, 2014.

The ANPR fails to distinguish that Congressional or Executive actions providing assistance and programs for the betterment of the Native Hawaiian people are profoundly different from the solemn act of recognizing a sovereign government, similar to tribes or otherwise.

It is unclear under S. 1622 to what extent the Commission would propose changes to Federal and state policies involving aspects of recognizing a Native Hawaiian government to improve services, similar to what the Department of the Interior is attempting to do.

Congress, and this Committee in particular, has long struggled with the constitutionality of Native Hawaiian recognition. The Commission is not in any better position than Congress to examine and determine the constitutionality of such recognition.

The breadth of the Commission's responsibilities under S. 1622 is quite extensive. I am concerned, in particular, with how the

Commission's recommendations could extend to matters which implicate the Federal recognition of a Native Hawaiian government.

CHANGES IN EXISTING LAW (CORDON RULE)

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of S. 1622 will not make any changes in existing law.

