

114TH CONGRESS
1ST SESSION

S. 246

To establish the Alyce Spotted Bear and Walter Soboleff Commission on Native Children, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2015

Ms. HEITKAMP (for herself, Ms. MURKOWSKI, Mr. TESTER, Ms. HIRONO, Mr. SCHATZ, Mrs. FEINSTEIN, Mr. FRANKEN, Mr. HOEVEN, Mr. UDALL, Ms. KLOBUCHAR, Mrs. MURRAY, Mr. THUNE, Ms. WARREN, Mr. HEINRICH, Mr. MORAN, Mr. WHITEHOUSE, Mr. BLUMENTHAL, Ms. COLLINS, Mrs. BOXER, Mrs. FISCHER, Ms. STABENOW, Ms. CANTWELL, Ms. BALDWIN, and Mrs. SHAHEEN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To establish the Alyce Spotted Bear and Walter Soboleff Commission on Native Children, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the United States has a distinct legal, trea-
2 ty, and trust obligation to provide for the education,
3 health care, safety, social welfare, and other needs of
4 Native children;

5 (2) chronic underfunding of Federal programs
6 to fulfill the longstanding Federal trust obligation
7 has resulted in limited access to critical services for
8 the more than 2,100,000 Native children under the
9 age of 24 living in the United States;

10 (3) Native children are the most at-risk popu-
11 lation in the United States, confronting serious dis-
12 parities in education, health, and safety, with 37
13 percent living in poverty;

14 (4) 17 percent of Native children have no
15 health insurance coverage, and child mortality has
16 increased 15 percent among Native children aged 1
17 to 14, while the overall rate of child mortality in the
18 United States decreased by 9 percent;

19 (5) suicide is the second leading cause of death
20 in Native children aged 15 through 24, a rate that
21 is 2.5 times the national average, and violence, in-
22 cluding intentional injuries, homicide, and suicide,
23 account for 75 percent of the deaths of Native chil-
24 dren aged 12 through 20;

1 (6) 58 percent of 3- and 4-year-old Native chil-
 2 dren are not attending any form of preschool, 15
 3 percent of Native children are not in school and not
 4 working, and the graduation rate for Native high
 5 school students is 50 percent;

6 (7) 22.9 percent of Native children aged 12 and
 7 older report alcohol use, 16 percent report substance
 8 dependence or abuse, 35.8 percent report tobacco
 9 use, and 12.5 percent report illicit drug use;

10 (8) Native children disproportionately enter fos-
 11 ter care at a rate more than 2.1 times the general
 12 population and have the third highest rate of victim-
 13 ization; and

14 (9) there is no resource that is more vital to the
 15 continued existence and integrity of Native commu-
 16 nities than Native children, and the United States
 17 has a direct interest, as trustee, in protecting Native
 18 children.

19 **SEC. 3. DEFINITIONS.**

20 In this Act:

21 (1) COMMISSION.—The term “Commission”
 22 means the Alyce Spotted Bear and Walter Soboleff
 23 Commission on Native Children established by sec-
 24 tion 4.

1 (2) INDIAN.—The term “Indian” has the mean-
2 ing given the term in section 4 of the Indian Self-
3 Determination and Education Assistance Act (25
4 U.S.C. 450b).

5 (3) INDIAN TRIBE.—The term “Indian tribe”
6 has the meaning given the term in section 4 of the
7 Indian Self-Determination and Education Assistance
8 Act (25 U.S.C. 450b).

9 (4) NATIVE CHILD.—The term “Native child”
10 means—

11 (A) an Indian child, as that term is de-
12 fined in section 4 of the Indian Child Welfare
13 Act of 1978 (25 U.S.C. 1903);

14 (B) an Indian who is between the ages of
15 18 and 24 years old; and

16 (C) a Native Hawaiian who is not older
17 than 24 years old.

18 (5) NATIVE HAWAIIAN.—The term “Native Ha-
19 waiian” has the meaning given the term in section
20 7207 of the Elementary and Secondary Education
21 Act of 1965 (20 U.S.C. 7517).

22 (6) SECRETARY.—The term “Secretary” means
23 the Secretary of the Interior.

24 (7) TRIBAL COLLEGE OR UNIVERSITY.—The
25 term “Tribal College or University” has the meaning

1 given the term in section 316(b) of the Higher Edu-
2 cation Act of 1965 (20 U.S.C. 1059c(b)).

3 **SEC. 4. COMMISSION ON NATIVE CHILDREN.**

4 (a) IN GENERAL.—There is established a commission
5 in the Office of Tribal Justice of the Department of Jus-
6 tice, to be known as the “Alyce Spotted Bear and Walter
7 Soboleff Commission on Native Children”.

8 (b) MEMBERSHIP.—

9 (1) IN GENERAL.—The Commission shall be
10 composed of 11 members, of whom—

11 (A) 3 shall be appointed by the President,
12 in consultation with—

13 (i) the Attorney General;

14 (ii) the Secretary;

15 (iii) the Secretary of Education; and

16 (iv) the Secretary of Health and
17 Human Services;

18 (B) 3 shall be appointed by the Majority
19 Leader of the Senate, in consultation with the
20 Chairperson of the Committee on Indian Affairs
21 of the Senate;

22 (C) 1 shall be appointed by the Minority
23 Leader of the Senate, in consultation with the
24 Vice Chairperson of the Committee on Indian
25 Affairs of the Senate;

1 (D) 3 shall be appointed by the Speaker of
2 the House of Representatives, in consultation
3 with the Chairperson of the Committee on Nat-
4 ural Resources of the House of Representatives;
5 and

6 (E) 1 shall be appointed by the Minority
7 Leader of the House of Representatives, in con-
8 sultation with the Ranking Member of the Com-
9 mittee on Natural Resources of the House of
10 Representatives.

11 (2) REQUIREMENTS FOR ELIGIBILITY.—

12 (A) IN GENERAL.—Subject to subpara-
13 graph (B), each member of the Commission
14 shall have significant experience and expertise
15 in—

16 (i) Indian affairs; and

17 (ii) matters to be studied by the Com-
18 mission, including—

19 (I) health care issues facing Na-
20 tive children, including mental health,
21 physical health, and nutrition;

22 (II) Indian education, including
23 experience with Bureau of Indian
24 Education schools and public schools,
25 tribally operated schools, tribal col-

1 leges or universities, early childhood
2 education programs, and the develop-
3 ment of extracurricular programs;

4 (III) juvenile justice programs re-
5 lating to prevention and reducing in-
6 carceration and rates of recidivism;
7 and

8 (IV) social service programs that
9 are used by Native children and de-
10 signed to address basic needs, such as
11 food, shelter, and safety, including
12 child protective services, group homes,
13 and shelters.

14 (B) EXPERTS.—

15 (i) NATIVE CHILDREN.—1 member of
16 the Commission shall—

17 (I) meet the requirements of sub-
18 paragraph (A); and

19 (II) be responsible for providing
20 the Commission with insight into and
21 input from Native children on the
22 matters studied by the Commission.

23 (ii) RESEARCH.—1 member of the
24 Commission shall—

1 (I) meet the requirements of sub-
2 paragraph (A); and

3 (II) have extensive experience in
4 statistics or social science research.

5 (3) TERMS.—

6 (A) IN GENERAL.—Each member of the
7 Commission shall be appointed for the life of
8 the Commission.

9 (B) VACANCIES.—A vacancy in the Com-
10 mission shall be filled in the manner in which
11 the original appointment was made.

12 (c) OPERATION.—

13 (1) CHAIRPERSON.—Not later than 15 days
14 after the date on which all members of the Commis-
15 sion have been appointed, the Commission shall se-
16 lect 1 member to serve as Chairperson of the Com-
17 mission.

18 (2) MEETINGS.—

19 (A) IN GENERAL.—The Commission shall
20 meet at the call of the Chairperson.

21 (B) INITIAL MEETING.—The initial meet-
22 ing of the Commission shall take place not later
23 than 30 days after the date described in para-
24 graph (1).

1 (3) QUORUM.—A majority of the members of
2 the Commission shall constitute a quorum, but a
3 lesser number of members may hold hearings.

4 (4) RULES.—The Commission may establish, by
5 majority vote, any rules for the conduct of Commis-
6 sion business, in accordance with this Act and other
7 applicable law.

8 (d) NATIVE ADVISORY COMMITTEE.—

9 (1) ESTABLISHMENT.—The Commission shall
10 establish a committee, to be known as the “Native
11 Advisory Committee”.

12 (2) MEMBERSHIP.—

13 (A) COMPOSITION.—The Native Advisory
14 Committee shall consist of—

15 (i) 1 representative of Indian tribes
16 from each region of the Bureau of Indian
17 Affairs who is 25 years of age or older;
18 and

19 (ii) 1 Native Hawaiian who is 25
20 years of age or older.

21 (B) QUALIFICATIONS.—Each member of
22 the Native Advisory Committee shall have expe-
23 rience relating to matters to be studied by the
24 Commission.

1 (3) DUTIES.—The Native Advisory Committee
2 shall—

3 (A) serve as an advisory body to the Com-
4 mission; and

5 (B) provide to the Commission advice and
6 recommendations, submit materials, documents,
7 testimony, and such other information as the
8 Commission determines to be necessary to carry
9 out the duties of the Commission under this
10 section.

11 (4) NATIVE CHILDREN SUBCOMMITTEE.—The
12 Native Advisory Committee shall establish a sub-
13 committee that shall consist of at least 1 member
14 from each region of the Bureau of Indian Affairs
15 and 1 Native Hawaiian, each of whom shall be a
16 Native child, and have experience serving on the
17 council of a tribal, regional, or national youth orga-
18 nization.

19 (e) COMPREHENSIVE STUDY OF NATIVE CHILDREN
20 ISSUES.—

21 (1) IN GENERAL.—The Commission shall con-
22 duct a comprehensive study of Federal, State, local,
23 and tribal programs that serve Native children, in-
24 cluding an evaluation of—

1 (A) the impact of concurrent jurisdiction
2 on child welfare systems;

3 (B) the barriers Indian tribes and Native
4 Hawaiians face in applying, reporting on, and
5 using existing public and private grant re-
6 sources, including identification of any Federal
7 cost-sharing requirements;

8 (C) the obstacles to nongovernmental fi-
9 nancial support, such as from private founda-
10 tions and corporate charities, for programs ben-
11 efitting Native children;

12 (D) the issues relating to data collection,
13 such as small sample sizes, large margins of
14 error, or other issues related to the validity and
15 statistical significance of data on Native chil-
16 dren;

17 (E) the barriers to the development of sus-
18 tainable, multidisciplinary programs designed to
19 assist high-risk Native children and families of
20 those high-risk Native children;

21 (F) cultural or socioeconomic challenges in
22 communities of Native children;

23 (G) any examples of successful program
24 models and use of best practices in programs
25 that serve children and families;

1 (H) the barriers to interagency coordina-
2 tion on programs benefitting Native children;
3 and

4 (I) the use of memoranda of agreement or
5 interagency agreements to facilitate or improve
6 agency coordination, including the effects of ex-
7 isting memoranda or interagency agreements on
8 program service delivery and efficiency.

9 (2) COORDINATION.—In conducting the study
10 under paragraph (1), the Commission shall, to the
11 maximum extent practicable—

12 (A) to avoid duplication of efforts, collabo-
13 rate with other workgroups focused on similar
14 issues, such as the Task Force on American In-
15 dian/Alaska Native Children Exposed to Vio-
16 lence of the Attorney General; and

17 (B) to improve coordination and reduce
18 travel costs, use available technology.

19 (3) RECOMMENDATIONS.—Taking into consid-
20 eration the results of the study under paragraph (1)
21 and the analysis of any existing data relating to Na-
22 tive children received from Federal agencies, the
23 Commission shall—

24 (A) develop recommendations for goals,
25 and plans for achieving those goals, for Federal

1 policy relating to Native children in the short-
2 , mid-, and long-term, which shall be informed
3 by the development of accurate child well-being
4 measures, except that the Commission shall not
5 consider or recommend the recognition or the
6 establishment of a government-to-government
7 relationship with—

8 (i) any entity not recognized on or be-
9 fore the date of enactment of this Act by
10 the Federal Government through an Act of
11 Congress, Executive action, judicial decree,
12 or any other action; or

13 (ii) any entity not included in the list
14 authorized pursuant to the Federally Rec-
15 ognized Indian Tribe List Act of 1994 (25
16 U.S.C. 479a et seq.);

17 (B) make recommendations on necessary
18 modifications and improvements to programs
19 that serve Native children at the Federal, State,
20 and tribal levels, on the condition that the rec-
21 ommendations recognize the diversity in cul-
22 tural values, integrate the cultural strengths of
23 the communities of the Native children, and will
24 result in—

1 (i) improvements to the child welfare
2 system that—

3 (I) reduce the disproportionate
4 rate at which Native children enter
5 child protective services and the pe-
6 riod of time spent in the foster sys-
7 tem;

8 (II) increase coordination among
9 social workers, police, and foster fami-
10 lies assisting Native children while in
11 the foster system to result in the in-
12 creased safety of Native children while
13 in the foster system;

14 (III) encourage the hiring and re-
15 tention of licensed social workers in
16 Native communities;

17 (IV) address the lack of available
18 foster homes in Native communities;
19 and

20 (V) reduce truancy and improve
21 the academic proficiency and gradua-
22 tion rates of Native children in the
23 foster system;

24 (ii) improvements to the mental and
25 physical health of Native children, taking

1 into consideration the rates of suicide, sub-
2 stance abuse, and access to nutrition and
3 health care, including—

4 (I) an analysis of the increased
5 access of Native children to Medicaid
6 under the Patient Protection and Af-
7 fordable Care Act (Public Law 111-
8 148) and the effect of that increase
9 on the ability of Indian tribes and Na-
10 tive Hawaiians to develop sustainable
11 health programs; and

12 (II) an evaluation of the effects
13 of a lack of public sanitation infra-
14 structure, including in-home sewer
15 and water, on the health status of Na-
16 tive children;

17 (iii) improvements to educational and
18 vocational opportunities for Native children
19 that will lead to—

20 (I) increased school attendance,
21 performance, and graduation rates for
22 Native children across all educational
23 levels, including early education, post-
24 secondary, and graduate school;

1 (II) localized strategies developed
2 by educators, tribal and community
3 leaders, and law enforcement to pre-
4 vent and reduce truancy among Na-
5 tive children;

6 (III) scholarship opportunities at
7 a Tribal College or University and
8 other public and private postsecondary
9 institutions;

10 (IV) increased participation of
11 the immediate families of Native chil-
12 dren;

13 (V) coordination among schools
14 and Indian tribes that serve Native
15 children, including in the areas of
16 data sharing and student tracking;

17 (VI) accurate identification of
18 students as Native children; and

19 (VII) increased school counseling
20 services, improved access to quality
21 nutrition at school, and safe student
22 transportation;

23 (iv) improved policies and practices by
24 local school districts that would result in

1 improved academic proficiency for Native
2 children;

3 (v) increased access to extracurricular
4 activities for Native children that are de-
5 signed to increase self-esteem, promote
6 community engagement, and support aca-
7 demic excellence while also serving to pre-
8 vent unplanned pregnancy, membership in
9 gangs, drug and alcohol abuse, and suicide,
10 including activities that incorporate tradi-
11 tional language and cultural practices of
12 Indians and Native Hawaiians;

13 (vi) taking into consideration the re-
14 port of the Indian Law and Order Com-
15 mission issued pursuant to section 15(f) of
16 the Indian Law Enforcement Reform Act
17 (25 U.S.C. 2812(f)), improvements to Fed-
18 eral, State, and tribal juvenile justice sys-
19 tems and detention programs—

20 (I) to provide greater access to
21 educational opportunities and social
22 services for incarcerated Native chil-
23 dren;

1 (II) to promote prevention and
2 reduce incarceration and recidivism
3 rates among Native children;

4 (III) to identify intervention ap-
5 proaches and alternatives to incarcer-
6 ation of Native children;

7 (IV) to incorporate families and
8 the traditional cultures of Indians and
9 Native Hawaiians in the juvenile jus-
10 tice process, including through the de-
11 velopment of a family court for juve-
12 nile offenses; and

13 (V) to prevent unnecessary de-
14 tentions and identify successful re-
15 entry programs;

16 (vii) expanded access to a continuum
17 of early development and learning services
18 for Native children from prenatal to age 5
19 that are culturally competent, support Na-
20 tive language preservation, and comprehen-
21 sively promote the health, well-being, learn-
22 ing, and development of Native children,
23 such as—

24 (I) high quality early care and
25 learning programs for children start-

1 ing from birth, including Early Head
2 Start, Head Start, child care, and
3 preschool programs;

4 (II) programs, including home
5 visiting and family resource and sup-
6 port programs, that increase the ca-
7 pacity of parents to support the learn-
8 ing and development of the children of
9 the parents, beginning prenatally, and
10 connect the parents with necessary re-
11 sources;

12 (III) early intervention and pre-
13 school services for infants, toddlers,
14 and preschool-aged children with de-
15 velopmental delays or disabilities; and

16 (IV) professional development op-
17 portunities for Native providers of
18 early development and learning serv-
19 ices;

20 (viii) the development of a system that
21 delivers wrap-around services to Native
22 children in a way that is comprehensive
23 and sustainable, including through in-
24 creased coordination among Indian tribes,

1 schools, law enforcement, health care pro-
2 viders, social workers, and families;

3 (ix) more flexible use of existing Fed-
4 eral programs, such as by—

5 (I) providing Indians and Native
6 Hawaiians with more flexibility to
7 carry out programs, while maintaining
8 accountability, minimizing administra-
9 tive time, cost, and expense and re-
10 ducing the burden of Federal paper-
11 work requirements; and

12 (II) allowing unexpended Federal
13 funds to be used flexibly to support
14 programs benefitting Native children,
15 while taking into account—

16 (aa) the Indian Employ-
17 ment, Training and Related Serv-
18 ices Demonstration Act of 1992
19 (25 U.S.C. 3401 note; 106 Stat.
20 2302);

21 (bb) the Coordinated Tribal
22 Assistance Solicitation program
23 of the Department of Justice;

24 (cc) the Federal policy of
25 self-determination; and

1 (dd) any consolidated grant
2 programs; and

3 (x) solutions to other issues that, as
4 determined by the Commission, would im-
5 prove the health, safety, and well-being of
6 Native children;

7 (C) make recommendations for improving
8 data collection methods that consider—

9 (i) the adoption of standard defini-
10 tions and compatible systems platforms to
11 allow for greater linkage of data sets
12 across Federal agencies;

13 (ii) the appropriateness of existing
14 data categories for comparative purposes;

15 (iii) the development of quality data
16 and measures, such as by ensuring suffi-
17 cient sample sizes and frequency of sam-
18 pling, for Federal, State, and tribal pro-
19 grams that serve Native children;

20 (iv) the collection and measurement of
21 data that are useful to Indian tribes and
22 Native Hawaiians;

23 (v) the inclusion of Native children in
24 longitudinal studies; and

1 (vi) tribal access to data gathered by
2 Federal, State, and local governmental
3 agencies; and

4 (D) identify models of successful Federal,
5 State, and tribal programs in the areas studied
6 by the Commission.

7 (f) REPORT.—Not later than 3 years after the date
8 on which all members of the Commission are appointed
9 and amounts are made available to carry out this Act, the
10 Commission shall submit to the President, Congress, and
11 the White House Council on Native American Affairs a
12 report that contains—

13 (1) a detailed statement of the findings and
14 conclusions of the Commission; and

15 (2) the recommendations of the Commission for
16 such legislative and administrative actions as the
17 Commission considers to be appropriate.

18 (g) POWERS.—

19 (1) HEARINGS.—

20 (A) IN GENERAL.—The Commission may
21 hold such hearings, meet and act at such times
22 and places, take such testimony, and receive
23 such evidence as the Commission considers to
24 be advisable to carry out the duties of the Com-
25 mission under this section, except that the

1 Commission shall hold not less than 5 hearings
2 in Native communities.

3 (B) PUBLIC REQUIREMENT.—The hearings
4 of the Commission under this paragraph shall
5 be open to the public.

6 (2) WITNESS EXPENSES.—

7 (A) IN GENERAL.—A witness requested to
8 appear before the Commission shall be paid the
9 same fees and allowances as are paid to wit-
10 nesses under section 1821 of title 28, United
11 States Code.

12 (B) PER DIEM AND MILEAGE.—The fees
13 and allowances for a witness shall be paid from
14 funds made available to the Commission.

15 (3) INFORMATION FROM FEDERAL, TRIBAL,
16 AND STATE AGENCIES.—

17 (A) IN GENERAL.—The Commission may
18 secure directly from a Federal agency such in-
19 formation as the Commission considers to be
20 necessary to carry out this section.

21 (B) TRIBAL AND STATE AGENCIES.—The
22 Commission may request the head of any tribal
23 or State agency to provide to the Commission
24 such information as the Commission considers
25 to be necessary to carry out this Act.

1 (4) POSTAL SERVICES.—The Commission may
2 use the United States mails in the same manner and
3 under the same conditions as other agencies of the
4 Federal Government.

5 (5) GIFTS.—The Commission may accept, use,
6 and dispose of gifts or donations of services or prop-
7 erty related to the purpose of the Commission.

8 (h) COMMISSION PERSONNEL MATTERS.—

9 (1) TRAVEL EXPENSES.—A member of the
10 Commission shall be allowed travel expenses, includ-
11 ing per diem in lieu of subsistence, at rates author-
12 ized for an employee of an agency under subchapter
13 I of chapter 57 of title 5, United States Code, while
14 away from the home or regular place of business of
15 the member in the performance of the duties of the
16 Commission.

17 (2) DETAIL OF FEDERAL EMPLOYEES.—

18 (A) IN GENERAL.—On the affirmative vote
19 of $\frac{2}{3}$ of the members of the Commission—

20 (i) the Attorney General, the Sec-
21 retary, the Secretary of Education, and the
22 Secretary of the Health and Human Serv-
23 ices shall each detail, without reimburse-
24 ment, 1 or more employees of the Depart-
25 ment of Justice, the Department of the In-

1 terior, the Department of Education, and
2 the Department of Health and Human
3 Services; and

4 (ii) with the approval of the appro-
5 priate Federal agency head, an employee of
6 any other Federal agency may be, without
7 reimbursement, detailed to the Commis-
8 sion.

9 (B) EFFECT ON DETAILEES.—Detail
10 under this paragraph shall be without interrup-
11 tion or loss of civil service status, benefits, or
12 privileges.

13 (3) PROCUREMENT OF TEMPORARY AND INTER-
14 MITTENT SERVICES.—

15 (A) IN GENERAL.—On request of the Com-
16 mission, the Attorney General shall provide to
17 the Commission, on a reimbursable basis, rea-
18 sonable and appropriate office space, supplies,
19 and administrative assistance.

20 (B) NO REQUIREMENT FOR PHYSICAL FA-
21 CILITIES.—The Administrator of General Serv-
22 ices shall not be required to locate a permanent,
23 physical office space for the operation of the
24 Commission.

1 (4) MEMBERS NOT FEDERAL EMPLOYEES.—No
2 member of the Commission, the Native Advisory
3 Committee, or the Native Children Subcommittee
4 shall be considered to be a Federal employee.

5 (i) TERMINATION OF COMMISSION.—The Commis-
6 sion shall terminate 90 days after the date on which the
7 Commission submits the report under subsection (f).

8 (j) NONAPPLICABILITY OF FACCA.—The Federal Ad-
9 visory Committee Act (5 U.S.C. App.) shall not apply to
10 the Commission, the Native Advisory Committee, or the
11 Native Children Subcommittee.

12 (k) EFFECT.—This Act shall not be construed to rec-
13 ognize or establish a government-to-government relation-
14 ship with—

15 (1) any entity not recognized on or before the
16 date of enactment of this Act by the Federal Gov-
17 ernment through an Act of Congress, Executive ac-
18 tion, judicial decree, or any other action; or

19 (2) any entity not included in the list author-
20 ized pursuant to the Federally Recognized Indian
21 Tribe List Act of 1994 (25 U.S.C. 479a et seq.).

22 (l) FUNDING.—Out of any unobligated amounts
23 made available to the Secretary, the Attorney General, or
24 the Secretary of Health and Human Services, the Attor-

1 ney General shall make not more than \$2,000,000 avail-
2 able to the Commission to carry out this Act.

○