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

MAY 11, 2015.—Ordered to be printed

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

R E P O R T

[To accompany S. 246]

The Committee on Indian Affairs, to which was referred the bill (S. 246) 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. 246 is to establish the Alyce Spotted Bear and Walter Soboleff Commission on Native Children in the Office of Tribal Justice within the Department of Justice. The Commission would conduct a comprehensive study on Federal, state, local, and tribal programs that serve Native children. Using the results from the study, the Commission would submit a report to Congress and the President on how to improve the programs studied.

BACKGROUND

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

For example, the National Indian Child Welfare Association (NICWA) reports that Indian children are overrepresented in foster care—at more than 2.1 times the general population. Indian children have the third highest rate of victimization at 11.6 per 1,000

children of the same race or ethnicity.¹ According to NICWA, in 2009, 7,335 Indian children were victims of child maltreatment.

Another challenge for Native youth is substance abuse. According to the National Survey on Drug Use and Health, 22.9 percent of Indian youth ages 12 and older report alcohol use, 18.4 percent report binge drinking and 16.0 percent report substance abuse or dependence. 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 Indian infants experience higher infant mortality rates than those of other racial or ethnic groups. For example, in 2009, the rate of infant mortality for Indian babies was 8.5 per 1,000 live births. That figure is 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.²

Under- or unemployment and poverty are more pervasive problems among Indian families than other populations. The Annie E. Casey Foundation KIDS COUNT—State Trends in Child Well-Being 2013 Data Book reported that 37 percent of Indian children live in poverty compared with 14 percent of non-Hispanic white children.³ It further reported that 51 percent of Indian children's parents lack secure employment as defined by full-time, year-round employment compared with 25 percent of non-Hispanic white children and 39 percent of Latino children.

Indian teens have considerably higher rates of being neither in school or working than their non-Hispanic or Asian or Pacific Islander counterparts. Fifteen percent of Indian teens are not in school and not working. Fifty-eight percent of 3 and 4 year-old Indian children were not attending any form of pre-school compared with 50 percent of African-American and Asian and Pacific Islander children.

Each of these studies indicates that Native youth experience significantly more challenges in virtually every aspect of their development, from birth to adolescence than any other population. However, it is most troubling that these youth face a higher risk and rate of premature death than other youth. The Substance Abuse and Mental Health Services Administration reports that suicide is the second leading cause of death—2.5 times the national rate—for Indian youth in the 15 to 24 age group.

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

¹ U.S. Department of Health and Human Services Administration for Children and Families, *Child Welfare Outcomes 2008–2011 Report to Congress*, https://www.acf.hhs.gov/sites/default/files/cb/cwo08_11.pdf (last visited on Feb. 26, 2015).

² Federal Interagency Forum on Child and Family Statistics, *America's Children: Key National Indicators of Well-Being, 2013*, http://www.childstats.gov/pdf/ac2013/ac_13.pdf (last visited on Mar. 6, 2015).

³ The Annie E. Casey Foundation, *Kids Count 2013 Data Book—State Trends in Child Well-Being*, <http://datacenter.kidscount.org/files/2013KIDSCOUNTDataBook.pdf> (last visited on Mar. 6, 2015).

The Commission proposed by S. 246 is named in honor of two tribal leaders. The first is Alyce Spotted Bear, a former tribal chairwoman of the Mandan, Hidatsa, and Arikara Nation in North Dakota, a passionate advocate for Native children, and a recognized leader in education. The second is Walter Soboleff, a Tlingit from Alaska, a noted educator, a cultural and traditional historian, a religious leader for Alaska Native people, and the first Alaska Native Chairman of the Alaska State Board of Education.

Protecting Native children and providing safe and supportive communities has been a top priority identified by tribal leaders to this Committee. Yet, the lack of sufficient coordinated research on the full scope of the causes, existing issues and challenges inhibits the Federal and tribal governments from developing appropriate, tailored programs to deliver the most efficient and targeted services to these children.

The collection, development, and evaluation of appropriate data is fundamental to a comprehensive assessment of the needs of Native children who may be rendered even more vulnerable by the misplaced or chronic underfunding of programs for Indian Country due to the lack of data. This bill would establish a Commission to facilitate such an assessment.

Finding the best methods of developing and coordinating the service delivery systems for Native children would be a central mission of the Commission. The intent of S. 246 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 intended to strengthen 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. 246 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, the mental and physical health systems serving Native children, and the educational systems that foster the academic achievement of Native students.

LEGISLATIVE HISTORY

The bill, S. 246, was introduced on January 22, 2015, by Senators Heitkamp and Murkowski with 23 co-sponsors: Senators Baldwin, Blumenthal, Boxer, Cantwell, Collins, Feinstein, Fischer, Franken, Heinrich, Hirono, Hoeven, Inhofe, Klobuchar, Moran, Murray, Schatz, Shaheen, Stabenow, Tester, Thune, Udall, Warren, and Whitehouse.

The bill was referred to the Committee on Indian Affairs. No hearing was held on the legislation this Congress. On February 4, 2015, the Committee held a business meeting to consider the bill. One amendment was offered and adopted. The bill, as amended, was ordered to be reported favorably to the Senate.

In the 113th Congress, Senators Heitkamp and Murkowski introduced S. 1622, the predecessor bill, on October 30, 2013 with 33 co-sponsors. The Committee held a hearing on the bill on April 2, 2014 where the Administration testified in support of the bill. The

Committee held a business meeting on May 21, 2014 and ordered the bill, with an amendment, to be reported favorably. A substitute amendment was later offered for Senate consideration. The bill did not pass the Senate. The current bill, S. 246, includes the changes incorporated in the substitute amendment from the 113th Congress.

SECTION-BY-SECTION ANALYSIS OF BILL

Section 1—Short title

This section states that the short title of the bill is the “Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act.”

Section 2—Findings

This section 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 and seventeen percent have no health insurance coverage.

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, 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.

Fifty-eight percent of 3- and 4-year-old Native children are not attending any form of preschool while 15 percent of Native children are not in school and not working. The graduation rate for Native high school students is 50 percent.

Approximately 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.

There is no resource that is more vital to the continued existence and integrity of Native communities than Native children. The United States has a direct interest, as trustee, in protecting Native children.

Section 3—Definitions

This section sets forth definitions:

“Commission” means the Alyce Spotted Bear and Walter Soboleff Commission on Native Children established by section 4;

“Indian” means a person who is a member of an Indian tribe, as defined by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450b);

“Indian tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq., 85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, as defined by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450b);

“Native child” means: (A) an Indian child is any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe, as defined by section 4 of the Indian Child Welfare Act of 1978 (25 U.S.C. § 1903), (B) an Indian who is between the ages of 18 and 24 years old, and (C) a Native Hawaiian who is not older than 24 years old;

“Native Hawaiian” means any individual who is: (A) a citizen of the United States; and (B) a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii, as evidenced by—(i) genealogical records, (ii) Kupuna (elders) or Kamaaina (long-term community residents) verification; or (iii) certified birth records, as defined by section 7207 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 7517);

“Secretary” means the Secretary of the Interior; and

“Tribal College or University” means an institution that: (A) qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. § 1802 et seq.) or the Navajo Community College Act (25 U.S.C. 640a); or (B) is cited in section 532 of the Equity in Education Land-Grant Status Act of 1994 (7 U.S.C. § 301 note), as defined by section 316(b) of the Higher Education Act of 1965 (20 U.S.C. § 1059c(b)).

Section 4—Commission on Native children

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

Section 4(b)(1) provides that there shall be eleven members to the Commission. Three members would be appointed by the President in consultation with the Attorney General and the Secretaries of the Interior, Education, and Health and Human Services.

Three members would be appointed by the Speaker of the House in consultation with the Chairman of the House Committee on Natural Resources. Another three would be appointed by the Majority Leader of the Senate, in consultation with the Chairman of the Senate Committee on Indian Affairs. Finally, the Minority Leaders of the House and Senate would each appoint one member, in consultation with the Ranking Member of the House Committee on Natural Resources and the Vice Chairman of the Senate Committee on Indian Affairs, respectively.

Section 4(b)(2) determines the requirements for eligibility for Commission members. Each member is required to have expertise and experience in Indian affairs and matters to be studied by the

Commission. 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, which 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. The chairperson will call the initial meeting within thirty days following the appointment of all commissioners, 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 of an Indian tribe from each of the Bureau of Indian Affairs regions and one Native Hawaiian. Each member of the NAC must be 25 years of age or older and have experience 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 Native Children subcommittee consisting of at least one member from each of the Bureau of Indian Affairs' 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. That report shall include evaluations of concurrent 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 inter-agency 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 General. In addition, to the extent practicable, the Commission is to use available technology to reduce travel and other costs.

Section 4(e)(3) requires the Commission 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 key improvements:

- (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 increased 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, wellbeing, 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) solutions 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 for legislative and administrative actions. The report is due 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 not less than five hearings, which shall be public, and that witness expenses shall be provided for as under section 1821 of title 28, United States Code. 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 United States Code, 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 ninety days after the submission of its report.

Section 4(j) prevents the Federal Advisory Committee Act (5 U.S.C. App.) from applying to the Commission.

Section 4(k) prevents the recognition or establishment of a government-to-government relationship with any entity not recognized on or before the date of enactment of the Act by the Federal government through an Act of Congress, Executive action, judicial decree, or any other action; or any entity not included in the list of Federally Recognized Indian Tribes, as determined in 25 U.S.C. 479a et seq. The amount of \$2,000,000 is authorized to be appropriated to carry out the Act.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated February 10, 2015, was prepared for S. 246.

FEBRUARY 10, 2015.

Hon. JOHN BARRASSO,
Chairman, Committee on Indian Affairs,
United States Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 246, 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. 246—Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act

S. 246 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 nonfederal 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. The commission would submit a report on those recommendations to the Congress and the President within three years of the formation of the commission. S. 246 also would allow the commission to use staff detailed from other federal agencies to complete its work and reimburse commission members for traveling expenses. The legislation would authorize the appropriation of \$2 million to establish and run the commission.

Based on the costs of similar commissions, CBO estimates that implementing the legislation would cost about \$2 million over the 2015–2020 period, subject to appropriation of the necessary amounts. Under the bill, amounts would be used to pay for travel expenses, fees for witnesses, and preparing the commission's report. CBO estimates that any costs for employees detailed from other agencies to work for the commission would not be significant.

Enacting S. 246 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 of that provision on direct spending would be insignificant. Enacting S. 246 would not affect revenues.

S. 246 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK REDUCTION 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. 246 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has not received any Executive Communications from the Executive Branch regarding S. 246.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of S. 246 will not make any changes to existing law.