



# USET

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## **USET SPF Testimony for the Record of the Senate Committee on Indian Affairs Legislative Hearing on S. 1870, S. 1953, and S. 1942**

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Committee on Indian Affairs (SCIA) with the following testimony for the record of its October 25<sup>th</sup> legislative hearing to receive testimony on S. 1870, the Securing Urgent Resources Vital to Indian Victim Empowerment (SURVIVE) Act of 2017, S. 1953, the Reauthorization of the Tribal and Law Order Act (TLOA) of 2010, and S. 1942, Savanna's Act. These bills, if enacted, would provide Tribal Nations with critical resources, financial and otherwise, to aid in the fight against crime and the preservation of public safety in Indian Country. Below, we offer our support for the intent of each bill, as well as some suggested changes with a goal of ensuring all Tribal Nations have access to their provisions.

USET SPF is a non-profit, inter-Tribal organization representing 27 federally recognized Tribal Nations from Texas across to Florida and up to Maine. USET SPF is dedicated to enhancing the development of Tribal Nations, to improving the capabilities of Tribal governments, and assisting the USET SPF Member Tribal Nations in dealing effectively with public policy issues and in serving the broad needs of Indian people.

### **S. 1870, the Securing Urgent Resources Vital to Indian Victim Empowerment (SURVIVE) Act**

As you are well aware, Indian Country currently faces an epidemic of crime, with Tribal citizens 2.5 times more likely to become victims of violent crime and Native women, in particular, subject to higher rates of domestic violence and abuse. And yet, Tribal Nations do not have direct access to funding that would allow them provide victim services. Currently, Tribal Nations must access Crime Victims Fund (CVF) dollars via state pass-through or by competing for modest Department of Justice grants. To meet the needs of crime victims on Tribal lands, Tribal governments need a stable source of funding to build the crime victim services and compensation infrastructure that is taken for granted in much of the rest of the country. Only then can Tribal citizens truly begin to access critically needed services and healing. As sovereign governments, Tribal Nations must have direct access to this funding--just like states and territories.

The SURVIVE Act ensures that 5% of annual disbursements from the CVF are directed to Tribal governments through a competitive grant process. While USET SPF is strongly supportive of a statutorily mandated Tribal set aside, it is the long-standing position of this organization that the federal fiduciary trust responsibility is not fulfilled under a competitive grant model. Not only is it an abrogation of the federal trust responsibility to force Tribal Nations to compete for federal dollars, the competitive grant process often precludes some Tribal Nations from having access to those dollars at all. We urge SCIA to consider a more equitable method of distribution for this funding, including the opportunity to receive dollars through existing contracts and compacts.

### **S. 1953, the Reauthorization of the Tribal and Law Order Act of 2010**

Passage of TLOA in 2010 was a major victory for Tribal jurisdiction, self-determination, and the fight against crime in Indian Country. This law provides critical opportunities for Tribal Nations to assume new authorities and responsibilities for protecting their homelands. However, seven years later, there remain barriers for many Tribal Nations, including USET SPF member Tribal Nations, to the assumption of these new authorities.

### Sentencing Authority

Many USET SPF Tribal Nations have an interest in implementing enhanced sentencing authority under TLOA, as an increase in Tribal sentencing is more likely to deter crime, which continues to rise on our reservations. However, with the exception of one or two Tribal Nations, no USET SPF member Tribal Nation is currently exercising this authority. Our region is not unique in this regard. Nationally, only a handful of Tribal Nations have implemented or are in the process of implementing this provision.

A primary barrier to the implementation of enhanced sentencing in the USET SPF area and beyond is the lack of federal funding to support Tribal Court systems. For Tribal Nations to fully exercise new authorities, their courts need to comply with costly requirements. Currently, many Tribes do not have adequate funding to abide by these requirements and will not be able to assume new authorities. Through USET SPF's participation on the Tribal Interior Budget Committee (TIBC), USET SPF member Tribal Nations have consistently identified Tribal Courts as a top priority for line item funding increases within the Bureau of Indian Affairs' budget. With an average funding level of around \$75,000, Tribal Nations can barely afford the work of a part-time judge, let alone institute the other types of judicial infrastructure required by TLOA. For Fiscal Year (FY) 2018, the President's Budget Request contains a nearly 22% cut to Tribal Courts. Though this cut is restored in the House Interior Appropriations bill, it is critical that any reauthorization of TLOA address gaps in existing judicial infrastructure. We urge this Committee to support increased funding for Tribal Courts in pursuit of this goal.

Compounding and in addition to insufficient funding are the unique circumstances faced by some USET SPF member Tribal Nations in which land claim settlement acts with their respective states are being severely misinterpreted. These land claim settlement acts were primarily intended to provide certainty to landowners concerning disputed title to claimed lands. Unfortunately, top officials in some of these states assert that these settlement acts prevent the execution of any federal law passed afterward for the benefit of Tribal Nations unless Nations with restrictive settlement acts are explicitly identified in statute. That is, these Tribal Nations are currently restricted from accessing any legislative gains made in recent years for Indian Country, including the benefits of TLOA. Some USET SPF member Tribal Nations report being threatened with lawsuits, should they attempt to implement TLOA's enhanced sentencing provisions. USET SPF asserts that Congress did not intend these land claim settlements to forever prevent a handful of Tribal Nations from taking advantage of beneficial laws meant to improve the health, general welfare, and safety of Tribal citizens. We would like to further explore a long-term solution to this problem with the Committee. In the short-term, we urge this Committee to include language in the upcoming TLOA reauthorization that ensures the law applies to all federally-recognized Tribal Nations.

### Drug Enforcement

S. 1953 seeks to address and prevent drug trafficking in Tribal communities. Yet, this objective remains elusive throughout much of Indian Country, including within the USET SPF region. USET SPF member Tribal Nations are in desperate need of adequate law enforcement resources, especially those for drug enforcement. Drug abuse and trafficking, particularly opioids, is a persistent and growing problem in Indian Country, including within the USET SPF Area. However, in our BIA Drug Enforcement Region (from ME to FL to NM to the central US), there are only 7 drug enforcement agents assigned to serve over 100 Tribal Nations.

USET SPF continues to advocate for increased funding for law enforcement, including drug enforcement. Though our Tribal patrol officers perform a vital role in addressing drug issues within a communities, drug investigations are conducted primarily by specialized units or task forces on departmental, statewide and federal levels. These units involve enhanced intelligence gathering, information sharing, controlled buys, surveillances and other factors. Our BIA Drug Enforcement Region needs much more than 7 personnel available for this purpose.

#### State-Tribal-Federal Collaboration

Much of the implementation of TLOA depends on collaboration between Tribal, state, and federal governments, including issues related to jurisdiction, cross-deputization, cooperative agreements, and information sharing. While USET SPF member Tribal Nations continue to have meaningful and productive collaboration with federal partners, many Nations report difficulty in achieving similar relationships with states. While USET SPF recognizes that many of these difficulties are deep-seeded, we request that this Committee and our partners within federal government seek methods of ensuring states engage in meaningful consultation with Tribal Nations we they collaborate on the implementation of TLOA. As it considers the reauthorization of TLOA, USET SPF encourages SCIA to include provisions requiring states to meaningfully consult with Tribal Nations.

#### Tribal Law Enforcement Employee Retention

As the Committee works toward reauthorizing TLOA, USET SPF asks that it consider addressing issues related to the retention of Tribal law enforcement personnel. Because of the deep disparity in resources between Tribal law enforcement agencies and those at the local, state, and federal level, it is often difficult to retain Tribal law enforcement personnel. As Penobscot Police Chief, Bob Bryant, noted in his 2015 testimony to the President's 21<sup>st</sup> Century Task Force on Policing:

Tribal law enforcement agencies remain underfunded and understaffed, creating a paradigm of officer "burn out," low morale, stress related illnesses, and lack of stress management resources. The result puts the safety and life of each police officer in jeopardy every time they put on their badge and walk out the door to serve their community..... As with any community, law enforcement agencies are asked to engage and partner with the communities and citizens that they serve. Such engagement and partnership promotes problem solving and solutions to the issues that hamper the progress and well-being of our communities. This becomes difficult, if not impossible, with high officer turnover. Nowhere is the turnover rate higher than in Tribal law enforcement. This turnover is the direct result of the many issues I have outlined in my testimony today.

USET SPF supports and recommends the inclusion of provisions that would increase funding for Tribal law enforcement personnel, encourage mutual aid compacts with other units of government, increase access to counseling for officers who have experienced on-the-job trauma, and create access to federal retirement and other benefits for officers.

#### Tribal Access to Crime Information

USET SPF supports language in the bill designed to increase Tribal access to the U.S. Department of Justice Tribal Access Program (TAP) to allow Tribal Nations to more effectively serve and protect their citizens and communities. The U.S. Department of Justice launched the TAP in August 2015 to provide Tribal Nations with access to information systems for both civil and criminal purposes. TAP allows Tribal criminal justice agencies to strengthen public safety, solve crimes, conduct background checks, and offer greater protection for law enforcement by ensuring the exchange of critical data across the Criminal Justice Information Services systems.

In Fiscal Year (FY) 2017, with \$2 million of unexpended FY 2016 funds allocated by the USDOJ SMART Office and COPS Office, the Department was only able to deploy workstations and training to 11 Tribal governments, while more than 50 Tribal Nations, including several USET SPF member Tribal Nations, had submitted letters of interest to take part in TAP. Without a secure and robust funding stream, rollout to the remaining 300+ eligible Tribal Nations will be a long process, unnecessarily delaying Tribal access to this critical criminal justice data, hampering law enforcement coordination, and further compounding gaps in Tribal resources. Since the program began, only 19 Tribal Nations have benefited from this technology and training. Additional funding is needed to meet demand and a dedicated funding stream would ensure the long term viability of this program. We urge the Committee to authorize additional funding for TAP, in addition to providing for enhanced technical assistance.

### **S. 1942, Savanna's Act**

As this Committee well knows, American Indian/Alaska Native (AI/AN) women suffer from violent crime at a rate three-and-a-half times greater than the national average. Nearly 84 percent of all AI/AN women will experience domestic violence and one in three AI/AN women will be sexually assaulted in their lifetimes. We must do more to address this crisis. This includes ensuring Tribal Nations are able access to more tools to prevent these tragedies.

Savanna's Act is a critical step in this fight. The bill would provide Tribal Nations will improved access to federal crime databases, require Tribal consultation on database access at all levels of government, standardize the response to missing and murdered AI/AN, and require reporting on statistics related to missing and murdered AI/ANs. USET SPF supports each of these provisions, as an opportunity to begin to close the deep divide in protection from violence, sexual assault, trafficking, and other crimes between AI/AN women and those in the rest of the United States.

### **Conclusion**

There is still much work to done to ensure that all Tribal Nations across the United States have the ability to provide for the public safety of their citizens, protect from and address crime victimization, and end the epidemics of violence and drug trafficking in Tribal communities. We are hopeful that with additional funding, improved infrastructure, and clarifying language, many more Tribal Nations will be able to exercise the types of authorities vital to these goals. We appreciate SCIA's attention to our comments and look forward to further opportunities to discuss improved public safety in Indian Country.