U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General *Washington, D.C. 20530*

The Honorable Russell Vought
Director
Office of Management and Budget
Washington, DC 20503

SEP 2 9 2020

Dear Mr. Director:

This letter responds to your request for the views and recommendations of the Department of Justice (Department) on enrolled bill S. 227, the "Savanna's Act." Despite the concerns expressed below, the Department recommends that the President sign the bill.

The purpose of the bill is to direct the Attorney General to review, revise, and develop law enforcement and justice policies and protocols to address missing or murdered Native Americans; empower tribes with resources and information necessary to respond to cases of missing or murdered Native Americans; and increase the collection of data regarding missing or murdered Native Americans and sharing of that data among the agencies and officials responsible for investigating those crimes.

Accordingly, the bill requires the Department, among other things, to take the following actions: provide training to law enforcement agencies on how to record tribal enrollment for victims in federal databases; develop and implement a strategy to notify citizens of the National Missing and Unidentified Persons System (NamUs); conduct specific outreach to Indian tribes regarding the ability to publicly enter information into NamUs or other non-law enforcement sensitive portals; develop guidelines for response to cases of missing and murdered Indians; provide training and technical assistance to Indian tribes and law enforcement agencies for implementation of the developed guidelines; and report statistics on missing and murdered Indians.

Section 4(b)(3) of the bill would amend section 903(b) of the Violence Against Women and Department of Justice Reauthorization Act of 2005 to require that the Department's annual Violence Against Women Tribal Consultation include consultation about improving tribal access to federal, state, and other criminal information databases and other criminal justice systems. The Department and tribal leaders have discussed this issue at the previous consultations for many years, and the Department looks forward to doing so again at the 15th annual consultation, which will be held virtually from October 27-30, 2020.

As we explain below, the bill raises certain policy concerns. However, these concerns do not rise to such a level that we would recommend that the President disapprove it. Therefore, we recommend that the President approve the bill.

Section 5(a) directs U.S. Attorneys (USAs) to develop regionally appropriate guidelines to respond to cases of missing and murdered Indians. The best practices, standards, guidance, and guidelines outlined in subsections (2)-(5) of the bill relate to investigative standards that are already set by the Federal Bureau of Investigation (FBI), Bureau of Indian Affairs (BIA), and Tribal and State certifying entities. U.S. Attorney Office (USAO) staff are not in the best position to perform this function. The Department's position is that the FBI, BIA, and other law enforcement organizations who are already dedicated to this mission are better suited to accomplish these tasks.

Section 5(c)(3) would require the Attorney General to determine whether each tribal, state, and local law enforcement agency has incorporated the guidelines developed under section 5(a) into their respective guidelines, policies, and protocols. This requirement is extremely broad and will be extraordinarily challenging for the Department to implement. Indeed, the Department does not have the authority to oversee implementation of this requirement by tribal, state, and local law enforcement agencies and there is no existing mechanism that would enable the Department to fulfill this obligation. Given the total number of such agencies (in the tens of thousands), it is not clear how the Attorney General would be able to make this determination for each one, and if it is possible to do so, the process may take many years.

Section 5(d) would require the Attorney General to publish annually the name of every tribal, state, or local law enforcement agency that the Attorney General has determined has not implemented the guidelines developed under section 5(a). This section would be disastrous for law enforcement and prosecutors. This listing would prove to be a tool for the defense to use in all cases to argue that the named law enforcement entity is inadequate. This listing would negatively impact justice for victims. We recommend instead publishing the names of those agencies that have implemented the guidelines and replacing subsection (d)(2) with a process for adding agencies to the list as the Attorney General determines that they have implemented the guidelines. This approach is less punitive and allows those agencies that are on the list to receive the funding preference contemplated in section 5(c)(4).

Section 6 would require the Attorney General to include in the Annual Indian Country Investigations and Prosecutions Report to Congress statistics on missing Indians in the United States. The information collected includes age, gender, tribal enrollment, number of open and closed cases, and other such information that the Attorney General deems to be relevant. The bill, however, does not identify the nature and source of, nor the means by which this information will be collected. Specifically, it is not known whether the data collected is related to a crime or whether the data is coming from a law enforcement agency. The Uniform Federal

Crime Reporting Act of 1988, Title 34, United States Code, Section 41303, its implementing regulation, Title 28, Code of Federal Regulations, Section 0.85 (f), and the policy of the Uniform Crime Reporting Program, enables the FBI Criminal Justice Information Services (CJIS) Division to collect "criminal statistics" and "police statistics" of offenses "known to law enforcement." In light of these requirements, unless more particularity is provided about the data to be collected, it is unclear whether existing law, regulation, or policy would authorize the CJIS Division to collect information of this type.

Thank you for the opportunity to present our views. Please do not hesitate to contact this office if we may be of additional assistance to you.

Sincerely,

Stephen E. Boyd
Assistant Attorney General