

NOT INVISIBLE ACT OF 2020

SEPTEMBER 16, 2020.—Ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,
 submitted the following

R E P O R T

[To accompany H.R. 2438]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2438) to increase intergovernmental coordination to identify and combat violent crime within Indian lands and of Indians, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Not Invisible Act of 2020”.

SEC. 2. DEFINITIONS.

In this Act—

(1) the term “Commission” means the Department of the Interior and the Department of Justice Joint Commission on Reducing Violent Crime Against Indians under section 4;

(2) the term “human trafficking” means act or practice described in paragraph (9) or paragraph (10) of section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102);

- (3) the term “Indian” means a member of an Indian tribe;
- (4) the terms “Indian lands” and “Indian tribe” have the meanings given the terms in section 3 of the Native American Business Development, Trade Promotion, and Tourism Act of 2000 (25 U.S.C. 4302); and
- (5) the terms “urban centers” and “urban Indian organization” have the meanings given the terms in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

SEC. 3. COORDINATOR OF FEDERAL EFFORTS TO COMBAT VIOLENCE AGAINST NATIVE PEOPLE.

(a) **COORDINATOR DESIGNATION.**—The Secretary of the Interior shall designate an official within the Office of Justice Services in the Bureau of Indian Affairs who shall—

- (1) coordinate prevention efforts, grants, and programs related to the murder of, trafficking of, and missing Indians across Federal agencies, including—
 - (A) the Bureau of Indian Affairs; and
 - (B) the Department of Justice, including—
 - (i) the Office of Justice Programs;
 - (ii) the Office on Violence Against Women;
 - (iii) the Office of Community Oriented Policing Services;
 - (iv) the Federal Bureau of Investigation; and
 - (v) the Office of Tribal Justice;
- (2) ensure prevention efforts, grants, and programs of Federal agencies related to the murder of, trafficking of, and missing Indians consider the unique challenges of combating crime, violence, and human trafficking of Indians and on Indian lands faced by Tribal communities, urban centers, the Bureau of Indian Affairs, Tribal law enforcement, Federal law enforcement, and State and local law enforcement;
- (3) work in cooperation with outside organizations with expertise in working with Indian tribes and Indian Tribes to provide victim centered and culturally relevant training to tribal law enforcement, Indian Health Service health care providers, urban Indian organizations, Tribal community members and businesses, on how to effectively identify, respond to and report instances of missing persons, murder, and trafficking within Indian lands and of Indians; and
- (4) report directly to the Secretary of the Interior.

(b) **REPORT.**—The official designated in subsection (a) shall submit to the Committee on Indian Affairs and the Committee on the Judiciary of the Senate and the Committee on Natural Resources and the Committee on the Judiciary of the House of Representatives a report to provide information on Federal coordination efforts accomplished over the previous year that includes—

- (1) a summary of all coordination activities undertaken in compliance with this section;
- (2) a summary of all trainings completed under subsection (a)(3); and
- (3) recommendations for improving coordination across Federal agencies and of relevant Federal programs.

SEC. 4. ESTABLISHMENT OF THE DEPARTMENT OF INTERIOR AND THE DEPARTMENT OF JUSTICE JOINT COMMISSION ON REDUCING VIOLENT CRIME AGAINST INDIANS.

(a) **ESTABLISHMENT.**—Not later than 120 days after the date of enactment of this Act, the Secretary of the Interior, in coordination with the Attorney General, shall establish and appoint all members of a joint commission on violent crime on Indian lands and against Indians.

(b) **MEMBERSHIP.**—

(1) **COMPOSITION.**—

(A) **IN GENERAL.**—The Commission shall be composed of members who represent diverse experiences and backgrounds that provide balanced points of view with regard to the duties of the Commission.

(B) **DIVERSITY.**—To the greatest extent practicable, the Secretary of the Interior shall ensure the Commission includes Tribal representatives from diverse geographic areas and of diverse sizes.

(2) **APPOINTMENT.**—The Secretary of the Interior, in coordination with the Attorney General, shall appoint the members to the Commission, including representatives from—

- (A) tribal law enforcement;
- (B) the Office of Justice Services of the Bureau of Indian Affairs;
- (C) State and local law enforcement in close proximity to Indian lands, with a letter of recommendation from a local Indian Tribe;
- (D) the Victim Services Division of the Federal Bureau of Investigation;
- (E) the Department of Justice’s Human Trafficking Prosecution Unit;
- (F) the Office of Violence Against Women of the Department of Justice;

- (G) the Office of Victims of Crime of the Department of Justice;
- (H) a United States attorney's office with experience in cases related to missing persons, murder, or trafficking of Indians or on Indian land;
- (I) the Administration for Native Americans of the Office of the Administration for Children & Families of the Department of Health and Human Services;
- (J) the Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services;
- (K) a Tribal judge with experience in cases related to missing persons, murder, or trafficking;
- (L) not fewer than 3 Indian Tribes from diverse geographic areas, including 1 Indian tribe located in Alaska, selected from nominations submitted by the Indian Tribe;
- (M) not fewer than 2 health care and mental health practitioners and counselors and providers with experience in working with Indian survivors of trafficking and sexual assault, with a letter of recommendation from a local tribal chair or tribal law enforcement officer;
- (N) not fewer than 3 national, regional, or urban Indian organizations focused on violence against women and children on Indian lands or against Indians;
- (O) at least 2 Indian survivors of human trafficking;
- (P) at least 2 family members of missing Indian people;
- (Q) at least 2 family members of murdered Indian people;
- (R) the National Institute of Justice; and
- (S) the Indian Health Service.

(3) PERIODS OF APPOINTMENT.—Members shall be appointed for the duration of the Commission.

(4) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made and shall not affect the powers or duties of the Commission.

(5) COMPENSATION.—Commission members shall serve without compensation.

(6) TRAVEL EXPENSES.—The Secretary of the Interior, in coordination with the Attorney General, shall consider the provision of travel expenses, including per diem, to Commission members when appropriate.

(c) DUTIES.—

(1) IN GENERAL.—The Commission may hold such hearings, meet and act at times and places, take such testimony, and receive such evidence as the Commission considers to be advisable to carry out the duties of the Commission under this section.

(2) RECOMMENDATIONS FOR THE DEPARTMENT OF INTERIOR AND DEPARTMENT OF JUSTICE.—

(A) IN GENERAL.—The Commission shall develop recommendations to the Secretary of the Interior and Attorney General on actions the Federal Government can take to help combat violent crime against Indians and within Indian lands, including the development and implementation of recommendations for—

- (i) identifying, reporting, and responding to instances of missing persons, murder, and human trafficking on Indian lands and of Indians;
- (ii) legislative and administrative changes necessary to use programs, properties, or other resources funded or operated by the Department of the Interior and Department of Justice to combat the crisis of missing or murdered Indians and human trafficking on Indian lands and of Indians;
- (iii) tracking and reporting data on instances of missing persons, murder, and human trafficking on Indian lands and of Indians;
- (iv) addressing staff shortages and open positions within relevant law enforcement agencies, including issues related to the hiring and retention of law enforcement officers;
- (v) coordinating tribal, State, and Federal resources to increase prosecution of murder and human trafficking offenses on Indian lands and of Indians; and
- (vi) increasing information sharing with tribal governments on violent crime investigations and prosecutions in Indian lands that were terminated or declined.

(B) SUBMISSION.—Not later than 18 months after the enactment of this Act, the Commission shall make publicly available and submit all recommendations developed under this paragraph to—

- (i) the Secretary of the Interior;
- (ii) the Attorney General;

- (iii) the Committee on the Judiciary of the Senate;
 - (iv) the Committee on Indian Affairs of the Senate;
 - (v) the Committee on Natural Resources of the House of Representatives; and
 - (vi) the Committee on the Judiciary of the House of Representatives.
- (C) SECRETARIAL RESPONSE.—Not later than 90 days after the date on which the Secretary of the Interior and the Attorney General receive the recommendations under paragraph (2), the Secretary and the Attorney General shall each make publicly available and submit a written response to the recommendations to—
- (i) the Commission;
 - (ii) the Committee on the Judiciary of the Senate;
 - (iii) the Committee on Indian Affairs of the Senate;
 - (iv) the Committee on Natural Resources of the House of Representatives; and
 - (v) the Committee on the Judiciary of the House of Representatives.
- (d) FACIA EXEMPTION.—The Commission shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App.).
- (e) SUNSET.—The Commission shall terminate on the date that is 2 years after the date of enactment of this Act.

Purpose and Summary

H.R. 2438, the “Not Invisible Act of 2020,” would address the crisis of violence and sexual violence committed against American Indian and Alaska Native men and women in two concrete ways—by directing the appointment, within the Bureau of Indian Affairs (BIA), of a coordinator of federal efforts to combat violence against Native people and by establishing, within the Department of the Interior (DOI) and the Department of Justice (DOJ), a Joint Commission on Reducing Violent Crime Against Indians.

The Amendment in the Nature of a Substitute (ANS) for H.R. 2438 would direct the Secretary of the Interior to designate an official within the Office of Justice Services of the BIA to coordinate prevention efforts, grants, and programs relating to murder of, trafficking of, and missing Native Americans, across various federal agencies. The coordinator, who would report to the Secretary of the Interior, would be directed to take into consideration the unique challenges faced by Tribal communities and to work in cooperation with outside organizations to train Tribal law enforcement, Indian Health Service (IHS) providers, and other Tribal community members on identifying, responding to, and reporting on cases of missing persons, murder, and human trafficking. The coordinator would report to Congress annually on these efforts and on recommendations for improving coordination.

The ANS would also direct the establishment of a Joint Commission on Reducing Violent Crimes Against Indians, within 120 days after enactment and for a two-year period of duration. The Commission, to be appointed by the Secretary of the Interior in coordination with the Attorney General, would be composed of members representing several prosecutorial agencies, law enforcement, Tribal leaders, relevant Federal departments, service providers, family members, and survivors. The Commission would be tasked with preparing recommendations, not later than 18 months after enactment of the Act, on actions DOI and DOJ can take to help combat violent crime against American Indians and within Indian lands, including the development and implementation of strategies for identifying, reporting, and responding to instances of missing persons, murder, and human trafficking on Indian lands and of American Indians; tracking and reporting relevant data; and increasing

prosecution of murder and human trafficking offenses on Indian lands and of Indians.

Background and Need for the Legislation

For decades, Native American and Alaska Native communities have struggled with high rates of assault, abduction, and murder of women.¹ Community advocates describe the crisis as a legacy of generations of government policies of forced removal, land seizures and violence inflicted on Native peoples.² Advocates also argue that killings and disappearances have been disregarded by law enforcement and have gotten lost in bureaucratic gaps concerning which local or federal agencies should investigate.³

A 2016 study by the National Institute of Justice (NIJ) found that more than four in five American Indian and Alaska Native women (84.3 percent) have experienced violence in their lifetime, including 56.1 percent who have experienced sexual violence.⁴ In the year leading up to the study, 39.8 percent of American Indian and Alaska Native women had experienced violence, including 14.4 percent who had experienced sexual violence.⁵ Overall, more than 1.5 million American Indian and Alaska Native women have experienced violence in their lifetime.⁶

The NIJ study also found that American Indian and Alaska Native men, too, have high victimization rates. More than four in five American Indian and Alaska Native men (81.6 percent) have experienced violence in their lifetime.⁷ And, overall, more than 1.4 million American Indian and Alaska Native men have experienced violence in their lifetime.⁸

An NIJ-funded study from 2008 found that the rates of violence on reservations are much higher than the national average.⁹ However, according to the Urban Indian Health Institute, no research has been done on the rates of such violence among American Indian and Alaska Native women living in urban areas despite the fact that approximately 71 percent of American Indian and Alaska Natives live in urban areas.¹⁰

Moreover, reports indicate that there is no reliable count of how many Native women go missing or are killed each year.¹¹ Researchers have found that women are often misclassified as Hispanic or Asian or other racial categories on missing-person forms and that thousands have been left off a federal missing-persons

¹ Glenna Stumblingbear-Riddle, *Standing With Our Sisters: MMIWG2S*, American Psychological Association Communique, Nov. 2018.

² Jack Healey, *In Indian Country, a Crisis of Missing Women. And a New One When They're Found*, N.Y. Times, Dec. 25, 2019.

³ *Id.*

⁴ André B. Rosay, *Violence Against American Indian and Alaska Native Women and Men*, 277 Nat'l Inst. Just. J. at 39 (2016).

⁵ *Id.* at 40.

⁶ *Id.* at 39.

⁷ *Id.* at 40.

⁸ *Id.*

⁹ See generally Ronet Bachman, et al., *Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What Is Known*, Aug. 2008, <https://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf>.

¹⁰ Urban Indian Health Institute, *Missing and Murdered Indigenous Women & Girls*, at 2, Sep. 2018 (citing T. Norris et al., *The American Indian and Alaska Native Population: 2010*, U.S. Census Bureau, <https://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf>).

¹¹ Jack Healey, *In Indian Country, a Crisis of Missing Women. And A New One When They're Found*, N.Y. Times, Dec. 25, 2019.

database.¹² Indeed, in a 2018 report, the Urban Indian Health Institute noted that, in 2016, there were 5,712 reports of missing American Indian and Alaska Native women and girls recorded by the National Crime Information Center, yet, during the same period, DOJ’s federal missing persons database, known as NamUs only logged 116 cases.¹³

In September 2017, the Government Accountability Office (GAO) released a report titled “Human Trafficking: Investigations in Indian Country or Involving Native Americans and Actions Needed to Better Report on Victims Served.”¹⁴ GAO surveyed tribal and major city law enforcement agencies and victim service providers on human trafficking investigations, victim services, and barriers to identifying and serving Native victims.¹⁵ Twenty-seven of the 132 tribal law enforcement agencies that responded to the survey reported initiating investigations involving human trafficking from 2014 to 2016 and six of 61 major city law enforcement agencies reported initiating human trafficking investigations that involved at least one Native victim during the same time period.¹⁶ Survey respondents identified lack of training on identifying and responding appropriately to victims, victim shame and reluctance to come forward, and lack of service provider resources as barriers to investigating cases and serving victims.¹⁷

In November 2019, President Trump signed an executive order creating a task force on missing and murdered American Indians and Alaska Natives, to improve cooperation among law enforcement agencies and address problems with basic data collection.¹⁸ The task force was meant to bring together various federal agencies, including the Federal Bureau of Investigation, the Assistant Secretary for Indian Affairs of the DOI, and the Commissioner of the Administration for Native Americans of the Department of Health and Human Services (HHS).¹⁹ Notably, the task force does not include Tribal leaders or survivors in its membership and has a focus on rural reservations, thus overlooking the large numbers of Native people in cities who become targets of violence.²⁰ Among other things, H.R. 2438 seeks to address these omissions.

Hearings

On July 16, 2019, the Subcommittee on Crime, Terrorism, and Homeland Security held a hearing titled, “Women and Girls in the Criminal Justice System,” which helped develop the substance of the Not Invisible Act of 2020.

¹² *Id.*

¹³ *Missing and Murdered Indigenous Women & Girls*, at 2.

¹⁴ Government Accountability Office, *Human Trafficking: Action Needed to Identify the Number of Native American Victims Receiving Federally-Funded Services* (2017) (GAO 17 235).

¹⁵ *See id.* GAO Highlights.

¹⁶ *Id.*

¹⁷ *Id.* at 12–13.

¹⁸ *See White House, Executive Order on Establishing the Task Force on Missing and Murdered American Indians and Alaska Natives*, Nov. 26, 2019.

¹⁹ *Id.*

²⁰ *See id.*

Committee Consideration

On March 11, 2020, the Committee met in open session and ordered the bill, H.R. 2438, favorably reported as an amendment in the nature of a substitute, by voice vote, a quorum being present.

Committee Votes

No record votes occurred during the Committee's consideration of H.R. 2438.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures and Congressional Budget Office Cost Estimate

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office (CBO). The Committee has requested but not received from the Director of the CBO a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

Duplication of Federal Programs

No provision of H.R. 2438 establishes or reauthorizes a program of the Federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 2438 would ensure better coordination among federal agencies to combat violence against Native people, including establishing a Joint Commission on Reducing Violent Crime Against Indians.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2438 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

Section by Section Analysis

The following discussion describes the bill as reported by the Committee.

Section 1. Short title. Section 1 sets forth the short title of the bill as the “Not Invisible Act of 2020.”

Sec. 2. Definitions. Section 2 includes relevant definitions.

Sec. 3. Coordinator of Federal efforts to combat violence against native people. Section 3 would direct the Secretary of the Interior to designate an official within the Office of Justice Services of the BIA to: (1) coordinate prevention efforts, grants, and programs across Federal agencies related to the murder, trafficking of, and missing Indians; (2) take into account the unique challenges faced by Tribal communities, urban centers, the BIA, Tribal law enforcement, Federal law enforcement, and State and local law enforcement, in combatting crime, violence, and human trafficking of Indians and on Indian lands; (3) work in cooperation with outside organizations with expertise in working with Indian tribes to provide victim-centered and culturally-relevant training to Tribal law enforcement, IHS health care providers, urban Indian organizations, and Tribal community members and businesses, on how to identify, respond to, and report instances of missing persons, murder, and trafficking within Indian lands and of Indians. The Coordinator would report directly to the Secretary of the Interior and submit an annual report regarding the coordination efforts accomplished and trainings completed during the previous year as well make recommendations for improving coordination across Federal agencies and relevant programs.

Sec. 4. Establishment of the Department of Interior and the Department of Justice joint commission on reducing violent crime against indians

Section 4(a) would direct the Secretary of the Interior, in coordination with the Attorney General, to establish a joint commission on violent crime on Indian lands and against Indians.

Section 4(b) would direct that the Commission be composed of members “whose diverse experiences and backgrounds enable them to provide balanced points of view with regard to the duties of the Commission” and, “to the greatest extent practicable,” include Tribal representatives from diverse geographic areas and of diverse sizes. The Commission would include representatives from several Federal law enforcement and prosecutorial agencies, including the Office on Violence Against Women and the Office of Victims of Crime in DOJ; representatives from other Federal departments, such as Housing and Urban Development, HHS, and HIS; Tribal representatives, including from Tribal law enforcement; representatives from national, regional, or urban Indian organizations; and survivors of human trafficking, family members of missing Indian people, and family members of murdered Indian people. Commission members would be appointed for the life of the Commission and would serve without compensation.

Duties of the Commission, as set forth in Section 4(c)(2), would include submitting recommendations, not later than 18 months after enactment of the Act, to the Secretary of the Interior and the Attorney General, and to relevant Committees of the House and Senate, to be made publicly available. The Commission would be

directed to make recommendations on: actions the Federal Government can take to help combat violent crime against Indians and within Indian lands, including the development and implementation of strategies for identifying, reporting, and responding to instances of missing persons, murder, and human trafficking on Indian lands and of Indians; legislative and administrative changes to combat the crisis; tracking and reporting data; addressing staff shortages and open positions in critical law enforcement positions; coordinating Tribal, State, and Federal resources to increase prosecution of murder and human trafficking offenses on Indian lands; and strategies for information sharing with Tribal governments regarding termination and declination of prosecutions. The Attorney General and the Secretary of the Interior would be directed to submit a publicly available written response to the Commission's recommendations, not later than 90 days after receipt of the Commission's recommendations.

Section 4(d) directs that the Commission be exempt from the Federal Advisory Committee Act (FACA).

Section 4(e) terminates the Commission two years after the date of enactment of the Act.

Committee Correspondence

JERROLD NADLER, New York
CHAIRMAN

DOUG COLLINS, Georgia
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Sixteenth Congress

February 21, 2020

The Honorable Raúl M. Grijalva
Chairman
Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Grijalva:

I am writing to you concerning H.R. 2438, the "Not Invisible Act of 2019."

I appreciate your willingness to work cooperatively on this legislation. I recognize that the bill contains provisions that fall within the jurisdiction of the Committee on Natural Resources. I acknowledge that your Committee will not formally consider H.R. 2438 and agree that the inaction of your Committee with respect to the bill does not waive any future jurisdictional claim over the matters contained in H.R. 2438 which fall within your Committee's Rule X jurisdiction.

I will ensure that our exchange of letters is included in the *Congressional Record* during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process.

Sincerely,


Jerrold Nadler
Chairman

c: The Honorable Douglas Collins, Ranking Member, Committee on the Judiciary
The Honorable Thomas J. Wickham, Jr., Parliamentarian
The Honorable Rob Bishop, Ranking Member, Committee on Natural Resources

RAUL M. GRIJALVA OF ARIZONA
CHAIRMAN

DAVID WATKINS
STAFF DIRECTOR

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

ROB BISHOP OF UTAH
RANKING REPUBLICAN

PARISH BRADEN
REPUBLICAN STAFF DIRECTOR

February 24, 2020

The Honorable Jerrold Nadler
Chair
Committee on the Judiciary
U.S. House of Representatives
2141 Rayburn House Office Building
Washington, D.C. 20515

Dear Chair Nadler,

In recognition of the goal of expediting consideration of H.R. 2438, the "Not Invisible Act of 2019," the Committee on Natural Resources agrees to waive formal consideration of the bill as to provisions that fall within the Rule X jurisdiction of the Committee on Natural Resources.

The Committee on Natural Resources takes this action with the mutual understanding that, in doing so, we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and that the Committee will be appropriately consulted and involved as the bill or similar legislation moves forward so that we may address any remaining issues within our jurisdiction. Our Committee also reserves the right to seek appointment of conferees to any House-Senate conference involving this or similar legislation.

Thank you for agreeing to include our exchange of letters in the *Congressional Record*. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process.

Sincerely,



Raul M. Grijalva
Chair
House Natural Resources Committee

Cc: The Honorable Rob Bishop, Ranking Member, Committee on Natural Resources
The Honorable Doug Collins, Ranking Member, Committee on the Judiciary
The Honorable Thomas J. Wickham Jr., Parliamentarian

