



**Testimony for Honorable Amber Kanazbah Crotty
23rd Navajo Nation Council Delegate
Before the U.S. Senate Committee on Indian Affairs Oversight Hearing
“Missing and Murdered: Confronting the Silent Crisis in Indian Country.”**

December 12, 2018

Introduction. Chairman Hoeven, Ranking Member Udall, Members of the Committee, thank you for this opportunity to testify on behalf of the Navajo Nation to address missing and murdered people in Indian Country. I am Navajo Nation Council Delegate Amber Kanazbah Crotty and I thank you for your commitment to prioritize public safety for Indian Country as it pertains to missing and murdered indigenous people. We recognize and appreciate your tireless efforts working on behalf of Tribes and would like to take this opportunity to thank this Committee for holding this hearing.

The Navajo Nation urgently appeals to this Committee to intervene to stop the increasing alarming rates of missing or murdered tribal members throughout Indian Country. Our Tribe continues to observe first-hand the disastrous outcome from the lack of resources that exist for states to maintain databases on indigenous missing persons or the failure across jurisdictions to effectively communicate to coordinate efforts to reduce the loss of Native American lives.

Background. The Navajo Nation is the largest land-based Tribe in the United States that spans over 27,427 square-miles across three states (Arizona, New Mexico, and Utah) with over 350,000 enrolled members. The Nation is comprised of 110 Chapters, also known as communities or local governments within the Navajo Nation. In New Mexico, there are an additional 80,000 enrolled members that reside in dependent Navajo communities, allotments, and border towns. Today, the Nation suffers from unemployment rates at about 42 percent and the median annual household income is approximately \$20,000.¹ Across the Navajo Nation, 61-percent of homes do not have electricity, 22-percent of households have telephones, and only 15-percent of households have computers.² Further complicating access to victim services, only 24-percent of residents over the age of 18 have access to a vehicle and the closest available victim services are generally hours away. Annual reporting to the FBI indicates violent crime rates have fallen by 48-percent over the past 25 years, and this same data indicates that violent crime is on the rise on the Nation. From 2010-2016, over 44.1-percent of calls to the Navajo Department of Public Safety (NDPS) involved violence, and alcohol underlies almost all of this violent crime.

The Navajo Nation is currently far from having sufficient public safety resources to adequately respond to reported crimes. Significantly, there are fewer than 200 Navajo police officers and 30 Criminal Investigators for the entire Navajo reservation. Given the on-reservation population, there are 0.85 officers per every 1,000 individuals, which is less than 1/3 of the national average of 3 officers per every 1,000 individuals. The Navajo Nation Police Department’s most recent annual crime reports illustrate the increase of violent crimes on the Nation—particularly homicides. Navajo Criminal Investigations responds to approximately 30–50 homicides per year within the Nation’s boundaries, which represents a homicide rate well above the national average (20–33 homicides per 100,000 people compared to 6-13 per 100,000 nationally). Based on the most recent census data, the homicide rate on the Navajo Nation is

¹ <https://navajobusiness.com/fastFacts/Overview.htm>

² <https://transition.fcc.gov/cgb/rural/presentations/ONSAT2OverviewofNNHeadStartTechnologyPlan.pdf>

four times the national average. The Navajo Police Department averaged 226,450 total calls for service over the past four years:

Navajo Police Department—Annual Reported Calls for Service				
Offense	2017	2016	2015	2014
Homicide	32	24	20	3
Rape	264	319	294	316
Robbery	40	26	23	22
Aggravated Assault	417	417	492	152
Burglary	893	738	728	895
Larceny	904	896	690	1,036
Motor Vehicle Theft	1,270	1,077	730	744
Arson	352	349	292	338
Assaults	472	417	442	464
Weapons	701	687	661	773
Sex Offenses	2,023	1,705	1,499	1,754
Child Abuse	917	1,092	1,167	1,058
Domestic Violence	5,351	5,119	4,628	4,658
Total	13,636	12,866	11,666	12,213
Grand Total of Calls for Service	234,137	218,810	213,692	239,161

These alarming statistics help illustrate why the Federal Bureau of Investigation (FBI) reported that Navajo Nation has one of the most violent crimes in Indian Country with 2,524 violent crimes; 2,311 aggravated assaults; and 160 rapes reported to law enforcement in 2017.³ Thus, violent crimes and crimes against women such as rape is comparable to major metropolitan areas such as Detroit and San Diego, proportionate to population.⁴

Violence Against Navajo Women. Gender-biased violence on the Navajo Nation is a multi-generational and culturally pervasive phenomenon. Similarly to our national counterparts, the true rates of violence against women are not accurately reflected in data since many victims of domestic violence (DV) or dating violence fail to report their abuser due to fear for their safety (i.e. retaliation), shame over their situation, or involvement of alcohol or drugs at the time of the incident. Administration of targeted victim services for DV, dating violence, and sexual assault has likely led to increased reporting of DV and sex offenses in recent years. Women who have been victimized are starting to trust that they will be supported, heard, and believed due to program implementation like Amá Dóó Átchíní Bighan, Inc. (ADABI) on the Nation. For example, ADABI has had positive impacts on our community in the Chinle Agency over the past years. In this community, reporting of sexual assault incidents have increased by 75 percent from 3 total reports during 2010-2012, to 12 total reports during 2014-2015. We believe this increase is a result of the efforts of ADABI to increase community awareness, build knowledge and skills among community partners about how to effectively respond to domestic violence and sexual assault.

³ <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/tables/table-11/table-11-state-cuts/arizona.xls>

⁴ Laurel Morales, “Navajo Nation, Feds Take on Overwhelming Violent Crimes” Fronteras: The Changing America Desk (March 01, 2013). Accessed at: <http://kjzz.org/content/6821/navajo-nation-feds-take-overwhelming-violent-crime>

Poverty, low educational attainment, addiction, unresolved trauma, and the emergence of gang culture, all contribute to the perpetuation of the culture of violence against women and girls within the Navajo Nation. Notably, if more victims are now coming forward, then violent crime rates are even worse than currently reported. This information is extremely concerning because it illustrates the battle that the Navajo Nation is currently engaging in to combat domestic violence and violent crimes across the reservation, but also demonstrates a need to ensure protections for children and law enforcement, as well.

Missing and Murdered Navajo Nation Members. Generally, victim services on the Navajo Nation consist of a “patchwork” of extremely limited support services that cannot meet the high demand for services. The Navajo Nation currently does not have the ability to provide comprehensive victim services to all victims of crime, as its sole funding source is strictly limited to services for intimate-partner violence. Consequently, the few existing services are almost exclusively for victims of domestic violence (DV), dating violence, and sexual assault. There are no on-reservation services for victims of violent crimes, crimes against children, etc. In reality, many simply go without support. Overall, initial crisis intervention and safety planning is performed by an array of critically under-resourced service providers whom are limited in scope and availability of resources. To further complicate matters, victims face significant barriers to access, including: extremely limited phone and internet access; Navajo-to-English language barriers; long-distance travel; and lack of transportation.⁵

Provided below are only a couple incidents of missing and murdered enrolled members of the Navajo Nation. Although the ages of each individual, geographical location, and date the persons were reported missing vastly differs in each case. The significant shortcomings in each case remains the same: law enforcements’ delayed response and jurisdictional complications.

- **11-year-old Ashlynn Mike** was kidnapped with her 9-year-old brother in Shiprock, New Mexico in May 2016. After a couple found Ashlynn’s 9-year-old brother scared and walking on the side of the road, he was taken to the Navajo Nation Police Department in Shiprock where they proceeded to coordinate with local law enforcement. Hours later, when the Farmington Police Department was notified of the missing child, it was clear no information had been shared. Eight hours after Ashlynn went missing, an AMBER Alert mass notification was finally issued at 2:30 A.M.
- **26-year-old Amber Webster**, a married mother-of-three, was murdered in Florence, Kentucky on December 2018. Amber was employed as a construction worker that had traveled out of state to provide income to her family on the Navajo Nation. 32-year-old Jesse James brutally stabbed her to death while staying at the same hotel as her. The two had no prior interactions with one another prior to the incident.
- **26-year-old Kaczinski Ariel Begay** went missing in July 2017 on the eastern edge of the Navajo Nation reservation in Arizona. Ariel was picked up from her residence by her boyfriend and never came back home. Efforts were been made by law enforcement and a search ensued on the Navajo Nation, New Mexico, and Arizona. However, sadly, her remains were found in October 2017 in Querino Canyon, Arizona. Her case remains unsolved today.
- **23-year-old Ryan Shey Hoskie, 42-year-old Teri Benally, and 32-year old Fredrick Watson** were three transgender Navajo Nation members who were found beaten to death in Albuquerque, New Mexico in January 2005, July 2009, and June 2009 respectively. All three

⁵ Note: Native victims are often unwilling to travel off-reservation for services for a variety of reasons, including long distances from family and jobs, lack of culturally appropriate training/programs, and language barriers.

victims' bodies were found in the Southeastern-side town within a block of one another laying in the street or allies. The details of each of their deaths remain unknown and no suspects were detained for their slayings.

- **63-year-old Marena Holiday**, mother of three and grandmother, was murdered in Comb Ridge, Utah on December 2015. Marena was killed within the boundaries of the Navajo Nation after she was beaten then shot in the head by a neighbor. In disposing of the body, the perpetrator tied a rope around Holiday's ankles to the back of his truck and dragged her body to hide under a tree. She was found the next day and the perpetrator was later indicted by a federal grand jury for first-degree murder and sentenced to just 22 years in prison.

Jurisdictional Complexities Complications in determining criminal jurisdiction on tribal land is a primary issue in determining who has legal authority between tribal police, state law enforcement, and federal agents. Ashlynn Mike's case is a primary example of jurisdictional complications and a delayed response time in rendering an AMBER Alert for a missing persons' notification through tribal-state-federal responses.⁶ Additionally, in cases where Native Americans represent only 1.6 percent of the state's population, geographical complexities are magnetized since many reservations are located in extremely rural locations within state boundaries.

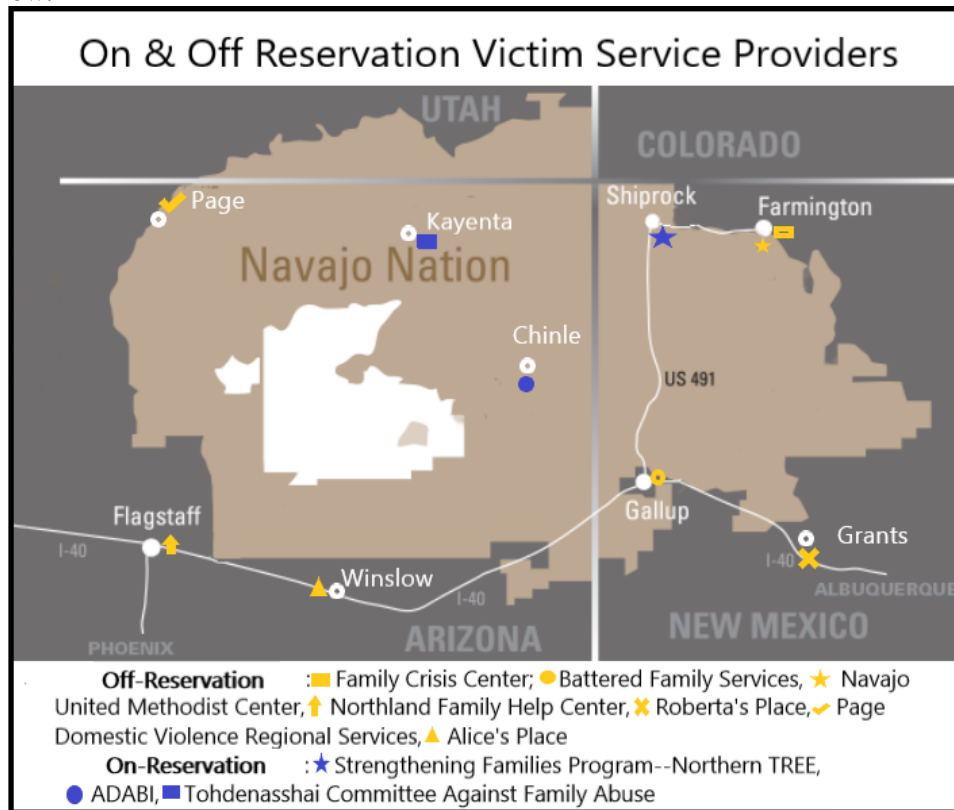
Due to the Nation's expansive geographical distances across three separate states and limited police force, it takes Navajo law enforcement hours to respond to criminal activity because it can exceed the capacity and resources of current law enforcement. This includes a vital problem of the Navajo Nation to facilitate active relationships with law enforcement between federal, state, local municipalities to effectively share information exists as a persistent issue. Currently, there is no mode of communication that exists between the Nation and law enforcement outside of the reservation boundaries, which leads to a continued loss of lives by way of jurisdictional miscommunication.

These same jurisdictional complications result in law enforcement officials at the local and state level to not enforcing restraining or protection orders issued through the Nation's courts as valid orders of protection outside the boundaries of the reservation. These circumstances leave victims feeling ignored and with the false impression that the police and court system do not care about them, as well as contributes to the now prevailing culture of impunity among criminal offenders. The establishment of a State-Tribal Intergovernmental Task Force and/or Intergovernmental Agreement (IGA) for cross-jurisdictional coordination is vital to reduce wasted time and communication amongst law enforcement. The Navajo Nation also estimates that the one-time funding allocation of \$5 million for upgrading and integrating all public safety partners to facilitate communication systems across jurisdictional boundaries for faster response times in locating missing persons.

Lack of Victim Advocates and Supportive Family Services. All available victim services on the Nation are specifically for domestic/dating violence and sexual assault. The Navajo Nation currently does not have the ability to provide comprehensive victim services to all victims of crime, as its sole funding source is strictly limited to services for intimate-partner violence. Currently, non-Indians generally have to go off reservation to receive victim services. Due to limited internal resources, the Navajo Nation must rely on third-party service providers to "fill the gaps" to provide additional on-reservation services, including emergency shelter and advocates. The available on-reservation victim services are administered by three providers: 1) Navajo Nation Division of Social Services' Strengthening Families Program (SFP); 2) Amá Dóó Áłhíni Bígħan, Inc. (ADABI) in Chinle; 3) and Tohdenasshai Committee Against Family

⁶ Note: In child abduction cases, 76-percent of those kidnapped are killed within 3 hours of abduction denoting the need for expedient state-tribal collaboration on searches and issuance of information to save lives.

Abuse in Kayenta, which are both non-profit organizations. More information on these programs is provided below:



Collectively, **ADABI and Tohdenasshai Committee Against Family Abuse** provide two short-term, emergency shelters and one “safe home” on the Navajo Nation for victims of domestic/dating violence, and sexual assault. In total, there are less than 30 available beds and the “safe home” has a maximum 5-7 night stay in a motel. These non-profit service providers receive referrals from the ER, law enforcement, Navajo Social Services, and other local service providers. They are critical partners who provide transportation, safety planning, court support, and help filing protection orders. For example, ADABI received and responded to 648 requests for service in 2017, which accounts for 8.5 percent of the total number of DV calls to 911 on the Nation. In 2017, ADABI advocates logged 241 transportation hours in 2017, which equates to six weeks of non-stop driving for a service provider.

Navajo Nation Division of Social Services ensures social services are available to needy families living on or near the reservation to reduce and alleviate hardships to ensure self-sufficiency.⁷ Out of the eight programs that the Division offers to meet this purpose, the *Strengthening Families Program (SFP)*⁸ is the only Navajo-administered victim-service provider on the reservation. It provides culturally holistic advocacy, supporting services, prevention education and safe shelters.⁹ However, this program has budgetary limitations that has resulted in the inability for the Nation to provide victim advocates to children and families that are negatively impacted by domestic violence and missing and murdered people. In May 2018, SFP opened a 24/7 residential emergency shelter in Shiprock, NM called the Northern T.R.E.E (Teaching Responsibilities, Empowerment and Equality) House. This is the only emergency shelter directly administered by the Navajo Nation. The shelter has been at capacity since its

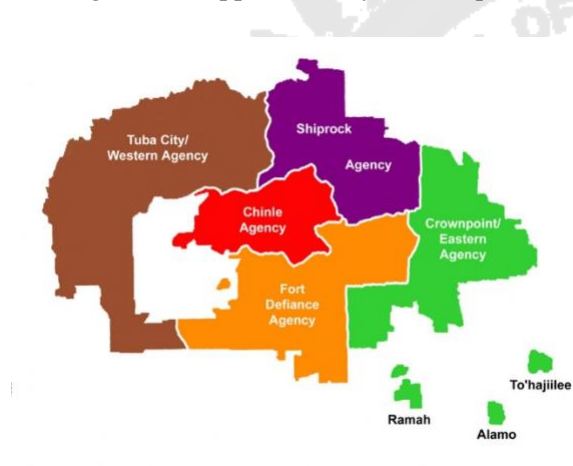
⁷ <http://www.nndss.navajo-nsn.gov/Home.aspx>

⁸ Established in October 2016.

⁹ <http://www.nndss.navajo-nsn.gov/DSSPrograms/StrengtheningFamiliesProgram/SFPHome.aspx>

opening with only four beds and staffed by five advocates where two advocates work at a time and they rotate split shifts to provide 24/7 services. While on duty, the two advocates must simultaneously answer calls to the 24/7 Crisis Line, intake new victims, and provide the full spectrum of support services, including responding to crisis calls both in the field and at the shelter, crisis intervention, safety planning, referrals, transportation, court support, and help filing temporary protection orders. Typically, one advocate will be transporting a victim, leaving only one advocate to run the shelter. If a crisis situation arises, no one is available to respond to the victim until the advocate providing transportation returns.

The Nation also employs 5 *Mobile Victim Witness Advocates (VWA)* who are responsible for assisting victims within the Navajo Nation with SFP-program services, including crisis intervention, safety planning, shelter placement, transportation (transport to shelter, counseling, court, SANE exams etc.), court support, referrals, home visits, and filing temporary protection orders. If there is a federal criminal case, VWAs may coordinate with Navajo Criminal Investigations, FBI, and U.S. Attorney's Offices. There is one VWA for each Region of the Navajo Reservation (see map below), meaning each advocate's coverage area is approximately 5,485 square miles.



Given current crime rates, population size, and land base, SFP estimates it would need a minimum of 4-6 VWAs per Region to provide adequate, comprehensive services across the Navajo Nation. Presently, each VWA's coverage area is more than 20 Chapters and advocates may travel hundreds of miles daily. On average, an advocate spends at least half a day with a victim for intervention and safety planning, while shelter transports take all day and average 400-miles roundtrip.

Mobile advocates' individual capacity to respond is further limited as there is only one tribal vehicle for

all five of the VWAs. VWAs currently share office space with staff in another Navajo department, which makes ensuring client confidentiality very difficult as the advocates gather information and conduct interviews. Because there are not enough VWAs or resources to respond to the overall need, VWAs must "triage" and prioritize their case load. In practice, this means that VWAs are sometimes not able to provide requested support within a reasonable period of time, if at all.¹⁰ Despite this overwhelmingly burdened system, out of 13,636 calls for service for violent offenses, SFP received and responded to 5,670 DV-related service calls, which demonstrates the Navajo government provided some form of direct victim services and support to at least 41.6 percent of victims of violent crime on the reservation.

In reality, many victim services are only available off-Reservation, including services for victims of violent crime, crimes against children, and human trafficking. The Navajo Nation currently subcontracts with multiple off-reservation service providers to provide additional victim services. Providing victim services off-reservation poses additional challenges, especially because many Native victims will not use off-reservation services for a variety of reasons, including long distances from family and jobs, lack of culturally appropriate programming, and language barriers. Ultimately, many crime victims on Navajo do not get the help or support they deserve and need.

¹⁰ Note: Further, the scope and available access to services of these providers varies depending on location and the daily capacity of mobile advocates and shelter services. Typically, any requests for mobile support services usually take many hours or even days before they get to the victim.

Historically, *victim advocate funding* has only temporarily been funded through grants. When the grants run out the advocate leaves and the victims are unable to build a stable point of contact, it diminishes the effectiveness of support services and sustainability of the program. Previously, the Nation requested a 3-year grant in the amount of \$14 million to implement a comprehensive victim advocate system, but only received \$2 million. This funding assists the Nation in being proactive in preventing domestic violence and providing housing and program options for families through educational and departmental programs offered to our citizens like the Home for Women and Children in Shiprock, New Mexico and the Gentle Ironhawk Shelter in Blanding, Utah purchased by the Navajo Nation.¹¹ The current estimate for victim services on Navajo Nation are currently \$4.6 million dollars per year.

Lastly, another unresolved issue exists to increase critical access and *supportive services to families with missing family members* and those whom are experiencing the after-effects of domestic violence or intimate partner abuse. There are no resources available for Native American families to gain access to in locating their missing family members and navigating through the complexities of the tribal-state-federal law enforcement systems and databases is problematic even at agencies.

Navajo Nation Courts, Prosecutors, and Public Defenders. Navajo Nation Courts domestic violence cases amount to 12 percent of the entire caseload on the Navajo Nation, which is a 4 percent increase since 2010. Only 14 prosecutors handle criminal court cases in eleven different judicial districts. From January 1, 2018 to December 7, 2018, the Navajo Nation prosecutors received 1,575 cases to review for domestic violence charges alone and filed 999 cases. This is an increase from the 2017 calendar during which prosecutors received 1,180 DV cases for review and filed 848.¹²

Based on this excessive criminal caseload in the Nation's courts, our Tribe has not implemented the Violence Against Women Act (VAWA) that would allow us to prosecute non-Indian offenders involved in domestic violence incidents within the boundaries of the reservation. The implementation of VAWA highlights a fundamental issue in tribal courts across the nation: the lack of funding and resources available in tribal public safety and court systems to adequately protect our citizens. For example, the estimate of additional caseload initiated through VAWA implementation would cost the Navajo Nation up to \$10 million/year. The increased costs of implementation would go towards hiring additional personnel, attorneys/judges, employee training, programmatic restructuring, facility upgrades, and technological updates for our outdated equipment. \$1.6 million is needed to expand prosecutorial resources and provide victim advocate services that are currently unavailable.

Database Development. Navajo Nation organizes police data through the Navajo Police Department Information Management Section. Current data study requests from outside law enforcement agencies are exceedingly difficult to provide because the Nation's current data tracking system is incompatible with the requested type of data search information. Additionally, due to the lack of available resources, the Nation's *paper* filing system is cumbersome to hand count and subject to human error. These issues directly contribute to the difficulties in identifying missing persons and updating information for public safety departments outside Navajo Nation's jurisdiction. The cost of updating our system into one Record Management Server would cost the Nation approximately \$5 million dollars. Further, supplementary funding to include 11 employees to conduct crime analysis within the Information Management Section of the Navajo Police Department plus support equipment costs would cost close to \$1 million. The

¹¹ <https://nativenewsonline.net/currents/navajo-nation-president-begaye-signs-closing-documents-to-purchase-gentle-ironhawk-domestic-violence-shelter/>

¹² *See Attachment A*—"Navajo Nation Reponse to Request for Additional Information Regarding Needs for the Office of the Prosecutor," dated November 13, 2018.

additional personnel would provide insight as to how law enforcement and investigations can be more proactive in addressing current crime trends within the Navajo Nation.

The National Crime Information Center, a crime database for law enforcement that includes missing persons; and the National Missing and Unidentified Persons System are two national databases that compile information of missing and murdered indigenous people. However, due to the inaccuracy of these systems, the collection of this data falls on the efforts of activist and advocacy groups. Currently, the United States does not have a reliable database or methodology of obtaining statistics on the number of missing and murdered indigenous people. Although the U.S. Department of Justice (DOJ) operates the public National Missing and Unidentified Persons System (NamUs) database, the data it receives is provided on a volunteer basis throughout inconsistent jurisdictions. NamUs is the closest platform that the federal government has established to collect and centralize data of Native Americans and Alaskan Natives, but remains inefficient and inaccurate due to the reporting and jurisdictional issues discussed above. Further, state databases that voluntarily track this information on a voluntary basis are inaccurate, as well. Six out of 10 state databases are not updated. This issue is further complicated by jurisdictional complications determining who is responsible for data collection and adequate identification of Native American heritage.

Tribal Access Program (TAP) Development. The U.S. Department of Justice (DOJ) launched the Tribal Access Program (TAP) pilot project for National Crime Information in August 2015 to provide Tribes with access to national crime information systems for both criminal and civil purposes. This allows Tribes to exchange data to protect their citizens through data exchange via the Criminal Justice Information Services (CJIS) system (federal component) and via state databases in which they are connected. Out of 55 Tribes that applied for funding through the DOJ for this program, DOJ selected the Navajo Nation to receive 2 kiosk systems in November 2017. Currently, the Navajo Nation has these two Tribal Access Program (TAP) kiosks installed on the reservation at: 1) Division of Social Services in Window Rock, AZ; and 2) Judicial building in Chinle, AZ. The possibility of expanding the number of databases to track this information on the Navajo Nation are taking place to add 5 to 7 more kiosks.

The upcoming expansion of the TAP program on the Navajo Nation presents an opportunity for congressional leaders to expand the program to develop a database to adequately track missing Navajo citizens and compile information to share across jurisdictional boundaries. The issue that arises in this instance is that Navajo Nation law enforcement has a responsibility of entering the voluminous amount of data of tribal court convictions. The inclusion of a database to track missing and murdered citizens would require a dedicated funding stream for our severely underfunded public safety program to operate and meet CJIS security requirements. Further, a DOJ tribal technical assistance program and annual update program is needed to educate on the already existing gaps in TAP.

Additional Service Gaps to Consider

Navajo Department of Medical Examiners. The Nation does not have an Office of the Medical Investigator (OMI). Deceased individuals have to be transported approximately 4 hours to a state facility for autopsy and, if there is no foul play involved in the case and the FBI pays for the autopsy, then there are only limited funds in which Navajo Criminal Investigations works with the families to get answers as to the nature of how their loved ones passed away. In order to establish an OMI within the Navajo Nation, the projection is \$4 million start up and thereafter have an annual operating budget of \$1.5 million. Contracting with the area state OMI offices is not feasible or practical.¹³

¹³ See Attachment B, Navajo Nation Legis. 0321-18 establishing Department of Medical Examiners enacted October 2018.

Federal Crime Data Analysis. The Navajo Nation can request services from the FBI to analyze the evidence of a federal crime at a crime lab. However, if the prosecution of the crime remains within the jurisdiction of the Navajo Nation, no funding exists to analyze the data. Further, the Nation does not have any crime labs to conduct the analysis. The Navajo Nation estimates that approximately \$1 million in additional funding for criminal data analysis is needed.

Another key aspect of a fully functional Navajo OMI would allow us to also sift through missing persons cases on our Nation that could potentially be of use to outside agencies who are searching for missing persons, and vice versa. For instance, NamUS allows participating agencies to utilize their program to go through data of missing persons and Jane/John Doe's, thus increasing the chances of finding missing loved ones who may be deceased.

Conclusion. The problem of missing and murdered people in Indian country continues to grow every year. Congress and the federal government, along with Indian tribes, need to address this now in order to curb the problem. In light of my testimony, we suggest the following:

1. Provide intergovernmental resources or establish State-Tribal tasks forces to increase communication between Tribes and states/local municipality law enforcement to determine jurisdictional reporting responsibilities.
2. Increase critical access and create effective federal systems that provide resources and information sharing for families who are in the process of locating their missing family members.
3. Increase access and funding for support services for the families of missing and murdered people and safe house shelters for domestic violence survivors.
4. Significantly increase funding for tribal courts to expand prosecutorial resources and provide victim advocate services that are currently unavailable.
5. Significantly increase funding for a dedicated funding stream for the Tribal Access Program (TAP) for Indian tribes to expand data sharing across jurisdictional boundaries to comprehensively operate and meet CJIS security requirements.

Thank you for providing me the opportunity to testify before the committee. *Ahéhee'* Thank you.


ATTACHMENT
A



THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

TO: Honorable Edmund Yazzie, Chairperson
Honorable Raymond Smith, Jr., Vice Chairperson
Honorable Kee Allen Begay, Jr.
Honorable Herman M. Daniels
Honorable Otto Tso
LAW AND ORDER COMMITTEE, 23RD NAVAJO NATION COUNCIL

FROM: 
Gertrude Lee, *Chief Prosecutor*
Office of the Prosecutor, Navajo Nation Department of Justice

DATE: November 13, 2018

SUBJECT: Response to Request for Additional Information Regarding Needs the Office of the Prosecutor

THE NAVAJO NATION OFFICE OF THE PROSECUTOR (NNOTP):

OVERVIEW

The NNOTP has three major functions: (1) it manages and oversees the prosecution of adult criminal cases, (2) white collar crime investigation and prosecution, and (3) manages and oversees juvenile justice matters in the form of dependency (child abuse and/or neglect) matters, juvenile delinquency cases, and child in need of supervision (CHINS) matters for the twelve Judicial Districts across the Navajo Nation. This includes working with Navajo, state, and federal law enforcement agencies, the Department of Family Services (DFS), schools, and other groups/programs to ensure the successful investigation and prosecution of alleged violations of the Navajo Nation criminal law, adjudicating children who are beyond control (CHINS), and for successful adjudication of dependency cases.

According to the Navajo Nation Supreme Court Judicial Branch annual and quarterly reports¹, the number of cases pending in the District Courts is increasing:

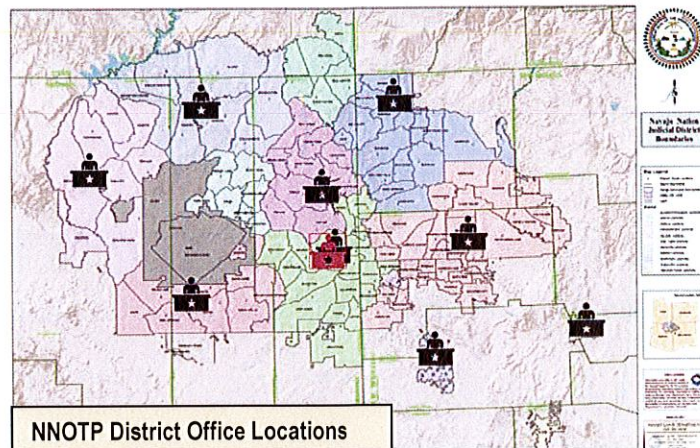
	FY 2016	FY2017	4 th Quarter FY2018
Adult Criminal	6801	7660	7882
Dependency	399	396	468
Delinquency	152	142	183
CHINS	63	172	66

¹ Navajo Nation Judicial Branch Quarterly and Annual Reports can be found at: <http://www.navajocourts.org/JBReports.htm>.

The NNOTP is responsible for initiating and managing the cases indicated in the above dockets. With a marked increase in all case types but CHINS, the need for additional staff and associated operating costs is critical.

The NNOTP has ten (10) offices spread throughout the reservation with at least one legal staff member in each district to manage all case filings for the District Office.

Three of the Prosecutor Districts manage the case filings for more than one Judicial District: Shiprock also manages Aneth, Chinle also manages Dził Yijiin, and Tó'hajiilee also manages Alamo.



NNOTP NEEDS:

A. SUBSTANTIAL INCREASE IN STAFF & FUNDING – LEGAL/SUPPORT STAFF & OPERATING COSTS

The Office of the Prosecutor has been understaffed for years. In researching the distribution of staff in neighboring state prosecutor offices, it is clear that the Navajo Nation Office of the Prosecutor is **severely** understaffed, especially with reference to administrative support staff.

According to the 2010 census, the Navajo Nation has a population of 173,667. The Nation also has over 300,000 enrolled members. The total number staff members employed with the NNOTP is thirty-nine (39). In comparison to the Navajo Nation, two neighboring counties in New Mexico, McKinley County (population 71,492) and San Juan County (population 130,044), have a combined District Attorney staff of one hundred three (103). Additionally, the NM Children Youth and Families' Department employs four (4) Children's Court Attorneys and support staff for child abuse and/or neglect matters in San Juan County and McKinley County.

This makes the total staff of these two counties roughly **one hundred seven (107)**. Again, the total staff of the Office of the Prosecutor, including the Chief Prosecutor, is **thirty-nine (39)**. For the convenience of the Committee, I have included with this memo copies of the employee listing of both of the New Mexico District Attorney Offices in McKinley County and San Juan County. This information is publicly available at <http://www.sunshineportalnm.com/>.

	Population (2010 census)	Total staff (2019)	Personnel Funds (2019)	Operating Budget (2019)
Navajo Nation	173,667	39	\$1,934,740 (OTP) \$787,602 (OTP)	\$146,703 (OTP) \$85,863 (JJ)
	TOTAL: 173,667	TOTAL: 39	TOTAL: \$2,722,342	TOTAL: \$232,566
McKinley County, NM	71,492	36	\$1,725,233	\$4,638,900.00
San Juan County, NM	130,044	67 +4	\$2,956,490	\$2,585,000.00
	TOTAL: 201,536	TOTAL: 107	TOTAL: \$4,681,723	TOTAL: \$7,223,900

DIFFERENCE

Personnel: -\$1,959,381

Operating: -\$6,991,334

TOTAL: -\$8,950,715

In comparison to McKinley County and San Juan County, the entire Navajo Nation Office of the Prosecutor has a staff *and* budget that is only **one-third (1/3)** the size of these two neighboring counties. These counties already have a large land base within the Navajo Nation over which they have no jurisdiction. Additionally, the District Attorneys of New Mexico file criminal cases but do not file civil child abuse and neglect actions, unlike the Navajo Nation Office of the Prosecutor which is tasked with filing on both types of cases. The staff of the two neighboring counties also include multiple positions for victim advocates, investigators, legal clerks, legal secretaries, IT assistants, and other support staff. The legal staff is a hierarchy with the following legal positions: District Attorney, Chief Deputy District Attorney, Deputy District Attorney, Senior Trial Attorney, Trial Attorney, and Associate Trial Attorney. The list of staff for the San Juan and McKinley County District Attorney offices also shows that their total staff is about one-third (1/3) legal staff and two-thirds (2/3) support staff. The Navajo Nation Office of the Prosecutor staff, including vacant positions, is as follows:

Legal staff (attorneys/tribal advocates)	20
Administrative Service Officer	1
Senior Network Specialist	1
Legal secretaries	13
Records Clerk	2
Office Specialist	1
Investigator	1

At present, the Office of the Prosecutor has no victim advocates to address the needs of victims of crimes, only two records clerks to help process the reports and court filings that come into the district offices, and only one IT staff member to address the many IT issues that occur in each of the prosecutor district offices. Deputy Chief Prosecutor Jaime High and I looked at our present staffing needs and we believe an increase of positions as follows would substantially help and support the needs of the Office of the Prosecutor.

<u>CURRENT POSITIONS</u>		<u>FUTURE POSITIONS</u>	
Attorneys	8		10
Prosecutors	8		9
JPOs	4		5
ASO	1		2
Legal Secretaries	13		19
Intake clerk	0		6
Victim advocates	0		6
Investigators	1		4
IT	0		2
	Total: 35		63

While this initial increase in staff from thirty-five (35) to sixty-three (63) total positions would not bring us near a total staff of one-hundred four (104), it would significantly improve the ability of the NNOTP to address crimes of violence, address the misappropriation of Navajo monies, assist victims of crime, and help the Office ensure the health, safety, and welfare of the Navajo Nation's children.

With an increase in staff come the associated operating costs. In comparison to neighboring jurisdictions, the Office of the Prosecutor's total operating budget for FY2019 is **\$232,566**, compared to San Juan/McKinley County's total operating budget of **\$7,223,900**. This means the operating budget of two state county prosecutors' offices is **31 times greater** than the NNOTP. At present, the Office of the Prosecutor's operating budget is so limited that the NNOTP has had to grapple with the following:

- While all District Offices should have at least one (1) tribal vehicle assigned, only five (5) districts have an assigned tribal vehicle: Shiprock, Window Rock, Dilkon, Chinle, and Tuba City. This leaves Kayenta, Crownpoint, Tohajilee/Alamo, and Ramah with no vehicles for official travel.
- The employees of the NNOTP are required to travel to attend court hearings, attend continuing legal education training, and training related to the Office's duties. We have inadequate funding for per-diem with regard to such travel.
- Though all of the districts are law offices with a need for ready access to paper, ink, and copiers, only four (4) districts have commercial copiers.
- The funding for internal office meetings has been cut back greatly. The Office of the Prosecutor needs to have quarterly staff meetings to ensure all District needs are being addressed and to provide constant training in the work of the NNOTP legal staff and support staff to ensure continued improvement and growth. The NNOTP has been able to make large strides in organization and performance because it has been able to meet on a regular basis to discuss goals, provide training, and increase communication. The current funding will only allow for one staff meeting for FY2019.
- The NNOTP budget for "advertisements" is insufficient compared with previous budget years. Such newspaper advertisements are necessary in Child Abuse and Neglect (dependency) matters when a parent or guardian cannot be located for personal service. The NNOTP is required by the Court to publish notices in newspapers to meet the

requirement for service by publication. Such notices range in cost anywhere from \$500 to \$2000, and the fees grow every year.

- At present there is an inadequate budget to cover attorney licensing fees and the cost for continuing legal education. Paying annual dues and CLE costs is an incentive for attorney recruitment. Unfortunately, we cannot use this as a recruitment tool because the NNOTP does not have the budget to pay CLE costs.

B. COMPETITIVE SALARIES & HOUSING TO RECRUIT & RETAIN STAFF

While the NNOTP has been successful in the past two years (2016-2018) recruiting staff to fill vacant positions, it has encountered several barriers to recruitment and retention.

1. Employee housing is a critical need with regard to recruitment and retention of staff. The interior areas of the reservation are very difficult to recruit for because housing is scarce and difficult to obtain. The NNOTP has found it particularly difficult to recruit staff in: Tuba City, Kayenta, Chinle, and Crownpoint due to lack of housing and long commutes. Several of the current legal staff have commutes ranging from 45 minutes to over an hour long. At least three legal staff members have included this as a reason for considering employment elsewhere.
2. There is a great need for salary adjustments and consideration for bonus pay for both support staff positions (legal secretary / office specialist / records clerks) and legal staff positions.

With regard to support staff positions, the NNOTP has found it difficult to recruit support staff positions in areas near border towns because of competing job opportunities. For example, the Shiprock District Office has a vacant legal secretary position which has had to be advertised several times. In one round of advertisement, the NNOTP made two offers of employment to two very qualified individuals. Both ultimately rejected the NNOTP's offer of employment because the Navajo Nation could not match the pay offered by the State of New Mexico. Both individuals received salary offers that were \$5 or more per hour than what the Navajo Nation could offer, even after requesting an above entry level salary from the Department of Personnel Management.

With regard to legal staff positions, the NNOTP has been able to recruit employees for legal positions but the primary issues we face are: (1) the lack of funding for step increases; (2) the Bonus Committee's denial of bonuses for legal and investigative staff; (3) lack of competitive salaries to recruit experienced tribal advocates; and (4) tribal advocate failure rate for the Navajo Nation Bar Exam.

As indicated above, the legal staff are responsible for many duties and are required to do their best to meet the enormous needs of their respective communities with few resources and while balancing extremely large caseloads. Additionally, once the legal staff have completed their training, they are in charge of entire district offices including the supervision of the support staff. While other legal programs in the Navajo Nation have positions for Senior Attorneys or Principal Attorneys, the NNOTP does not have the same hierarchy of legal positions and commensurate pay for additional duties.

For purposes of comparison, the Navajo Nation Department of Justice has the following legal positions with entry level salary as follows:

Classification Title	Pay Grade and Step A Salary	
Attorney General	AS76	\$133,307.20
Deputy Attorney General	AC75	\$118,705.60
Assistant Attorney General	AS74	\$112,257.60
Principal Attorney	AS72	\$94,411.20
Senior Attorney	AS70	\$79,892.80
Attorney	AS68	\$67,225.60
Attorney Candidate	AS67	\$61,630.40
Principal Tribal Court Advocate	AR68	\$58,488.00
Senior Trial Court Advocate	AR66	\$49,192.00

The NNOTP has the following legal positions with an entry level salary as follows:

Classification Title	Pay Grade and Step A Salary	
Chief Prosecutor	AS74	\$112,257.60
Deputy Chief Prosecutor	AS72	\$94,411.20
Attorney	AS68	\$67,225.60
Senior Prosecutor (Tribal Advocate)	AR67	\$53,643.20
Prosecutor (Tribal Advocate)	AR65	\$45,385.60
Juvenile Presenting Officer (Tribal Advocate)	AR64	\$41,641.60

The work of a Prosecutor's office is constant and specialized with each legal staff member not only attending to their duties as a trial practitioner (often they are in court every day) but also the daily business of supervising the administrative operations of the district offices, of reviewing the constant influx of reports from law enforcement and DFS, and attending to the concerns of citizens and victims of crimes. In order to recruit and retain legal staff, the NNOTP needs to be in a position to offer competitive salaries commensurate with the work required of the legal staff. Thus, the NNOTP would like to add additional positions for "Assistant Chief Prosecutor" and Senior Attorney and reassess all current pay grades.

Having the ability to offer competitive salaries is becoming critical because trained and now experienced legal staff are being targeted by other programs for recruitment. For example, a former staff member, an attorney, was hired by the NNOTP in March 2017. In October 2018 the attorney submitted his resignation after being offered a position as a staff attorney for the Navajo Nation Judicial Branch. Unfortunately, the NNOTP could not retain the attorney because the salary offered by the Judicial branch was nearly \$22,000 more than his salary with the NNOTP. There was no way the NNOTP could compete with such an offer or afford to match it. In October 2018 another attorney staff member was targeted for recruitment by the McKinley County District Attorney's Office. The attorney was offered \$10,000 more than his salary with the NNOTP.

Without a significant investment to make legal and support staff positions in the NNOTP more marketable and competitive, the NNOTP will only serve as a training ground and pipeline for

other programs and states. Rather than recruiting staff who will invest in, grow, and keep their employment with the NNOTP long-term, the NNOTP will be a mere stopping point for those waiting to be recruited and compensated at much greater levels than the NNOTP can afford.

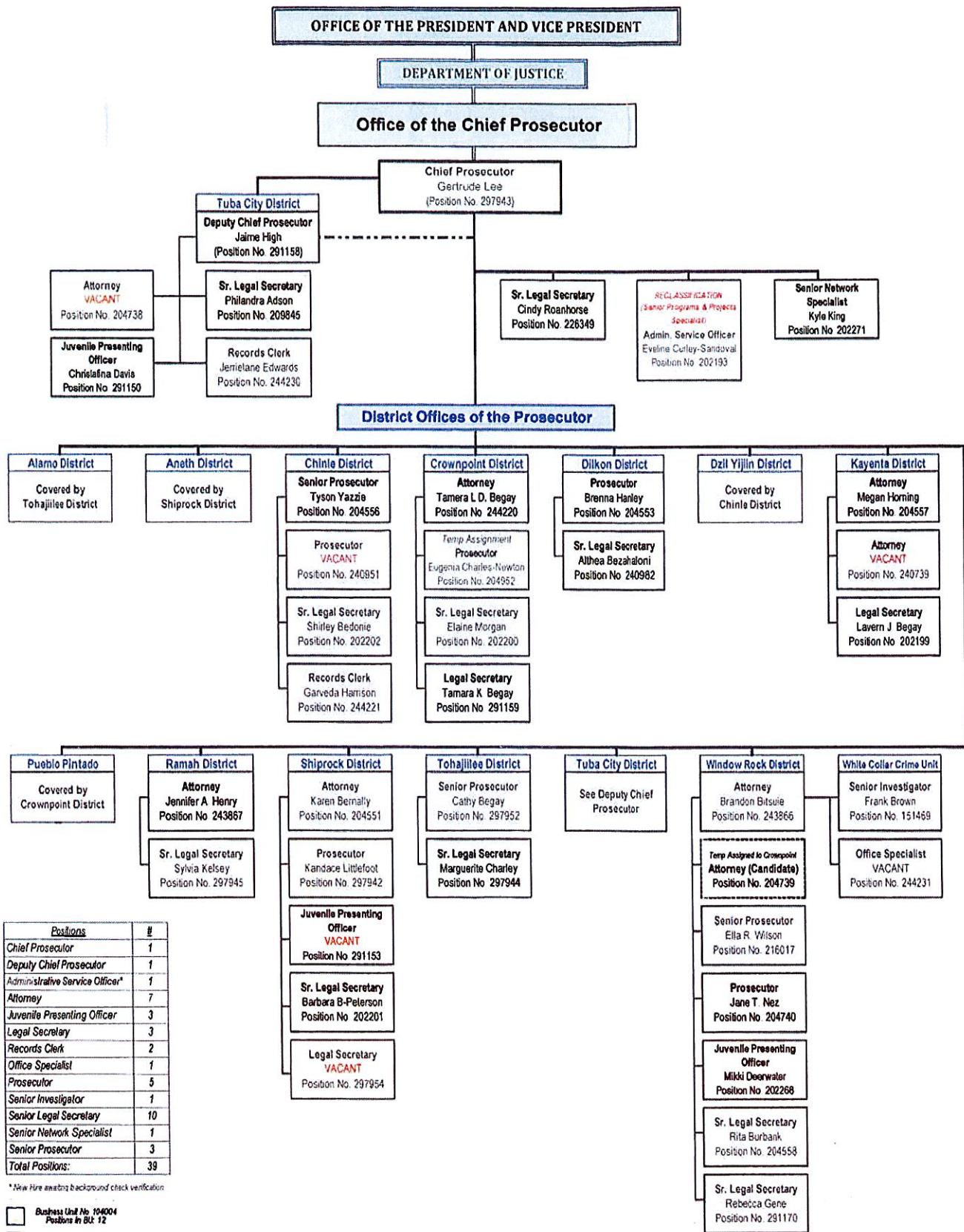
C. FUNDING FOR CRITICAL BUILDINGS NEEDS

Shiprock Prosecutor District is a high volume district (second in volume of reports received in all the districts). However, the Office of the Prosecutor staff work in a very tight area with room comfortably for only four (4) staff. There is inadequate room for files, office space, and nowhere to meet with victims, defense counsel, law enforcement, or other justice partners. Additionally, because of the location of the building, the internet and electricity frequently go out, which greatly affects the functioning of the Office.

Dilkon Prosecutor District is located in the Dilkon Police District Offices. At present the two (2) staff members are sharing a trailer with the Dilkon Police Lieutenant with two (2) rooms serving as a dedicated Prosecutor area. There is inadequate room for case files, equipment, and general office space. There is also nowhere to meet with victims, defense counsel, law enforcement, or other justice partners.

Recently, several justice facilities were built in Tuba City, Chinle, and Crownpoint. However, the layout of the Prosecutor's Office has caused safety concerns for the staff. The Tuba City and Crownpoint buildings only have one entry-way and exit for the entire office. In all three new buildings, there is no divider between the public and the staff in the Office. This has caused safety concerns for the staff when irate or intoxicated individuals enter the office and refuse to leave. Such individuals have ready access to the staff and there is no barrier to separate them from going where they wish in the building. Barriers need to be built in Tuba City, Kayenta, Chinle, Dilkon, Window Rock, Crownpoint, and Tohajiilee to ensure staff safety. Unfortunately, since January 2017 the NNOTP has made several requests to the Facilities Maintenance Department to build the barriers but the requests have gone unanswered and unaddressed.

Office of the Prosecutor Organizational Structure



Positions	#
Chief Prosecutor	1
Deputy Chief Prosecutor	1
Administrative Service Officer*	1
Attorney	7
Juvenile Presenting Officer	3
Legal Secretary	3
Records Clerk	2
Office Specialist	1
Prosecutor	5
Senior Investigator	1
Senior Legal Secretary	10
Senior Network Specialist	1
Senior Prosecutor	3
Total Positions:	39

* New Hire analyzing background check verification

- Business Unit No. 104004
Positions in BU: 12
- Business Unit No. 104005
Positions in BU: 27

OFFICE OF THE PROSECUTOR STATS - FY2018 COMPARED TO FY2017

10/1/17 - 9/24/18

FY2018 Hand Tally

	Received	Pending	Filed	Closed	Brought F	Police Rs	Walk-Ins	DFS
Alamo	99	94	81	85	9	132	302	13
	55	48	47	32	1			
Tohajiilee	146	144	126	74	92			
	78	61	64	64	60			
Dzil Yijiin	744	914	339	394	47	1845	1084	50
	648	487	199	143	1			
Chinle	1585	1429	1324	1368	558			
	1955	1207	987	1807	458			
Crownpoint	1583	1576	926	699	376	698	1137	56
	1386	1335	373	667	145			
Dilkon	759	650	642	858	727	414	232	14
	872	314	1011	374	211			
Kayenta	2524	3489	1639	2477	776	1702	854	28
	1368	301	442	423	599			
Ramah	800	842	543	404	78	527	562	11
	657	584	202	130	19			
Shiprock	2760	2390	2403	520	5806	1886	712	29
	1897	615	1563	870	4711			
Aneth	299	245	272	206	174			
	288	12	232	209	94			
Tuba City	3931	4934	2016	1465	541	2531	612	39
	1929	410	1146	739	180			
Window Rock	1657	1691	1396	1734	887	907	1352	35
	1932	1853	1253	1449	475			
						Total Hand Tally		
TOTAL	Received	Pending	Filed	Closed	Brought F	10642	6847	275
FY2018	16887	18398	11707	10284	10071			
FY2017	13065	7227	7519	6907	6954			

HEARINGS	11513	FY2018
	8108	FY2017

ATTACHMENT
B

5-DAY BILL HOLD PERIOD:
Website Posting Time/Date: 09-28-18 @ 4:25 pm
Posting End Date: 10-03-18
Eligible for Action: 10-04-18

Law & Order Committee

THENCE

Naa'bik'iyáti' Committee

THENCE

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

23rd NAVAJO NATION COUNCIL - Fourth Year, 2018

Navajo Nation Council

INTRODUCED BY



(Prime Sponsor)

Koe Allen Begay JR

TRACKING NO. : 0321-18



AN ACT

RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' AND THE NAVAJO NATION COUNCIL; AMENDING 2 N.N.C. § 1352 AND 17 N.N.C §§ 1851 THROUGH 1854; AMENDING CORONER PROVISIONS AND ESTABLISHING A DEPARTMENT OF MEDICAL EXAMINERS WITHIN THE DIVISION OF PUBLIC SAFETY; AUTHORIZING THE LAW AND ORDER COMMITTEE TO APPROVE A PLAN OF OPERATION FOR THE DEPARTMENT OF MEDICAL EXAMINERS

BE IT ENACTED:

SECTION ONE. AUTHORITIES

A. The Law and Order Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 600 (A). The committee, among other duties and responsibilities, oversees the Navajo Nation Division of Public Safety and programs within the division. 2 N.N.C. §§ 600(C)(5) and 601(C)(1). The committee pursuant to 2 N.N.C. § 601(B)(4) is authorized to approve and amend plans of operation for programs over which it exercises oversight authority.

B. Pursuant to 2 N.N.C. §164(A)(9), "a proposed resolution that requires final action by the Navajo Nation Council [must] be assigned to standing committee(s) having authority over the subject matter at issue and the Naabik'iyáti' Committee."

1 C. The Navajo Nation Council, pursuant to 2 N.N.C. §102(A), is the "governing body of
2 the Navajo Nation" A primary role of Navajo Nation Council delegates is policy-
3 making, a role which includes approval of enabling legislation.
4

5 **SECTION TWO. FINDINGS**

6 A. Pursuant to 17 N.N.C. §1851, "[t]he President of the Navajo Nation is authorized to
7 appoint at least one coroner within each police district, and to hold office at the
8 President's pleasure. Coroners shall be paid at a rate established by the Navajo Nation
9 Council and may be reimbursed for actual and necessary expenses, upon presenting
10 proper vouchers to the Controller of the Navajo Nation." 17 N.N.C. § 1851, *Appointment*
11 *of coroners; compensation.*

12 B. By a 2004 Executive Order, Joe Shirley, Jr., then President of the Navajo Nation,
13 appointed the Navajo Department of Criminal Investigation Captains (Criminal
14 Investigator Supervisors) as Coroners; and Criminal Investigation Lieutenants (Senior
15 Criminal Investigators) and Criminal Investigation Sergeants (Criminal Investigators) as
16 Deputy Coroners of each of the several Police Districts on the Navajo Nation.

17 C. The Navajo Department of Criminal Investigations is a program within the Division
18 of Public Safety, and is contracted through the BIA P.L. 93-638 to conduct investigations
19 of major crimes such as, but not limited to, homicides, rapes, and serious assaults.

20 D. Regarding determinations on causes of death, the policy of the BIA is that "under no
21 circumstances will a BIA Special Agent or Police Officer make a ruling regarding the
22 cause of death." BIA Death Investigation Policy # DIV-CR-02-2005 (issued 2005). This
23 policy applies to all law enforcement officers performing the same duties and
24 responsibilities as BIA Special Agents or Police Officers under the Navajo Nation's P.L.
25 93-638 contract.

26 E. The Navajo Department of Criminal Investigation is currently experiencing a strain to
27 perform coroner duties and to also conduct major crime investigations, especially under
28 the current manpower shortage.

29 F. Death investigation is a health-related field that should be managed by personnel
30 specifically trained in Medicolegal Death Investigation.

1 G. The creation of the Navajo Department of Medical Examiners supports self-reliance,
2 self-determination, job creation, and ensures that Navajo interests, beliefs, and traditions
3 will be protected.

4
5 **SECTION THREE. AMENDING ENABLING LEGISLATION FOR DIVISION**
6 **OF PUBLIC SAFETY**

7 The Navajo Nation hereby amends the enabling legislation for the Navajo Nation
8 Division of Public Safety, 2 N.N.C. § 1352 *et seq.*, as follows:

10
11 **TITLE 2. NAVAJO NATION GOVERNMENT**

12 **Chapter 5. Executive Branch**

13 **Subchapter 15. Division of Public Safety**

14 ****

15 **§ 1352. Purpose and objectives**

16 A. The purposes of the Navajo Division of Public Safety shall be:

- 17 1. To plan, organize and administer all aspects of the Navajo Division of Public Safety
18 programs so as to provide multi-public safety services that meet the needs of tribal
19 members of the Navajo Nation, as well as other individuals and entities within the
20 territorial jurisdiction of the Navajo Nation as defined in 7 N.N.C. § 254 and 18
21 U.S.C. § 1151.
- 22 2. To exercise control and authority over all law enforcement and public safety
23 activities within the Navajo Nation and adjoining Indian Country as designated
24 under Navajo, federal and other applicable laws where the Navajo Nation
25 exercises jurisdiction.

26 B. The objectives of the Navajo Division of Public Safety include, but are not limited to
27 the following:

- 28 1. To maintain law and order by the enforcement of applicable criminal laws and the
29 safeguarding of the lives and properties of the persons on the Navajo Nation by
30 deterring criminal activities and violations of tribal, state and federal laws,

1 through effective investigation, and to provide assistance in prosecutions and
2 appropriate court actions, in cooperation with the Navajo Nation Office of the
3 Prosecutor and other criminal justice entities which possess jurisdiction; to
4 negotiate and enter into appropriate agreements with other governmental
5 jurisdictions to carry out the responsibilities herein, in compliance with applicable
6 Navajo Nation laws, rules and regulations.

- 7 2. To plan for, respond to, and aid in the recovery from natural and manmade
8 disasters on the Navajo Nation and to coordinate with and train tribal and
9 affiliated non-tribal entities in the development of a comprehensive emergency
10 management plan.
- 11 3. To provide fire and rescue services and to develop community volunteer fire
12 services to effectively and efficiently respond to fire and rescue operations; to
13 provide training facilities and instructors for local fire departments; to enforce fire
14 and building codes and other applicable codes related to fire safety.
- 15 4. To respond to medical emergencies by rendering emergency care, and to transport
16 the sick or injured to a clinic or hospital when appropriate.
- 17 5. To establish, operate and provide support services for victims of serious and
18 violent crimes.
- 19 6. To provide and coordinate support services to ensure the availability of counseling
20 for Division employees.
- 21 7. To coordinate and disseminate information on safety programs and to facilitate
22 funding mechanism for its component departments with non-tribal entities.
- 23 8. To plan for, establish, provide and operate appropriate correctional facilities and
24 appropriate correctional services.
- 25 9. To provide competent medicolegal death investigations.

26 *****
27 _____
28
29
30

1 SECTION FOUR. AMENDING TITLE 17 BY DELETING CORONER
2 PROVISIONS; CREATING A DEPARTMENT OF MEDICAL EXAMINERS

3 The Navajo Nation hereby amends Title 17 by deleting coroner provisions at sections
4 1851 through 1854 and creating a Department of Medical Examiners as follows:

5 _____
6
7 TITLE 17. LAW AND ORDER

8 Chapter 5. Procedures

9 Subchapter 3. ~~Coroners~~ Medical Examiners; Investigation of Deaths

10
11 ~~§ 1851. Appointment of coroners; compensation~~

12 ~~The President of the Navajo Nation is authorized to appoint at least one coroner within~~
13 ~~each police district, and to hold office at the President's pleasure. Coroners shall be paid at~~
14 ~~a rate established by the Navajo Nation Council and may be reimbursed for actual and~~
15 ~~necessary expenses, upon presenting proper vouchers to the Controller of the Navajo~~
16 ~~Nation.~~

17
18 § 1851. Establishment of the Navajo Department of Medical Examiners

19 There is established within the Navajo Nation Division of Public Safety in the
20 Executive branch of the government of the Navajo Nation, the Navajo Department of
21 Medical Examiners.

22
23 § 1852. Investigation of deaths - Generally

24 ~~Whenever a coroner is informed that a person on Navajo Nation land has been killed, or~~
25 ~~has suddenly died under such circumstances as afford reasonable ground to suspect that the~~
26 ~~death was occasioned by the criminal act or gross negligence of another, the coroner shall~~
27 ~~go to the place where the body is located and inquire into the cause of death. Unless the~~
28 ~~coroner is a physician, he or she shall endeavor to have a physician accompany him or her~~
29 ~~to the place where the body is located.~~

1 A. The Navajo Nation Department of Medical Examiners shall, within the Navajo Nation,
2 investigate all deaths occurring under suspicious circumstances, including violent and
3 unexplained deaths. The Chief Medical Examiner, other medical examiners, and
4 medicolegal investigators within the Navajo Nation Department of Medical Examiners are
5 authorized to make determinations and issue certificates of death, among other duties and
6 responsibilities within its Plan of Operation.

7 B. The Navajo Nation Department of Medical Examiners is authorized to respond to the
8 scene of the death and shall prescribe procedures for taking possession of a dead body
9 following a death subject to investigation under this Section and for obtaining all
10 medicolegal facts relevant to the medical cause of death. The dead body shall not be
11 disturbed unless the Chief Medical Examiner or his/her designee grants permission to do
12 so.

13 C. All medicolegal investigations must be conducted in a manner that respects the culture,
14 tradition, and beliefs of the Navajo Nation.

15 D. As needed, the Navajo Nation Department of Medical Examiners may engage medical
16 examiners or offices of medical examination on a short term basis to respond to unexpected
17 surges in the need for medicolegal investigations.

18
19 **§ 1853. Autopsies and exhumations**

20 ~~A. When the coroner determines that the cause of death cannot be determined without an~~
21 ~~autopsy, the coroner or district prosecutor may petition the district court of the Navajo~~
22 ~~Nation to order an autopsy be held. If such an autopsy shall require exhumation of the~~
23 ~~body, such information shall be included in the petition. Hearings on such petitions shall~~
24 ~~be held on an expedited schedule upon a showing of exigent circumstances derived from~~
25 ~~medical necessity or the needs of a criminal investigation.~~

26 ~~B. The immediate family of the decedent shall be served with a copy of the petition and~~
27 ~~shall be allowed to file objections, if their identity and whereabouts can be ascertained and~~
28 ~~their participation is consistent with the requirements of medical necessity or the needs of a~~
29 ~~criminal investigation. The petitioner must show what reasonable, good faith efforts have~~
30 ~~been made to locate and serve the decedent's immediate family.~~

1 C. ~~The district court may order an autopsy if it finds that:~~

2 1. ~~The cause of death cannot be determined without an autopsy;~~

3 2. ~~Such determination is critical to a criminal investigation or required by medical~~
4 ~~necessity;~~

5 3. ~~No less invasive means is available for the investigation.~~

6 D. ~~After the district court has ordered an autopsy, the coroner may request the United~~
7 ~~States Public Health Service perform the autopsy, or may engage a private physician or~~
8 ~~other licensed health care provider to perform such service.~~

9 E. ~~If the ordered autopsy requires exhumation of a body, the coroner shall cause the body to~~
10 ~~be exhumed for examination and reburial after autopsy. The coroner may call upon the~~
11 ~~Navajo police for assistance in exhumation and reburial.~~

12
13 **§ 1853. Notification and Reporting of Deaths**

14 A. Any person subject to the jurisdiction of the Navajo Nation must promptly notify the
15 Navajo Nation Police Department of any death or dead body.

16 B. The Navajo Police Department shall promptly notify the Navajo Nation Department of
17 Medical Examiners of any death subject to investigation under this Act.

18
19 **§ 1854. Report**

20 A. ~~After inspecting the body and conferring with a physician, if the coroner is not himself~~
21 ~~or herself a physician, the coroner shall make a written report, in quadruplicate, stating the~~
22 ~~following facts:~~

23 1. ~~The name and census number of the dead person.~~

24 2. ~~When and where he or she died, and the circumstances of his or her death.~~

25 3. ~~What caused the death.~~

26 4. ~~Who caused the death, if caused by the act, whether criminal or not, of another~~
27 ~~person, or by gross negligence.~~

28 5. ~~An inventory of the property other than clothing of ordinary value found on the dead~~
29 ~~person.~~

30

1 ~~6. If the coroner is not a physician, the name and address the physician he or she~~
2 ~~consulted.~~

3 ~~B. The coroner shall submit all copies of his or her report to the Police Captain of the~~
4 ~~Navajo police district in which the death occurred. The Captain shall retain one copy and~~
5 ~~forward the remaining three copies to the Chief of the Navajo police.~~

6
7 § 1854. Exhumations for Death Investigations

8 A. When the Navajo Department of Medical Examiners concludes that the cause of death
9 cannot be determined without an exhumation of the body, the Chief Medical Examiner,
10 other medical examiners, medicolegal investigators, through a Navajo Nation prosecutor or
11 other legal counsel, may petition the district court of the Navajo Nation to order an
12 exhumation. Hearings on such petitions shall be held on an expedited schedule upon
13 showing of exigent circumstances including medical or Public Safety necessity.

14 B. The immediate family of the decedent shall be served with a copy of the petition and
15 shall be allowed to file objections, if their identity and whereabouts can be ascertained and
16 their participation is consistent with the requirements of medical or Public Safety necessity.
17 The petitioner must show what reasonable, good faith efforts have been made to locate and
18 serve the decedent's immediate family.

19 C. The district court may order an exhumation if it finds that:

- 20 1. The cause of death cannot be determined without an exhumation;
21 2. An exhumation is required for Public Safety or Medical Necessities; and
22 3. No less invasive means are available to determine cause of death or meet the
23 medical or Public Safety necessity.

24 D. The Navajo Department of Medical Examiners shall prescribe means for exhumation
25 that are minimally invasive under the circumstances and carry out the reburial following
26 the autopsy. The Department of Medical Examiners may call upon the Navajo Nation
27 Police for assistance in exhumation and reburial.

1 **§ 1855. Disposition of property found on body**

2 It shall be the duty of the coroner to take possession of all property except clothing of
3 ordinary value found on the person of anyone whose death he or she is required to
4 investigate, and to turn property over to the District Police Captain with his or her report
5 containing the inventory thereof. The District Police Captain shall deliver such property to
6 the Court of the Navajo Nation after it has served any purpose it may have as evidence in a
7 eriminal prosecution arising out of the death, and the Court shall dispose of the same as
8 part of the estate of the deceased or in such other manner as justice may require.
9

10 **§ 1855. Records and Reports**

11 A. The Chief Medical Examiner shall be responsible for maintaining complete and
12 thorough records and files that are properly indexed and searchable. At a minimum, the
13 record of every deceased person whose death is investigated shall contain:

- 14 1. The name, date of dirth, and census number of the deceased (if known);
15 2. The place where the body was found;
16 3. The date, cause and manner of death;
17 4. An inventory of the property found on the deceased and the current disposition of
18 that property;
19 5. Any and all other relevant information and reports of the Navajo Department of
20 Medical Examiners concerning the death; and
21 6. A death certificate.

22 B. The records and reports generated and maintained by the Navajo Department of
23 Medical Examiners shall be:

- 24 1. promptly delivered to the appropriate Navajo Nation Law Enforcement Agency
25 upon completion; and
26 2. open to the inspection of the Navajo Nation Law Enforcement Agencies, the Navajo
27 Nation Office of the Prosecutor, the Federal Bureau of Investigations, and the
28 United States Attorney's Office, and any other law enforcement agency or official
29 with a legitimate interest.
30

1 C. The records maintained by the Navajo Department of Medical Examiners, or
2 reproductions certified by the Chief Medical Examiners, are admissible as evidence in any
3 Navajo Nation court.

4 D. Notwithstanding the Navajo Nation Privacy Act, the following persons and entities
5 shall have conditional access to the records of the Navajo Department of Medical
6 Examiners:

- 7 1. All federal, state, and/or tribal law enforcement or prosecutor's office for purposes of
8 criminal prosecution.
- 9 2. The executor or representative of the decedent's estate.
- 10 3. Next of Kin.
- 11 4. Insurance companies handling claims for decedent's family.
- 12 5. Hospitals, health clinics, and/or medical/treatment facilities that provided treatment
13 to deceased for purposes of updating their medical records.

14 E. The Navajo Department of Medical Examiners is authorized to access confidential
15 medical records (including, but not limited to, records of substance use and abuse) and any
16 relevant information from physicians, hospitals, nursing homes, residential care facilities,
17 and all other health care providers subject to the jurisdiction of the Navajo Nation. Any
18 violation could result in penalties under 2 N.N.C. §§ 91 and 92.

19
20 **§ 1856. Duty of person discovering body**

21 ~~It shall be the duty of every Navajo police officer upon learning that a person has~~
22 ~~apparently been killed on Navajo Nation land, or has apparently died on such land because~~
23 ~~of the criminal act or gross negligence of another, to notify a Navajo coroner of such fact~~
24 ~~immediately. It shall be the duty of any person other than a police officer making a~~
25 ~~discovery of a body to notify a Navajo police officer or coroner without delay.~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

SECTION FIVE. EFFECTIVE DATE; DIRECTIVE TO APPROVE PLAN OF OPERATION

A. This action of the Navajo Nation Council herein shall be effective pursuant to 2 N.N.C. § 221(B).

B. The Navajo Nation Council hereby directs the Law and Order Committee to approve within 30 days a Plan of Operation for Navajo Nation Department of Medical Examiners within the Division of Public Safety.

SECTION SIX. CODIFICATION

The provisions of these amendments of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amendments in the next codification of the Navajo Nation Code.

SECTION SEVEN. SAVINGS CLAUSE

Should any provision of these amendments be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation without appeal to the Navajo Nation Supreme Court, those amendments that are not determined invalid shall remain the law of the Nation.

**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY**

LEGISLATION NO.: 0321-18

SPONSOR: Honorable Kee Allen Begay Jr.

TITLE: An Act Relating to Law and Order, Naabik'iyáti' and the Navajo Nation Council; Amending 2 N.N.C. § 1352 and 17 N.N.C. §§ 1851 Through 1854; Amending Coroner Provisions and Establishing a Department of Medical Examiners within the Division of Public Safety; Authorizing the Law and Order Committee to Approve a Plan of Operation for the Department of Medical Examiners

Posted: September 28, 2018 at 4:25pm

5 DAY Comment Period Ended: October 3, 2018

Digital Comments received:

Comments Supporting	1. Navajo Nation Human Rights Commission of the Navajo Nation Resolution No. NNHRCOCT-18-18
Comments Opposing	<i>None</i>
Inconclusive Comments	<i>None</i>



**Legislative Secretary II
Office of Legislative Services**

10/11/2018 3:05pm
Date/Time

**Resolution of the Navajo Nation Human
Rights Commission of the Navajo Nation**

**Supporting the Proposed Navajo Nation Council Resolution to Establish a Department of
Navajo Nation Medical Examiners**

WHEREAS:

1. Pursuant to 2 N.N.C. §920 and §921, the Navajo Nation Human Rights Commission (“Commission”) is established within the Legislative Branch as an entity of the Navajo Nation government and to operate as a clearinghouse to address discriminatory actions against citizens of the Navajo Nation; and to interface with local, state, federal governments and with national and international human rights organizations in accordance with its plan of operation and applicable laws and regulations of the Navajo Nation; and
2. In summer 2017 and winter 2018, the Commission conducted four (4) seminars addressing funerary activities that cause substantial financial burden on Navajo families across the Navajo Nation. In addition, the Commission conferred with Navajo cultural experts to bring to bear the cultural meaning of death and burial that was practiced by Navajos before the development of funeral homes and mortuary services; and
3. It is clear, in accordance with Navajo traditional teachings, that interment of a loved one is the replanting of the body so that the decedent can bring new life in the form of vegetation. Today, the Navajo people significantly depend on funeral homes off the Navajo Nation to prepare their loved one’s bodies for a final resting place, which includes a church service, placing the decease in a casket that is made from metal or wood and at times placed in a burial box or concrete vault. The use of off Navajo Nation resources for funeral services and activities have become costly thus over burdening Navajo families; and
4. On August 3, 2018, the Commission met with the Navajo Nation Department of Justice and Navajo Nation Division of Public Safety Criminal Investigation Section (“NNCI”) to discuss Navajo Nation law enforcement policies and procedures when investigating death. It was reiterated that the roles and responsibilities of Navajo Nation law enforcement and mortuaries impact the families’ decision when it comes to the planning, cost, and interment of a decedent; and
5. Moreover, NNCI expressed the need for public education on Navajo perceptions towards death because Navajo Nation law enforcement officers and Navajo people exhibit concern toward death. The concern towards death creates an opportunity for mortuaries to assume principle facilitation for the planning and interment of a decedent which often leads to purchasing expensive funeral and burial packages; and
6. While the NNCI expends a substantial amount of resources investigating death and relies on outside entities to conduct autopsy and other related services, the on-going efforts by NNCI to establish an internal Navajo Nation Department of Medical Examiners will allow for improved coordination and communication between the decedent’s family and law

enforcement when an investigation is necessary to determine the cause of a death. The Navajo Nation Department of Medical Examiners will allow for the hiring of qualified medical examiners trained in the area of medicolegal death investigations. The creation of the Navajo Department of Medical Examiners supports self-reliance, self-determination, job creation, and ensures that Navajo interests, cultural beliefs and traditions will be protected; and

7. The Commission advocates for the practice and protection of the Navajo people to exercise their Navajo human rights in all aspects of the Navajo Life Way, and after the review of the proposed amendments to Title 2 N.N.C. § 1352 and Title 17 N.N.C. §§ 1851 through 1854 of the Navajo Nation Codes, the Commission hereby supports the amendments purposed by NNCI that will establish the Department of Navajo Nation Medical Examiners.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Human Rights Commission hereby supports the Navajo Nation Council proposed resolution, Tracking No. 0321-18, Navajo Nation Division of Public Safety Criminal Investigation Section on amending Title 2 N.N.C. § 1352 and Title 17 N.N.C. §§ 1851 through 1854 of the Navajo Nation Codes to establish a Department of Navajo Nation Medical Examiners.
2. The Navajo Nation Human Rights Commission hereby recommends appropriate Navajo cultural teachings toward death, including funeral and burial protocols, be incorporated into the policies of the proposed establishment of a Department of Navajo Nation Medical Examiners as follows:
 - A. Interment of decedent is replanting - add language on Page 6 of 11, line 14: tradition, and beliefs of the Navajo Nation and people including, but not limited to, the belief that burying a loved one is replanting;
 - B. Implementing Navajo Fundamental Law of Sa'a Naaghai Bik'e Hozhoo, Hashkééjį, Hózhóójí and K'é be incorporated as follows:
 - a. Add language to SECTION TWO. FINDINGS, new paragraph to be placed between current paragraphs F. and G. to read "In 2002, the Navajo Nation Council enacted law that recognizes the foundation of Diné, Diné law and Diné government and that these laws provide sanctuary for the Diné life and culture, Diné people's relationship with the world beyond the sacred mountains, and the balance Diné people maintain with the natural world. 1 N.N.C. § 201, et. seq."
 - b. Replace § 1856 in its entirety with new title and paragraph as follows:
 Title: Respecting the Navajo Culture and Traditions
 Paragraph: The Navajo Department of Medical Examiners shall institute in its plan of operation and regulations the Diné beliefs and principals in accord with Diné bi beehaz'áanii bitsi siléi as provided for in Title 1 N.N.C. § 201, et. seq.; and

- C. Proper record be maintained of the decedents' gender and sexuality – add language on Page 9 of 11, line 14: 1. The name, date of birth, sex, gender, and census number of the deceased (if known).
 - D. Technical amendment to the proposed legislation to state that the sections amended in Title 17 end at §1856, not 1851.
3. The Navajo Nation Human Rights Commission hereby advocates the Office of the Navajo Nation President and Vice-President, Office of the Navajo Nation Speaker, and the Navajo Nation Council do everything necessary to ensure the establishment of a Department of Navajo Nation Medical Examiners.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Human Rights Commission at a duly called meeting in Saint Michaels, Navajo Nation (Arizona), at which time a quorum was present and was passed by a vote of 3 in favor and 0 opposed, this 8th day of October 2018.



Jennifer Denetdale, Ph.D., *Chairperson*
Navajo Nation Human Rights Commission

**23rd NAVAJO NATION COUNCIL
NAABIK'ÍYÁTI' COMMITTEE REPORT
Fourth Year 2018**

The **NAABIK'ÍYÁTI' COMMITTEE** to whom has been assigned:

NAVAJO LEGISLATIVE BILL #0321-18

An Act Relating to Law and Order, Naabik'iyáti' and the Navajo Nation Council; Amending 2 N.N.C. § 1352 and 17 N.N.C. §§ 1851 Through 1854; Amending Coroner Provisions and Establishing a Department of Medical Examiners within the Division of Public Safety; Authorizing the Law and Order Committee to Approve a Plan of Operation for the Department of Medical Examiners

Sponsored by: Honorable Kee Allen Begay, Jr.

Co-Sponsored by: Honorable Olin Kieyoomia

Has had it under consideration and reports the same legislation **WAS PASSED AND REFERRED TO THE NAVAJO NATION COUNCIL.**

Respectfully Submitted,



*Honorable LoRenzo C. Bates, Chairman
NAABIK'ÍYÁTI' COMMITTEE*

09 NOVEMBER 2018

MAIN MOTION

Motioned by: Honorable Amber Kanazbah Crotty

Seconded by: Honorable Nathaniel Brown

Vote: 11 in Favor, 0 Opposed (Chairman Bates not voting)

Per N.N.C. § 700 (D), "A quorum of the committee shall be satisfied by the presence of two (2) members of each standing committee..."