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## United States Senate

COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, DC 20510-6450

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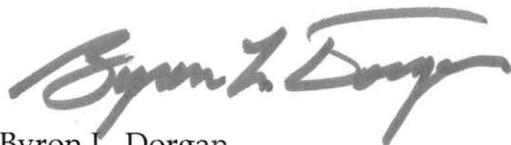
Dear Tribal Leader:

Over the past year, the Senate Committee on Indian Affairs has held three hearings and convened a number of listening sessions and meetings with tribal leaders to discuss the state of tribal justice systems. These meetings confirm that tribal communities are in the midst of a public safety crisis. I write to ask for your participation in developing legislation to address this crisis and to improve the current system.

Attached is a concept paper that is based on tribal leader comments and recommendations received at our hearings and meetings. The paper describes some of the deficiencies in the tribal justice system, and lists some legislative solutions offered by tribal leaders. The paper was developed to help begin the discussion, which will take place in the coming weeks. This concept paper is merely a set of ideas and we would like to solicit your comment and ideas before deciding on a strategy.

I look forward to working with you to address the serious law enforcement problems that exist in Indian Country. If you have any questions, please contact our staff at the Senate Committee on Indian Affairs at (202) 224-2251.

Sincerely,



Byron L. Dorgan  
Chairman

## SUMMARY OF THE LEGISLATIVE PROPOSALS

### *FEDERAL ACCOUNTABILITY-COORDINATION MEASURES*

- U.S. Attorneys often decline to prosecute Indian Country crimes, and fail to coordinate with tribal prosecutors. *Mandate federal officials to file and maintain data on declination reports.*
- The legal resources at the Federal level are overburdened. *Create an Office of Indian Country Crime within the Criminal Division, and authorize the Department of Justice to appoint tribal prosecutors as Special Assistant U.S. Attorneys.*
- Tribes have no one office to go to within the Department of Justice to answer their questions. *Elevate and define the role of the Office of Tribal Justice as a resource for tribal leaders.*
- U.S. Attorney tribal liaisons have proven helpful in prosecuting Indian country crimes, but are inconsistent in delivery of services and communication with tribal communities. *Define the role of Tribal Liaisons at appropriate U.S. Attorney's Offices.*
- Tribal leaders complain that the Department of Justice's grant programs are inflexible, and fail to account for the unique law enforcement needs of Indian communities. *Require the Department of Justice to consult with tribes on the administration of tribal programs.*
- Prosecution of misdemeanor and some other Indian Country crimes do not count towards U.S. Attorney evaluations. *Require U.S. Attorneys' evaluations to include credit for all Indian Country prosecutions, including misdemeanors.*
- Tribal leaders have raised concerns that the current organizational structure of the Bureau of Indian Affairs' Office of Justice Services (BIA-OJS), including the Internal Affairs Office, has led to a lack of coordination and response to the law enforcement needs of tribal communities. *Enhance coordination between BIA-OJS and tribal law enforcement agencies.*

### *STATE ACCOUNTABILITY-COORDINATION MEASURES*

- Federal laws delegate responsibility of many violent crimes committed on Indian lands to several State governments; however, the laws provide no means of holding States accountable for failure to provide public safety to tribal communities. *Clarify that the Federal Government retains concurrent authority over all PL 280 jurisdictions*
- *Authorize Tribes to to adopt resolutions to retrocede jurisdiction back to the federal and tribal governments when States refuse to provide public safety*
- *Set minimum resource (funding and personnel) requirements for States that wish to continue to exercise authority over reservation crimes. If States cannot meet the requirements, then authority over reservation crimes should retrocede back to the federal and tribal governments*
- *Establish programs that provide incentives to Tribes and States to coordinate law enforcement strategies and criminal information (See Wisconsin Stat)*

#### **EMPOWERING TRIBAL LAW ENFORCEMENT AGENCIES AND TRIBAL GOVERNMENTS**

- Tribal law enforcement officers are often the first responders to crimes committed on Indian lands. However, federal laws limit the authority of tribal officers to arrest non-Indian suspects. *Expand on program to grant special commissions that enable tribal police officers to make arrests for all crimes committed on Indian lands.*
- Tribal law enforcement officers are often the first responders to crimes committed on Indian lands, but few have access to criminal databases that enable them to determine whether a suspect is dangerous or has a prior criminal record. *Authorize tribal law enforcement to access national criminal databases.*
- There exists a significant shortage in police personnel on Indian lands. Recruitment and retention of tribal police officers is difficult. The problem is exacerbated by the fact that Bureau of Indian Affairs police officers are required to receive training at the Indian Police Academy in Albuquerque, NM. *Provide greater flexibility for training of tribal law enforcement officers.*
- Tribal law enforcement agencies rely in on available tribal and federal funds and have been historically underfunded. *Establish a federally-chartered tribal law enforcement foundation to support the mission of tribal police departments.*

#### **PROGRAMS AND RESOURCES FOR TRIBAL JUSTICE SYSTEMS**

- Alcohol plays a role in 80% of crimes committed on Indian lands. The Indian alcohol and substance abuse act expired in 2000, and has not been funded within the BIA since 2005. *Reauthorize and amend the Indian Alcohol & Substance Abuse Act*
- The Indian Tribal Justice Support (ITJSA) and the Tribal Technical & Legal Assistance (TTLA) Acts fund essential tribal court services, the ITJSA expired September 30, 2007; TLAA expired in FY 2004. *Reauthorize the Indian Tribal Justice Support and Technical & Legal Assistance Acts*
- BIA funds meet only 30% of need regarding tribal law enforcement personnel. Tribes have used the DOJ Community Oriented Policing Services Program since FY 1999 to supplement law enforcement personnel. The program has worked well to help tribal police presence; however, tribal leaders complain that the program only offers temporary 3-5 year funding. *Reauthorize and amend the Tribal Community Oriented Policing Services program within the Department of Justice to provide for long term funding.*
- Tribal jails funding has a \$400 million backlog. As a result tribal courts are forced to release offenders often without punishment. *Reauthorize and expand on the Department of Justice Tribal Jails program.*
- *Authorize the construction of regional detention centers for long-term incarceration where deemed appropriate by a consortium of Tribes*

- *Authorize the transfer of prisoners convicted of violent crimes in tribal court to federal prisons with placement assurances.*
- *Authorize/expand on the Native American Probation Office Liaison program*

#### **COLLECTION OF INDIAN COUNTRY CRIME DATA**

- *Indian Country crime data either does not exist or is unreliable. This deficiency hinders a comprehensive understanding of crime trends in Indian Country and limits the development of effective strategies for crime prevention. In addition, without reliable data law enforcement agencies cannot effectively allocate resources or measure strategic approaches. *Require the Bureau of Indian Affairs, Federal Bureau of Investigations, and U.S. Attorneys to track crimes committed in Indian Country by adding an "Indian Country" category to the Uniform Crime Reports; require the Bureau of Justice Statistics to report to Congress annually**
- *Require the Bureau of Indian Affairs, Federal Bureau of Investigation, and the Bureau of Justice Statistics to help establish **tribal** data collection systems*
- *Establish or enhance existing Department of Justice data collection programs for Tribes*
- ***Establish a Congressional Indian Crime Commission** to review the tribal criminal justice system and make recommendations for needed reforms*

#### **DOMESTIC VIOLENCE & SEXUAL ASSAULT PILOT PROJECT**

- *Approximately 70% of the violent victimizations against Indian women are committed by non-Indians, over whom tribal courts have no jurisdiction. The Amnesty Report noted, "The apparent gap in jurisdiction or enforcement has encouraged non-Indian individuals to pursue criminal activities of various kinds in Indian Country." *Establish a pilot program to enhance tribal court jurisdiction over all domestic and sexual violence crimes committed on Indian lands regardless of the race of the offender.**
- *Tribal police training programs provide little focus domestic and sexual violence crimes, while in practice, police in Indian Country routinely face these crimes. As a result, many tribal and federal police are not equipped with the skills to adequately address crimes of sexual violence. *Enhance family violence training for tribal and federal law enforcement**

## CONCEPT PAPER FOR AN INDIAN COUNTRY CRIME BILL

In 2007, the Senate Committee on Indian Affairs has held three hearings and convened a number of listening sessions and other meetings with tribal leaders to discuss the state of Indian Country justice. These meetings confirm that tribal communities are mired in a severe public safety crisis.

Those who live in Indian Country know that the crime problems that tribal communities face are not recent developments. In 1975, during the Ford Administration, a “Task Force on Indian Matters” within the Department of Justice found that “law enforcement on most Indian reservations is in serious trouble.”<sup>1</sup> This Task Force stated the following reasons for reservation crime in the early 1970s: a confusing jurisdictional structure, inadequate funding of tribal justice systems, inadequate training of tribal and federal police, and a lack of coordination between and within government law enforcement agencies responsible for reservation crimes.

**The problem of Indian Country crime and the reasons for it given in 1975 continue unchanged to the present day.**

In some ways the problem has been exacerbated by the growth of the reservation population, the increase in non-Indian traffic, and the result of the Supreme Court’s *Oliphant v. Suquamish* decision. The statistics are staggering. American Indians are victims of violent crime at more than 2.5 times the rate of the rest of the population. More than 1 in 3 Native women will be raped or be subject to sexual violence in their lifetimes. Crime rates on remote reservations exceed 10 times the national average.

Tribal communities have suffered with the broken system of justice for more than 30 years. This longstanding crisis demands an immediate and comprehensive response.

This paper addresses five deficiencies: (1) accountability at the federal level for meeting the obligation of enforcing federal crimes on Indian lands; (2) cooperation and accountability of tribal, state, and local authorities with responsibility over Indian Country crimes, particularly those in Public Law 280 jurisdictions; (3) authority of tribal police to arrest and tribal governments to prosecute and proportionately punish crimes on Indian lands; (4) resources for tribal justice systems; and (5) data collection at all levels. A separate section is included to discuss the prevalence of and solutions to domestic violence and sexual assaults against women in Indian Country.

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<sup>1</sup> Doris Meissner, U.S. DOJ, Rept on the Task Force on Indian Matters 23 (1975).

## **ISSUE #1: LACK OF FEDERAL GOVERNMENT ACCOUNTABILITY**

As noted above, the criminal justice system that exists in Indian Country today is the product of over 200 years of disjointed federal laws and court decisions based on outdated federal policies.<sup>2</sup> The current system divides responsibility to police Indian lands to federal, state, and tribal governments.<sup>3</sup>

Under this system, many tribal communities rely solely on the Federal Government (the Bureau of Indian Affairs (BIA), Federal Bureau of Investigations (FBI), and U.S. Attorney's Offices (USAOs)) to investigate and prosecute violent crimes and other felonies committed on Indian lands.

A glaring deficiency in the system is the lack of any method of accountability on the part of the Federal Government. When a breakdown occurs, tribal governments and community members have no means of demanding a response to their local law enforcement concerns and have no input in decisions which are made hundreds and even thousands of miles away in Washington, D.C.

Tribal leaders and citizens have consistently lodged complaints to Congress that federal and State officials often decline requests for investigate and prosecute reservation crimes, and fail to keep the Tribe and the victims of crime informed about the status of investigations or prosecutions. Federal officials are not required to maintain these records.

Another common complaint is that officials within the Department of Justice (DOJ) and Department of the Interior (DOI) refuse to consult with tribal governments. These agencies routinely make internal decisions using unpublished guidelines that affect the investigation and prosecution of Indian Country crimes, and the administration of programs designed for the benefit of tribal justice systems. Tribal leaders have asked that these guidelines be made public, and that they be consulted prior to making these determinations.

Consistency in law enforcement personnel is essential to building trust within tribal communities. However, BIA routinely transfers police officers from reservation to reservation without providing an explanation to or receiving input from the tribal communities that they serve.

In the past, the BIA provided an annual law enforcement spending report to Congress and Tribes. That practice has not been followed for the past six years.

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<sup>2</sup> The Major Crimes Act and Public Law 83-280 were enacted during the eras of Assimilation and Termination respectively. The now-repudiated policies behind these Acts were rooted in paternalism. Their ultimate goals were to destroy tribal cultures, and terminate the status of tribes as governments.

<sup>3</sup> See Appendix A for breakdown of jurisdiction over Indian Country crimes.

Absent consultation at the community level, many tribal leaders are forced to travel to Washington, D.C. to demand answers. Tribal leaders who have made the journey complain that there is no single office within DOJ that has both the information to answer their questions and the authority to respond to their needs.

The following is a summary of possible legislative solutions to address the lack of accountability at the federal level for reservation crimes.

### **Recommendations**

- **Mandate federal filing of declination reports.** Current law authorizes the BIA, FBI, and USAs to report to tribal officials when declining to investigate or prosecute a major crime committed in Indian Country. The bill should mandate that federal officials file declination reports and maintain specific data on such declinations.
- **Authorize DOJ to appoint tribal prosecutors as Special AUSAs.** Federal law authorizes the Attorney General to “appoint attorneys to assist United States attorneys when the public interest so requires.” (28 USC §543). The bill should clarify that USAs can appoint tribal prosecutors to handle Indian Country crimes.
- **Institutionalize OTJ.** The Office of Tribal Justice is only able to serve the needs of tribal leaders if it has access to the Department decision-makers and access to timely information. The bill should institutionalize OTJ, elevate the office within the Department, and codify its mission.
- **Create an Office of Indian Country Crime within the Criminal Division.** This office would work under the direction of a Deputy Assistant Attorney General to: (1) ensure that the law enforcement needs of Indian Country receive focused attention; (2) manage an office of criminal prosecutors offering assistance and expertise to U.S. Attorneys; (3) measure performance and respond to referred prosecutions; (4) facilitate cooperation among tribal and state law enforcement and the various branches of federal law enforcement; (5) and serve as a point of contact and information for Congress, tribal governments, and the public on matters related to Indian Country law enforcement.
- **Tribal Liaisons at each District.** DOJ routinely appoints tribal liaisons at USAOs. However, tribes have reported inconsistent success and responsiveness from the various offices. The bill should require DOJ to appoint a tribal liaison to each District with significant Indian Country jurisdiction, and define the duties of the tribal liaison in order to provide more consistent results to an already successful program.
- **DOJ Consultation.** Legislation should require the Attorney General to consult with tribes in administering programs that affect their justice systems.
- **USAO Evaluations.** DOJ evaluates individual USAs and Assistant USAs based on the number and type of successful prosecutions completed. The bill should require the Attorney General to include all prosecutions in Indian Country towards the positive evaluation of federal prosecutors.
- **BIA Accountability.** Require BIA Special Agents in Charge (SACs) to meet with tribal leaders at their request at the BIA Superintendent’s office so that BIA officials can better coordinate on the full array of community needs. Legislation should require the BIA to submit an annual law enforcement spending report to Congress and tribal leaders.

## ISSUE #2: TRIBAL, STATE, AND LOCAL GOVERNMENT COOPERATION

Tribal, State, and local governments share a range of common interests, including the interest in maintaining public safety in their communities on limited budgets. Public safety is, however, a fluid condition. When it breaks down in one jurisdiction, chances are that breakdown will spill over into a nearby community. Thus, public safety in many tribal and nearby communities depends heavily on cooperation between tribal, state, and local governments.

A number of factors add to the need for Tribes and States to coordinate law enforcement services to their citizens, including: Public Law 83-280; the lack of tribal authority over non-Indians; and the increase in criminal use of Indian lands as safe havens to distribute drugs and other illegal substances to the tribal and nearby local communities.

Congress enacted Public Law 83-280 (PL 280) in 1953, in large part at the urging of State governments so that they would have greater authority over reservation matters. Today, more than half of all federally recognized tribes are subject to PL 280 jurisdiction.<sup>4</sup>

As a result of the Act, Public Law 280 State governments have a legal obligation to prosecute most crimes committed on Indian lands. While States have concurrent authority with Tribes over these crimes, many tribal governments rely almost entirely on the States to meet their legal obligation.<sup>5</sup>

As is the case with the Federal Government's obligation to police Indian lands, tribal leaders in PL 280 jurisdictions complain that State police are unresponsive to calls for criminal investigations and the public safety needs of tribal communities. Like the Major Crime Act, PL 280 implemented no mechanism to hold State governments responsible for the obligations incurred.

Moreover, there is no consensus among State or tribal justice officials about the legal implications, obligations, rights, and effects of PL 280. As a result, Tribes and local governments have engaged in disputes over which government has or doesn't have authority over a particular crime.

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<sup>4</sup> PL 280 continues to have a broad effect in Indian Country. Today Public Law 280 and like statutes structure law enforcement and criminal justice for 23% of the reservation-based tribal population in the Lower 48 states and all the Alaskan Natives. Another way of measuring its impact is that 51 % of all federally-recognized tribes in the lower 48 states, and 70 % of all recognized tribes (including Alaska Native villages) are affected by Public Law 280 [and like statutes].

<sup>5</sup> "Only 21% of PL 280 tribes in mandatory states outside Alaska have police departments. In contrast, 74 % of all remaining tribes in the lower 48 states, including those in the optional Public Law 280 states, have tribal police departments.... [Restricting the analysis to tribes with reservation populations over 100], 35% of all PL 280 tribes with reservation populations greater than 100 in mandatory states other than Alaska have tribal police departments. By comparison, 80% of all other tribes in the lower 48 states with reservation populations greater than 100 have tribal police departments." {Cite}

However, despite the antagonistic underpinnings of PL 280, a number of Tribes and States have proven that these disputes and complaints can be avoided.<sup>6</sup> Tribes and States have forged working law enforcement relationships, negotiated exactly what the legal obligations are and are not of each government, and devised agreed-upon plans to provide public safety services to their communities.

In non-PL 280 jurisdictions, cooperation is essential to addressing crimes committed by non-Indians. If there is no cross-deputization agreement in place, tribal police will be unable to arrest the non-Indian offender, and local law enforcement will rarely choose to enter reservation lands. When state police do respond, they have to proceed carefully when investigating the crime, absent clear, agreed-upon arrest procedures.

The following is a summary of possible legislative solutions to address the lack of accountability and coordination between Tribes and States to address reservation crimes.

### **Recommendations**

- **Clarify PL 280 Jurisdiction.** The bill should clarify that the Federal Government retains concurrent authority over all PL 280 jurisdictions.
- **Authorize Tribal Retrocession.** For a number of reasons, State governments have not been able to meet their obligation to provide public safety services to tribal communities. In these cases, the bill should authorize Tribes to adopt resolutions to retrocede jurisdiction back to the federal and tribal governments.
- **Establish PL 280 Accountability Agreements.** The bill should set minimum resource (funding and personnel) requirements for States that wish to continue to exercise authority over reservation crimes. If States cannot meet the requirements, then authority over reservation crimes should retrocede back to the federal and tribal governments.
- **Create incentives for States and local government cooperation on law enforcement issues.** Establish a program within the Office of Justice Programs that would encourage tribal-state cooperative law enforcement efforts. An example is found in Wisconsin Statutes §165.90, which provides State grants to joint tribal-county law enforcement plans. This program has been evaluated as very successful in improving reservation law enforcement in Wisconsin. *See David Lovell, Senior Analyst, WI Legislative Staff, Wisconsin's County-Tribal Law Enforcement Program (June 27, 2000).*

### **ISSUE #3: LOCAL TRIBAL AUTHORITY OVER RESERVATION CRIME**

For decades, community policing has proven to be the best method of combating crime. When law enforcement and justice officials develop relationships with citizens and possess a personal investment in the community, they are more likely to understand that community and its law enforcement needs. However, the opportunity of strong community policing is limited in Indian Country.

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<sup>6</sup> See Wis. Stat. §165.90.

Tribal law enforcement officers are the first responders to reservation crimes, but the jurisdictional scheme in place limits their arrest authority. Tribal police officers are generally only permitted to arrest individuals for crimes over which tribal courts have criminal jurisdiction. Thus, tribal officers have to restrain offenders until a county, State, or federal officer arrives, which can be difficult due to the remoteness of reservations, limited Federal and State law enforcement budgets, and the lack of coordination.<sup>7</sup>

The problem with the system is that State, local, and Federal governments have responsibility over Indian Country crimes, but they rarely dedicate an amount of funding that is equal to that responsibility. State and local governments prioritize the public safety needs of their own communities. Federal law enforcement agencies are focused on terrorism, homeland security, and immigration. Public safety in Indian Country is often last on the priority list.

At the same time, tribal governments have only limited jurisdiction, but they are often the only day-to-day regulators of public safety in Indian Country. Tribal police are also the only law enforcement agencies with a vested interest in and understanding of the public safety needs of their communities.

Tribal justice systems represent the last and sometimes only opportunity at obtaining justice for victims of reservation crimes that fall through the federal or state systems. Without prosecution at the tribal level, many of these crimes go unpunished.

Another barrier to tribal policing is the limited access that tribal law enforcement agencies have to national criminal databases.

The Committee has received an increasing number of reports about criminal organizations exploiting the confusion created by the jurisdictional scheme in place. That confusion coupled with a lack of police presence has made Indian reservations soft targets for criminal organizations.

Federal law enforcement officials have stated that Indian reservations are being used as a business development tool by large drug trafficking organizations. Authorities have seized documents outlining the distribution plans of drug organizations to replace alcohol with methamphetamine on reservations and their nearby communities.

This reality makes it essential that tribal police have the ability to access and share criminal history and other information among jurisdictions. Information sharing alternatives include interoperable communication systems, integrated justice information sharing systems, and reliable crime statistics, terrorism, and criminal intelligence. While

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<sup>7</sup> A program that is working in Indian Country is the granting of Special Law Enforcement Commission (SLECs) to tribal officers to enforce federal law, and thus, make arrests of any individual (Indian or non-Indian) committing a crime on Indian lands. The program was not being sufficiently implemented by the BIA. However, several U.S. Attorneys' Offices have taken the initiative of granting Special Commissions through their offices. The BIA would still have to approve the MOU granting the SLEC. Some Tribes complain that the BIA is inflexible in amending its "boiler plate" MOU.

Tribes are permitted limited access to some of these programs, such access is difficult to obtain and is not standardized.

Enhancing authority and legitimacy of the local tribal justice system is crucial to addressing problems with the administration of justice in Indian Country. The following are only a few possible recommendations for legislative provisions to enhance the authority of tribal governments to directly address reservation crimes.

### **Recommendations**

- **Tribal Law Enforcement Arrest Authority.** Current law provides that BIA law enforcement can enforce federal laws on Indian lands. The BIA and a recent DOJ program have offered Special Law Enforcement Commissions to tribal police officers. Legislation should expand on this program, clarify the standards required of tribal officers, and permit flexibility in reaching MOUs between the BIA and the tribal governments seeking special commissions. Legislation should also look to expanding the arresting authority of tribal and federal officers over all crimes committed on Indian lands regardless of the nature of the offense (tribal, federal, or state crime) or the status of the offender as Indian or not.
- **Law Enforcement Information Access.** The bill should enhance coordination, information sharing, and cooperation between tribal, state, and federal law enforcement officers and prosecutors. It should authorize tribal police officers that meet established training and other requirements to access national criminal databases and interoperable communications, and establish clear and consistent standards to permit such access.
- **Law Enforcement Training and Recruitment.** Legislation should establish flexible but consistent national standards for tribal police officer training, require quicker turn around time from the United States for background checks of potential tribal officers, and encourage the BIA to implement a recruitment and retention program.
- **Law Enforcement Foundation.** The current funding for law enforcement is limited. The bill should establish a federally-chartered tribal law enforcement foundation to support the mission of tribal police departments. The foundation would supplement funding for law enforcement activities such as community policing, equipment, and other essential needs.
- **Regional Information Sharing System Grants, (42 USC §3796h).** This program authorizes the Director of BJA to make grants and enter into contracts with State and local criminal justice agencies and non-profit organizations to identify, target, and remove criminal and terrorist conspiracies and activities spanning jurisdictional boundaries. Legislation should establish a tribal set-aside within this program.
- **Federal Indian Country Crime Commission.** Establish a commission made up of judges, law enforcement officers, legal experts, and tribal officials to review the current tribal criminal justice system and to make recommendations relating to jurisdiction, the establishment of federal court satellites on Indian lands, enhancement of tribal court jurisdiction and sentencing authority, and other needed reforms.

## **ISSUE #4: RESOURCES TO SUPPORT TRIBAL JUSTICE SYSTEMS**

Many of the deficiencies listed above can be attributed to the lack of resources dedicated to address reservation crime at all levels of government responsible for such crime.

Maintaining law and order in Indian Country is both a legal and moral obligation that the United States incurred in the over two centuries of dealings with tribal governments. Through treaty and other agreements, Indian Tribes ceded hundreds of millions of acres of their homelands to help build the Nation. In a 1970 Special Message on Indian Affairs, President Nixon summarized the United States' related obligation: "The government has agreed to provide community services such as health, education and public safety, services which would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans." The Interior Department, through the BIA, provides a base funding stream for all tribal government justice programs to meet a portion of the United States' treaty obligation.

In addition to this broad trust responsibility, the United States Constitution, federal laws, and Supreme Court decisions all acknowledge that Indian Tribes are separate distinct governments within our federal system. As a result, just as DOJ administers grant programs for the benefit of State and local government justice systems, such grants are also made available to tribal governments to supplement their justice systems.

DOJ's FBI presence in Indian Country has understandably dropped sharply in the years since September 11, 2001. FBI activity on Indian lands in New Mexico is down 58%, Washington -55%, Oklahoma -70%, Minnesota -87%, and Utah -50%.

At the same time, funding for tribal justice systems within DOJ that would enable Tribes to make up for the lessened federal presence has consistently dropped over the past seven years. In FY 2000, Congress appropriated the following funding amounts for tribal justice programs within DOJ: tribal COPS program – \$40 million; tribal jails – \$34 million, and the Tribal Youth Program – \$12.5 million. The funding for these programs in FY 2006-07 was \$15 million, \$9 million, and \$10 million respectively. The Administration sought to eliminate these programs in its FY 2008 Budget.

Less than 2500 federal and tribal law enforcement officers patrol 56 million acres of Indian lands. Many reservations are larger than some States. Because of this lack of law enforcement personnel and the remote nature of many reservations, survivors of violent crime report waiting hours and even days for police to respond to their calls.

In addition, many tribal courts systems lack computers, essential tracking systems and public defenders. Tribal jails also face a \$400 million construction backlog. While DOJ provides some funding for jail construction, the BIA provides funding for maintenance, operation, and training of tribal jails and corrections officers.

Given the limited sentencing authority of tribal courts, most tribal jails were built with short-term incarceration in mind. However, in recent years tribal prosecutors have picked up violent criminal cases that fall through the cracks in the federal system, and stacked offenses in an attempt to ensure that the punishment meets the level of the crime. As a

result, the current tribal jails system now includes a diverse mix of petty misdemeanor criminals and hard core violent offenders.

Tribal leaders have noted that there is lack of juvenile justice programs in Indian Country to address the growing problem of juvenile and gang crime. The great majority of Indian Tribes lack a comprehensive juvenile justice system. Many juveniles are not punished for crimes, and status offenses are completely ignored. While DOJ's Tribal Youth Program is a proven success for delinquency prevention, the program is limited in offerings to address juveniles after they are in the tribal or federal court system.

Because of the limited resources available and the complex nature of tribal justice systems, tribal justice administrators are forced to be creative when implementing programs to address crime in their communities. However, this creativity is not welcomed or permitted in many federal programs. Further, federal grants have varying deadlines and requirements, making it administratively complex and time consuming.

### **Recommendations**

- **Reauthorize the Tribal Justice Support & and Tribal Technical and Legal Assistance Acts**, (25 U.S.C. §§ 3601-3681).
- **Reauthorize and Amend the Tribal COPS program**, (42 USC § 3796dd - 3796dd-8), to establish a long-term grant program for tribal police departments.
- **Reauthorize the DOJ Tribal Jails program**, (42 USC § 13709), and clarify that Tribes can use funds to construct tribal court buildings.
- **Tribal Jails.** The bill should establish a permanent funding stream for facilities, staffing, training, and maintenance of local tribal jails for short-term incarceration. This provision should consider alternative sentencing programs and the use of private contract firms for more efficient construction.
- **Regional Detention Facilities.** The bill should establish a funding stream to authorize construction of regional detention centers for longer term incarceration where deemed appropriate by a consortium of Tribes.
- **Transfer tribal prisoners to the Bureau of Prison.** Legislation should establish a program for the regular transfer of violent criminals convicted in tribal court to federal prisons.
- **Increase Funding for Indian Probation Officer Liaisons.** Federal parole officers supervise offenders who are sentenced to a term of probation by the court or who are on parole or supervised release after they're released from prison. Legislation should expand on the Indian Liaison program.
- **Tribal Youth Program**, (42 USC §3796ee-1). The bill should strengthen and expand upon the Tribal Youth Program within DOJ to include programs beyond delinquency prevention.
- **Flexibility of Administration of Tribal Programs.** The bill should require that all federal tribal justice programs should make efforts to allow innovative approaches to justice, including traditional mechanisms of social control.

- **Streamlining Funding Programs.** The bill should consider streamlining tribal justice funding programs to cut administrative costs and time for Tribes, while including adequate accountability requirements.

## **ISSUE #5: LACK OF INDIAN COUNTRY CRIME DATA**

For years, tribal leaders have rightly asserted that Indian Country crime data either does not exist or is unreliable. There is no sustainable system for collecting data of crimes committed on Indian lands. This deficiency hinders a comprehensive understanding of crime trends in Indian Country and limits the development of effective strategies for crime prevention. In addition, without reliable data law enforcement agencies cannot effectively allocate resources or measure strategic approaches.

The lack of timely and reliable crime data is also a proven impediment to obtaining federal funding for tribal justice programs. Without current data, the Administration is less likely to request and Congress is less likely to appropriate significant resources to help address this serious and pervasive problem.

Because the BIA, FBI, and U.S. Attorney's Offices have primary responsibility for violent crimes in Indian Country, the United States should develop and maintain a self-sustaining system for tracking Indian Country crime data. No such system exists.

The Bureau of Justice Statistics (BJS) conducted one of the first reported studies on American Indians and crime in 1999, which studied the years 1992-1996. In 2004, BJS followed up the '99 report with a similar study of the years 1992-2002. No national reports or updates have been conducted since the 2004 report.

From 1993-2004, BJS compiled a compendium of federal justice statistics. These statistics are very useful, but they lack a specific tribal component. While the studies examine the types of federal offenses committed and the race of criminals in the federal system, they do not make clear which crimes were committed in Indian Country.

### **Recommendations**

- **Federal Data Collection.** The bill should require the BIA, FBI, and U.S. Attorneys to track crimes committed in Indian Country. It should consider adding an "Indian Country" category to the Uniform Crime Reports, and require BJS to report to Congress annually on national Indian Country crime data.
- **Tribal Data Collection.** The lack of resources and expertise in data collection at the tribal level has prevented many Tribes from collecting their own data on reservation crimes. The bill should establish a program directing the BIA, FBI, and BJS to work with tribal governments to implement tribal data collection systems.
- **Improvement of Criminal Justice Records, (42 USC §3759).** This program provides grants to States and local governments to improve their criminal justice records, including completion and automation of criminal histories, improving their criminal records systems and the sharing of such data with the Attorney General. Legislation should consider establishing a similar program for tribal governments.

## **DOMESTIC VIOLENCE AND SEXUAL ASSAULTS IN INDIAN COUNTRY** **PILOT PROJECT**

The prevalence of sexual violence against women in Indian Country has been well-documented. The April 2007 Amnesty Report found that more than 34% of Native women will be raped in their lifetimes. This percentage is more than 2.5 times the rate of other women in the United States. Amnesty also found that a significant percentage of perpetrators against Indian women are non-Indian. BJS confirmed this finding and has reported that at least 70% of the violent victimizations Indians are committed by non-Indians. The Amnesty Report noted, “The apparent gap in jurisdiction or enforcement has encouraged non-Indian individuals to pursue criminal activities of various kinds in Indian Country.”

The title of the Amnesty Report “Maze of Injustice” alludes to the confusion created by the jurisdictional “maze” on Indian lands discussed in detail above. This complex scheme hampers law enforcement and delays the process of investigating and prosecuting crimes of domestic and sexual violence.

The gaps in jurisdiction and lack of accountability are particularly glaring in the area of domestic and sexual violence crimes. Advocates for Native women survivors of sexual assaults have reported that serial rapists plague reservations with impunity, in part because there is no system of accountability in place. They claim that these criminals target reservations based on the lack of law enforcement presence, and a known lack of coordination among tribal and state officials.

With regard to sexual violence, the lack of resources is also devastating. In addition to the lack of law enforcement, Tribes face severe shortfalls in health care. Forty-four percent of Indian Health Service (IHS) facilities lack personnel trained to provide emergency services to respond to sexual violence, and 30% lack the basic protocols for treating victims.

Victims of sexual violence report delays of hours and even days before receiving a response to their distress call. When victims’ calls are answered, the local health facility may lack the necessary sexual assault evidence kit. Some victims are forced to travel hundreds of miles in to reach a health facility where the critical forensic examination can be performed. Even then, there is no guarantee that an exam will be performed.

Many advocacy groups report that the police officers often lack the necessary training to respond appropriately to sexual assaults. Few tribal, state, and federal officer training programs include in-depth components on responding to domestic violence, rape, and other crimes of sexual violence. The Basic Police Officer Training Program, offered by the Indian Police Academy trains a significant number of tribal and all BIA police. The program includes intensive training for a number of issues including narcotics, preservation of evidence, criminalistics, civil rights, Indian county law, and BIA specialized training. Little focus is provided on domestic and sexual violence crimes,

while in practice, police in Indian Country routinely face these crimes. As a result, many tribal and federal police are not equipped with the skills to adequately address crimes of sexual violence.

Jurisdictional confusion, lack of police training, lengthy delays in starting investigations, and lack of prioritization all play a role in permitting crimes of sexual violence to occur with impunity. The end result is that many instances of sexual violence against Indian women go unpunished.

A National Public Radio report of rapes on the Standing Rock Sioux Reservation found that a number of cases “are going unreported, uninvestigated, and unprosecuted.” NPR interviewed an ex-BIA police officer who confirmed that many sexual assault cases are never investigated.

When crimes are investigated, they often fall apart in court. From October 1, 2003-September 30, 2004, federal prosecutors declined to prosecute 60.3% of the sexual violence cases filed with their offices. The BIA is consistently among the federal investigating agencies with the highest percentage of cases declined by federal prosecutors. Once declined in the federal system, there is little chance of prosecution. Only 27 of the 475 cases that the United States declined during FY 2004 were prosecuted in other courts.

Crimes against Indian women and children strike at the very heart of tribal sovereignty. These drastic crimes by their very nature attack the political integrity of tribal governments. As a result, legislation to address violent crimes in Indian Country should consider returning criminal jurisdiction over these crimes to tribal courts to prosecute regardless of the status of the defendant as Indian or not. Empowering tribal governments to try crimes committed on their lands corresponds with Congress policy of strengthening tribal self-determination. In addition, trying these crimes within the community in which they were perpetuated will lessen the perceptions of bias in the federal justice system, and at the same time strengthen community members’ faith in the tribal justice system.

### **Recommendations**

- **Establish a Pilot Project** to enhance tribal court jurisdiction and sentencing authority over a set of domestic and sexual violence crimes committed on Indian lands regardless of the race of the offender. The project should establish standards to ensure adequate constitutional protections for defendants. It should also establish programs to aid tribal justice systems in meeting these requirements.
- **Authorize Non-Indians to Voluntarily Enter Tribal Drug Courts** for lesser offenses (misdemeanors) that involve domestic abuse.
- **Establish as a federal crime the violation of any court’s domestic protective order while on a federal enclave, including Indian Country.**
- **Enhance family violence training for tribal and federal law enforcement.** The bill should consider mandating that BIA and tribal police receive significant training in responding to domestic and sexual violence crimes.