

**TESTIMONY OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
TO THE
SENATE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON
S. 1953
TRIBAL LAW AND ORDER REAUTHORIZATION ACT OF 2017**

OCTOBER 25, 2017

Good afternoon Chairman Hoeven, Vice-Chairman Udall, and members of the Committee. My name is Bryan Rice and I am the Director of the Bureau of Indian Affairs (BIA) at the Department of the Interior (Department). Thank you for the opportunity to provide testimony before this Committee on S. 1953, the Tribal Law and Order Reauthorization and Amendments Act (TLORA) of 2017.

The passage of the Tribal Law and Order Act (TLOA) in 2010 brought about many important changes in addressing public safety in Indian Country. Through our experiences in implementing TLOA, we have identified areas that still require additional attention. The Department believes S. 1953 is a critical start to this important conversation and supports the goals of the bill. We would like to work with the sponsor to further clarify a number of provisions to further strengthen the legislation.

A significant focus of TLOA was to address challenges related to reporting and data collection. These challenges are present across multiple sectors, but are particularly problematic in the context of criminal justice, in which Federal, state, tribal, and local governments share responsibilities. It is important to continue efforts to build accurate data and provide Congress, the public, and, most importantly, the tribes, with the information needed to identify and analyze the criminal justice needs in Indian Country. Section 103 of S. 1953 would assist in that effort by providing for enhanced sharing of Federal data with tribes.

As the nation moves toward evidence-based policy making, there has been increased focus on the quality of information the Department and other agencies are required to collect and report back to Congress. While the legislation includes numerous reporting requirements for agencies, we would welcome the opportunity to meet with the sponsor to discuss and determine how the Department could best meet the reporting requirements stipulated in a timely manner. We would like to engage with the bill's sponsor about our current capacity to analyze complex data sets and what we would need to meet the reporting requirements set forth by this bill.

S. 1953 recognizes that public safety in Indian Country is an issue that requires a multidisciplinary approach. In particular, Section 102 of this bill asks the Department specifically to work with the Department of Health and Human Services and the Department of Justice to integrate and coordinate law enforcement, public safety, and substance abuse and mental health programs. The inclusion of alternatives to detention in the bill can play an important role in breaking the cycle of recidivism, as many Indian Country offenders are engaging in criminal activity due to untreated mental health and alcohol and substance abuse issues. Collaboration with other agencies may provide new pathways for individuals to get the help they need in order to break recidivism cycles, while simultaneously overcoming the fragmentation and siloing of programs across agencies that often impedes efforts by creating service gaps. The Department stands ready to work with the bill sponsors to further explore whether interdepartmental cooperative efforts and program consolidation can help meet the goal of reducing recidivism.

Tribal courts are an essential component for the delivery of justice services in tribal communities. Section 107 reauthorizes tribal court training programs, which are critical to supporting tribes as they build their justice services capacity. Strengthening criminal justice capacity will be important as tribes potentially seek to utilize the provisions in the TLOA to reassume concurrent federal-tribal jurisdiction in Public Law 280 states, or to exercise the special domestic violence criminal jurisdiction provision in the Violence Against Women Reauthorization Act of 2013.

In many parts of the country, the BIA's Office of Justice Services (OJS) does not have enough bed space to house tribal inmates, requiring contracts with local and county facilities to meet the need. This facility shortage creates additional resource challenges, including increased transportation costs and further stretching already thin officer patrol coverage. Section 102(c), Memorandum of Agreement, can provide OJS additional flexibility to address the incarceration needs currently facing Indian Country.

TLOA's Indian Law and Order Commission devoted an entire chapter to intergovernmental cooperation, noting that a number of tribal governments have seen success through partnerships with local counties and state agencies using cross-deputization agreements and memoranda of understanding. The Department believes that encouraging tribes and state and local law enforcement agencies to pool their resources and work together will ultimately lead to more comprehensive law enforcement coverage and safer communities.

The Department is also interested in working with the sponsor to address additional technical changes to TLOA that are not currently reflected in the legislation. Currently, Section 211 of TLOA provides for BIA-OJS to develop an annual report of unmet staffing needs of the law enforcement, corrections, and tribal court programs. The Department is concerned with the proposal to withhold funding in the event the reports currently required to Congress are delayed. All funding for law enforcement within the BIA-OJS is essential and withholding such funding could negatively impact the BIA's delivery of public safety needs to tribes and Indian Country.

While there have been delays in providing this report in the past, the Department is committed to working to provide accurate and relevant data to the Congress consistent with the TLOA timeframes. The Department will also work with the Committee to further refine the annual reporting requirements.

Section 231(a)(4)(A) of TLOA requires that requests for a background check made by an Indian Tribe that has contracted or entered into a compact for law enforcement or corrections services, must be completed by OJS no later than 60 days after the date it receives the request. As the Office of Personnel Management (OPM) has the responsibility for completing background checks for the federal government, we recommend tribal background investigations be reassigned to OPM. If background checks are not reassigned to OPM, we request that the 60-day requirement be changed to 120 days, which would allow more time for completion.

Currently, Federal Tort Claims Act (FTCA) coverage is frequently declined for intentional torts committed by tribal law enforcement officers carrying out self-determination contracts or compacts *unless* the officers (a) have a special law enforcement commission (SLEC) under 25 U.S.C. § 2804(a)(3)(A)(i) *and* (b) are enforcing federal law at the time of the activities from which the claims arose. We believe this interpretation is under-inclusive based upon statutory construction, congressional intent, and recent Supreme Court precedent, *Millbrook v. United States*, 133 S. Ct. 1441 (2013), and that it results in declination of FTCA coverage to tribal officers that Congress intended to be provided with the “full protection and coverage” of the FTCA.

Contracted or compacted tribal officers provide services that normally would be provided by the BIA; thus, tribal officers should have the same treatment and protection as Federal officers. We would like to work with the Committee to provide much needed clarification to the legal status of tribal officers without SLECs and to make certain that tribal law enforcement officers are treated equitably when they are carrying out the functions or services contracted from the BIA.

Conclusion

The Department of the Interior looks forward to working with the bill sponsor and this Committee on S. 1953, the Tribal Law and Order Reauthorization Act. By making TLOA stronger, we will make significant steps toward improving law and order in Indian country.

Thank you for the opportunity to testify today. I look forward to answering your questions.