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The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie, and Skykomish tribes and other tribes and band signatory to the Treaty of Point Elliott

Prepared Statement of Glen G. Gobin

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Oversight Hearing on *The Tribal Law and Order Act ("TLOA") – 5 Years Later: How have the criminal justice systems in Indian County improved?*

The Senate Committee on Indian Affairs

Wednesday, December 2, 2015

Good afternoon Chairman Barrasso, Vice-Chairman Tester, and Committee Members, my name is Glen Gobin, Vice-Chairman of the Tulalip Tribes. I would like to thank you for the opportunity to testify on the Tribal Law and Order Act and its effect on criminal justice systems in Indian Country.

Introduction

The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie, Skykomish, and a number of allied bands, who have occupied the Puget Sound region in Washington State since time immemorial, and were signatory to the 1855 Treaty of Point Elliot. Under the terms of the treaty, these tribes moved to the Tulalip Indian Reservation and in 1934 under the Indian Reorganization Act, chose to use the name the "Tulalip Tribes" which is named for a bay on the Reservation.

We thank the committee for supporting the Tribal Law and Order Act of 2010 in an effort to better address crime in Indian County. The purpose of the Tribal Law and Order Act (TLOA) is to make US Attorney and federal agencies more accountable for serving Native communities, to provide greater authority and autonomy to Tribal Nations to operate their own justice systems and protect their communities, and to enhance cooperation between federal and state officials in law enforcement training and access to criminal justice information. Although Tribal justice systems still face significant jurisdictional and funding obstacles, the TLOA is a positive, initial step forward in providing tribal justice systems with increased authority and tools needed to keep tribal communities safe.

Tulalip initially expanded its justice system in 2001 when it retroceded criminal jurisdiction from the State of Washington. In the last decade, the Tulalip justice system has made great strides, developing a full service police department and court system as well a strong support system of prosecutors, probation officers and public defenders. During the same period, Tulalip incorporated Quil Ceda Village (Village) to promote Reservation based business development. The success of this economic development has created thousands of new jobs and brought in millions of new visitors to the Reservation. However, our government is still unable to collect the necessary taxes to support critical governmental functions that other state, federal and local governments enjoy. The imposition, assessment, and collection of taxes by the state and county undermine and prevent Tulalip and the Village from exercising its own sovereign taxing authority. As a direct result, the tribes must subsidize and finance, with millions of tribal hard dollars each year, the necessary governmental infrastructure and services to the Village businesses. The end result, is that the Tribes cannot devote those revenues to the needs of the tribal community, including its criminal justice system. Although it has been difficult to expand the justice system to cover these increased responsibilities with finite tribal resources, a strong public safety system is vital for the continued growth of the Tulalip community. Much of the recent success Tulalip has had would not have been possible without an effective tribal justice system that community members, visitors and businesses can rely on.

After the passage of the TLOA, Tulalip amended its criminal codes to increase sentencing authority for major felony crimes. As other tribes experienced, these amendments took time to expand the corresponding infrastructure needs. In 2014, Tulalip requested to participate and was chosen for the VAWA Special Domestic Violence Court Jurisdiction Pilot Project, and today we continue to prosecute non-natives for domestic violence crimes. Since that time we have had 11 cases, with 6 convictions, 2 dismissals, 1 transferred to the US Attorney's office and 2 pending. Under the VAWA tribal provisions, domestic violence crimes can be designated as crimes subject to TLOA enhanced sentencing guidelines. Furthermore, pursuant to the TLOA, with the support of the Executive U.S. Attorney's office and after many discussions with the Western District U.S. Attorney, one of our Tulalip tribal prosecutors is designated as a Special Assistant U.S. Attorney (SAUSA) to prosecute reservation crimes in federal court. This SAUSA appointment has improved collaboration and communication between our respective agencies, resulting in increased prosecutions of sexual predators.

Since Tulalip received retrocession and years prior to implementing greater criminal justice authority under the TLOA, it has been committed to protecting the rights of the accused. All of the Tulalip judges, prosecutors and criminal defense lawyers are highly qualified attorneys. Tulalip provides all indigent defendants with legal counsel without charge. All basic rights of defendants are recognized and codified into the Tulalip criminal justice codes. All defendants have the right to appeal to the Tulalip Court of Appeals. Just as important, the Tulalip court is best suited to address crime and impose sentences in a culturally appropriate way, which includes exploring alternatives that help offenders, victims and the community heal. As a result of this robust justice system and increased jurisdictional authority, we have seen an increase in victims coming forward to report crimes as they are seeing that their perpetrators will be held accountable.

There is no question that the Tribal Law and Order Act has enabled Tulalip to better protect its community. Although the TLOA still leaves the tribes reliant on federal prosecution for most serious crimes, even with the addition of another tribal liaison as TLOA authorized, the U.S. Attorney will still decline to prosecute some major offenses for a variety of reasons. In these situations, it is vital for the Tribal court to have the authority and capacity to appropriately sentence violent offenders. Under the TLOA enhanced sentencing guidelines, Tulalip has filed approximately 33 charges carrying a sentence of more than one year. Federal and state prosecutors are often unwilling to pursue domestic violence and sexual assault cases on the Reservation because they are time consuming and inherently difficult to prosecute. The TLOA enhanced sentencing guidelines have proven especially useful as a

tool for addressing these crimes on the Tulalip Reservation. We have one person convicted of rape of a child and is serving three years (the max available) in federal prison, through the Bureau of Prisons Pilot Project.

The Tulalip Tribes values its relationship with the U.S. Attorney's Office, which has been an important partner in fighting crime on the Reservation. The provisions of the TLOA providing for better reporting and communication between the U.S. Attorney's Office and Indian tribes have proved helpful in improving this relationship. Since the passage of the TLOA, Tulalip prosecutors have developed a better working relationship with the Assistant U.S. Attorneys in the Seattle Office, and the Tulalip Police Department has forged a better relationship with federal law enforcement.

While in the Tribal Law and Order Act of 2010 Congress required the Attorney General to ensure that tribal agencies that met applicable requirements be permitted access to national crime information databases, the ability of tribes to fully participate in national criminal justice information sharing via state networks has been dependent upon various regulations, statutes and policies of the states in which a tribe's land is located. The Washington State Patrol is the CSA for the state, and it is also the administrator for the state database. Under Washington law, the Tulalip Tribes access to the national crime information databases has been limited that at times endangers officer safety and our community at large. For example our tribal court domestic violence protection orders were not directly entered into the database. Instead we had to through a state intermediary, which introduced extra layers of bureaucracy that introduced delays, errors, and sometimes prevented orders from being entered into NCIC-POF. Earlier this year, we began participation in the JUST pilot project and last month we were notified that we will be included in the User face of the Tribal Access Program (TAP).

Despite the recent progress, Indian Country continues to face a crisis of violent crime. A Bureau of Justice Statistics Report covering the period 1992-2002 found that American Indians are victims of violent crime a rate more than *twice* that of the national population. "*American Indians and Crime.*" (U.S. DOJ Publication No. NCJ 203097). Washington, DC: U.S. Department of Justice (2004). According to the DOJ-BJS report, American Indians experienced an estimated 1 violent crime for every 10 residents over age 12. The figures are even worse for Native American women, who are the victims of rape or sexual assault at a rate more than 2.5 times that of American women in general. The DOJ- BJS study concluded that 34.1 percent of American Indian and Alaska Native women - more than one in three - will be raped in their lifetime. The enactment of the Tribal Law and Order Act was an important step toward dealing with crime in Indian country, but much still needs to be done. Checkerboard jurisdiction and lack of tribal criminal justice authority over most non-Indian offenders create unnecessary obstacles to addressing Reservation crime. The need to build upon TLOA and the VAWA tribal provisions is critical as we move forward. For example, in 6 of our 11 SDVCJ cases, children were present and victims of crime. Other Pilot Project tribes experienced the same phenomena; even where the law has been implemented, tribal prosecutors are limited in their authority and cannot charge an offender who simultaneously abuses or endangers his children, commits a drug or alcohol offense or property crime, interferes with the reporting of the domestic violence, or who physically or sexually assaults someone other than an intimate partner. Of our six child victims only one will have its crime redressed because the case is in the federal system.

Criminal cases are best handled by local law enforcement, which is tribal law enforcement on the Indian reservation. Tulalip police officers all possess both tribal and Washington State general peace officer commissions with authority to arrest under tribal and state laws. At Tulalip, the Tribal police department responds to all police calls on the Reservation, from both the Indian and non-Indian community. Incidents range from simple misdemeanors to major crimes such as murder and rape. In 2015, Tribal law enforcement has made a total of 835 arrests. Roughly 60 % of

the arrestees were non-Indian. Tribal criminal justice systems need full jurisdiction, with federal assistance, to prosecute persons arrested by local law enforcement in order to truly keep their communities safe.

The Tulalip Tribes remain committed to operating an excellent and effective justice system. The same principles of accountability and fairness recognized in the United States justice system are equally important in the Tribal justice systems. However, criminal justice requires substantial and reliable sources of revenues to operate effectively.

The increased responsibility Tulalip has taken on in addressing crime has strained tribal budgets. Police, courts, indigent defense and probation all require significant levels of funding. The expense of incarceration is one of the highest hurdles for Tribes to implement the enhanced sentencing authority under the TLOA. Furthermore, prosecuting cases in which a defendant may face up to three years in custody carries higher costs, as there will be greater prosecution and defense expenses, as well as longer trials. In addition, these defendants have a higher need for appropriate re-entry programs as these crimes are more severe and the perpetrator needs more reeducation and treatment to return to the tribal community. Tribal governments must balance these needs with other important unmet needs such as housing, education and health care for the Indian community.

Providing tribal courts with greater authority will not be effective unless the federal government steps up and supports Indian tribes with equal funding and removes limitations to our authority to generate new revenues. States and other local governments have greater direct access to federal funding resources that tribes either cannot access, or the barriers are so great to access, that attempt to obtain the funding is pointless because of barriers or conditions that a state places on tribes. A prime example of unequal funding is the recent increase that states are receiving from the Victims of Crime Act, in which the state of Washington funding is increased from around 3 million to over 35 million for this year. There is no mandated tribal set aside or formal system for meaningful consultation for tribes to benefit from this funding. VOCA provides no meaningful tribal set aside. We have been encouraged by the introduction of the SURVIVE Act, but passage is still uncertain. Increased federal funding is necessary for Tribes to build capacity and operate justice systems effectively. We call upon the federal government to actively support Tribal governments in their efforts to gain greater authority to raise revenues through tribal taxation in order to meet criminal justice and other important tribal government responsibilities. We also call for equality in access to all justice system funding programs with a mandated tribal set-aside that goes directly through to the tribes.

Specific Amendments Needed to TLOA

- The Bureau of Prison program. The Bureau of Prisons Tribal Prisoner Program should be expanded, streamlined, and made permanent to include other non-violent TLOA and VAWA crimes that qualify for enhanced sentencing. The Bureau of Prison project was a 3.5 year program; however, it took a minimum of 2 years for many tribes to enact TLOA. Furthermore, use of the BOP project was limited to sentencing of 2 years and 1 day, and limited to violent crimes. Thus, few tribes were able to utilize the BOP project and it soon went away. The BOP program needs to be expanded so that tribes can utilize these jail facilities for sentencing of over 1 year and 1 day similar to other criminal justice agencies. In addition, Defendants convicted on Special Domestic Violence Court Jurisdiction (SDVCJ) should be included as eligible defendants as well as repeat violators of DV protection orders and stalking crimes. As the process currently exists, violations of protection orders and stalking crimes are not characterized as violent crimes for purposes of BOP Pilot Project participation criteria. Such a narrow view does not recognize that these types of crimes can be just as lethal or impactful as “violent” crimes. The process could be streamlined and less burdensome than the past application process.

The value of this program goes beyond the obvious one of not having the tribe bear the expense of longer-term incarceration. In addition, use of this program can be used as a prosecutor tool. There are times when we have a case that could possibly be filed by the USAO, but that we feel is more appropriately addressed in Tribal Court. One circumstance is when we feel it's important to the community, for a variety of reasons, to have justice done here at Tulalip. Sometimes the conduct is egregious enough that two, three, or more years seems called for, but if filed in federal court could result in 30 years – essentially life in prison in some cases. In addition, we might have a case that really *should* be prosecuted by the USAO, but for some reason they are not willing to take the case. In those instances we can offer a significant sentence, but the financial burden on the Tribes would be extreme. Perhaps the most important benefit to the Tribes is that a sentence served in federal prison removes the defendant from the community. Inmates have much less influence on community members and vice-versa. You can see how a person operating a criminal enterprise of some kind could continue to do so if s/he had regular contact with people on the outside. Similarly, DV victims would be more easily intimidated and manipulated if visitation were possible. Furthermore, a county jail such as the one utilized by our Tribe is really intended for much shorter-term incarceration, and offers much less in the way of rehabilitative services to inmates that might affect future behavior and reduce recidivism. Our Tribe only became TLOA-qualified and VAWA-qualified in the last two years. It is anticipated that as this enhanced jurisdiction is asserted more and more over time, the option of sending our prisoners to federal prison could be utilized more and more.

- NCIC/criminal databases and Tribal Access. The Tulalip Tribes urges the appropriation of financial resources towards fully implementing the Tribal Access Program (TAP) to Federal Databases. The TAP program will need to be fully funded as a permanent program in partnership with Indian Tribes to enhance delivery to tribal governments and provide ongoing improvements while keeping all interested tribes informed of the delivery of this program. The Tulalip Tribes is honored to be selected as a Pilot project tribe for TAP, but it is potentially already encountering unnecessary limitations because there is insufficient funding for our defined need to fully utilize the program thus databases, as other non-tribal governments are able to do.

Conclusion

Thank you for taking the time to listen to our concerns, the voices and needs of our tribe, and for considering our recommendations. We believe in the continuation of building alliances to enhance and promote the needs of tribal justice agencies. By working together we stand stronger in our advocacy efforts for equal access to justice, local based solutions to local problems, and access to services and advocacy designed by and for Native communities.

Sincerely,

/s/ Glen G. Gobin

Glen G. Gobin
Board Member, Tulalip Tribes