

**TESTIMONY OF
MICHAEL BLACK
DIRECTOR, BUREAU OF INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
TO THE
SENATE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON
S. 2785**

MAY 18, 2016

Chairman Barrasso, Vice-Chairman Tester, and members of the Committee, my name is Mike Black and I am the Director for 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. 2785, the Tribal Youth and Community Protection Act of 2016. The Department supports S. 2785.

The Obama Administration has made it a priority to improve the health, welfare, and safety of Tribal communities. Two separate federal taskforces, the Indian Law and Order Commission and the Attorney General's Task Force on American Indian/Alaska Native Children Exposed to Violence, concluded local control is the key for promoting public safety in Indian Country. The tribal provisions in the Violence Against Women Reauthorization of 2013 employed this principle and since its enactment, a number of tribes are making strides in combatting domestic violence. S. 2785 continues to move in this direction by strengthening tribes' ability to protect their communities and prosecute non-Indian offenders.

S. 2785

S. 2785 would reauthorize Section 4206 and 4218(b) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. Section 2412 and Section 2451(b) respectively) to authorize funding for Tribal Action Plans (Section 4206) and Training Programs (Section 4218(b) for fiscal years 2016 through 2020. The Department supports this reauthorization.

S. 2785 would amend 25 U.S.C. Section 1304, Tribal jurisdiction over crimes of domestic violence, to include Tribal jurisdiction over crimes of child violence and drug offenses. S. 2785 amends 25 U.S.C. Section 1304 definitions for dating violence and domestic violence to include “felony and misdemeanor violations” of the Tribe’s criminal law within its own lands. S. 2785 also amends Section 1304 by including definitions for “caregiver,” “child violence,” “drug offense,” and “related conduct.”

The Department recommends changing the “Tribal Action Plan” (TAP) to a “Tribal Strategic Action Plan” (TSAP) based on feedback received from Tribes regarding current tribal practices. Such change would allow for plans that are driven by tribes, rather than the Federal government.

The Department recommends adding language to 25 U.S.C. Section 2412 (c) provisions that provide more deference to the Tribal Strategic Action Plan.

S. 2785 also amends the current authorized amount of appropriations from \$5 million to \$10 million for fiscal years 2016 through 2020 pursuant to DOJ grant programs for tribes under subsection (f). Since these amounts represent DOJ resources specifically authorized to strengthen and support tribal criminal justice systems, we are open to continuing conversations about the appropriate reporting mechanism.

Conclusion

Thank you for providing the Department the opportunity to provide input into S. 2785. The Department supports S. 2785 and recommends a few changes as noted above. I am available to answer any questions the Committee may have.

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DIRECTOR, BUREAU OF INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
TO THE
SENATE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON
S. 2920
TRIBAL LAW AND ORDER REAUTHORIZATION ACT OF 2016**

MAY 18, 2016

Chairman Barrasso, Vice-Chairman Tester, and members of the Committee, my name is Mike Black and I am the Director for 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. 2920 the Tribal Law and Order Reauthorization Act (TLOA) of 2016.

The Tribal Law and Order Act (TLOA) brought about necessary and important changes in addressing public safety in Indian Country. Our experiences implementing TLOA have highlighted additional areas that still need to be addressed. TLOA was passed to clarify the responsibilities of Federal, state, tribal, and local governments with respect to crimes committed in Indian country; to increase coordination and communication among Federal, state, tribal, and local law enforcement agencies; to empower tribal governments with the authority, resources, and information necessary to provide public safety in Indian country effectively; to reduce the prevalence of violent crime in Indian country and to combat sexual and domestic violence; to prevent drug trafficking and reduce rates of alcohol and drug addiction in Indian country; and to increase and standardize the collection of criminal data and the sharing of criminal history information among Federal, state, and tribal officials responsible for responding to and investigating crimes in Indian country.

In the six years since TLOA was passed in 2010, the Department of the Interior still strongly supports the purposes of TLOA. We believe there is no substitute for having enough officers on the ground, and we will continue working to improve law enforcement in Indian country. The Obama Administration has made it a priority to improve the health, welfare, and safety of tribal communities, and I am pleased to be here before this Committee today to provide the Department's full support of and recommendations for S. 2920.

A major focus of TLOA was to address challenges related to reporting and data collection. We want to continue this effort to build robust data and provide the public with the information it needs. Section 103 provides for sharing of federal data with tribes. One gap we recognize is the lack of incorporation of tribally-owned data into state and federal databases. For example, an individual may have prior tribal arrests that are not reflected in state and federal databases. To foster respect and reciprocity for tribally-collected data, the Department would like to encourage

the bill's authors to consider extending the Department of Justice's new Tribal Access Program for National Crime Information, which provides tribes access to national crime information for both civil and criminal purposes, to include a pilot program or other mechanism to support tribes interested in sharing tribal court criminal records with other law enforcement agencies. The Department recognizes many tribes are currently doing this; however, we should encourage law enforcement agencies and courts to adopt this practice across Indian Country.

Even with the information improvement efforts of TLOA, Indian Country still lacks data on criminal justice, or, more accurately, the ability to identify and analyze the information needed to paint an accurate picture of law enforcement in Indian Country. This is a challenge in multiple sectors, including health, child welfare, and others, but it is particularly problematic in the context of criminal justice, in which Federal, state, tribal, and local governments share responsibilities.

Further, 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 in order to report back to Congress. This bill has numerous reporting requirements, but stops short of providing additional resources for us to effectively meet this direction effectively and in a timely manner. We would appreciate the opportunity to share more with the bill's sponsors about our capacity to analyze complex data sets in a way that is meaningful for Congress.

Tribal courts are an essential part of tribal governments, which provide local delivery of justice in tribal communities. We support Section 107, which reauthorizes tribal court training programs. Those training programs are critical to assisting tribes with building capacity.

We are encouraged by the tremendous progress some tribes are making to build their courts up. Many more tribes continue to face challenges. TLOA's Indian Law and Order Commission (ILOC) recognized that tribes in Public Law 280 states, particularly those in California and Alaska, have even greater hurdles to the development of their justice systems. Additionally, TLOA allowed for re-assumption of concurrent federal jurisdiction in Public Law 280 states and extended sentencing provisions for tribes, followed by the Violence Against Women Reauthorization Act of 2013, which contained special domestic violence criminal jurisdiction provisions. Despite their strong desire, relatively few tribes are able to take on these additional responsibilities. In reviewing S. 2920, we note that it does not address these issues and would appreciate the opportunity to work with the authors to ensure that tribes can utilize their full authority and jurisdiction to prosecute crimes in Indian Country.

The Department appreciates the inclusion of alternatives to detention in the bill as many of our offenders are engaging in criminal activity due to untreated mental health and alcohol and substance abuse issues. We want to continue to look for ways to get these individuals the help they need to break the cycle of recidivism.

One detention issue not addressed in the bill is the disproportionately high costs of time and expense for transporting prisoners within the current system of facilities. We believe issues

associated with transportation of prisoners contribute to the scarcity of detention funding. Transporting a prisoner requires two officers, and in remote areas this pulls officers off patrol and out of the community for days at a time. This creates severe safety risks across Indian County, where a tribe may have only two officers in its entire police force. Transporting juveniles presents an additional challenge, as it often requires traveling a longer distance in order for the individual to be housed at one of a very limited number of juvenile facilities. These high transportation costs soak up the already scarce resources available for detention. We believe one method to solve this problem may be to create incentives for intergovernmental cooperation with regard to bed space in detention facilities to allow tribal prisoners to be housed closer to home in local or county facilities.

TLOA's ILOC devoted an entire chapter to intergovernmental cooperation, noting that some tribal governments have seen success through partnerships with local counties and state agencies using cross-deputization agreements and memoranda of understanding. We know not every tribe, state, local, or county official will feel enough groundwork has been laid to foster a strong working relationship today. However, we believe encouraging them to pool their limited resources makes good fiscal sense, and can lead to better cooperation in other areas that face similar jurisdictional challenges, such as health care delivery, natural resources management, or road maintenance. Recognizing that all these entities have a role to play will ensure communities as a whole, Indian and non-Indian, are safer. With this in mind, we recommend additional bill language to create strong incentives toward intergovernmental cooperation.

Collaboration is also important within the Federal family. Federal interagency collaboration, breaking down silos within government, remains a priority for this Administration as it seeks to create an "all of government" approach to Indian Affairs. S. 2920 recognizes that public safety in Indian Country is an issue which needs attention from multiple agencies. Section 102 asks us specifically to work with Health and Human Services and the Department of Justice to integrate and coordinate around our respective criminal justice programs. We believe the fragmentation of programs across agencies is confusing for tribes and impedes our ability to care for tribal members once they enter into the criminal justice system. Interior stands ready to collaborate with its counterparts.

We also recommend the following technical changes to TLOA in addition to our views on TLORA:

Currently TLOA Section 211(c)(13) requires BIA to provide technical assistance and training to tribes on the DOJ National Crime Information Center (NCIC) databases. As this Committee is aware, the NCIC and other national crime information databases are maintained by the DOJ. It would be more appropriate if this responsibility were assigned to the Department of Justice, with input from BIA Office of Justice Services (OJS).

TLOA Section 211(c)(15) allows BIA to share with the Department of Justice all relevant crime data delivered to BIA by tribes. The BIA does share all relevant data including Uniform Crime Reports Data. To maximize this opportunity, the Department recommends language that allows

FBI's Criminal Justice Information Services (CJIS) to work with OJS to ensure each tribal jurisdiction is assigned an ORI number for uniform crime reporting purposes.

Finally, Section 211 of TLOA provided 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 would negatively impact the BIA's delivery of public safety needs to tribes and Indian Country. The Department acknowledges the delay in providing this report and is working to provide accurate and relevant data to the Committee. We hope to have an opportunity to work with the Committee to refine the annual reporting requirements.

Currently, Section 231(a)(4)(A) of TLOA states that if a request for a background check is made by an Indian Tribe that has contracted or entered into a compact for law enforcement or corrections services, OJS must complete the check no later than 60 days after the date it received 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 not reassigned, the 60-day requirement should be changed to 120 days, which would allow more time for completion.

Section 234(c)(1) of TLOA established a four-year pilot program under which the Federal Bureau of Prisons would accept up to 100 offenders convicted in tribal court. We agree that this program should be continued, and that a working group should be established to assist in streamlining a process in which tribal court judges can more easily sentence individuals into the program.

Conclusion

Thank you for inviting the Department to testify. We look forward to working with this Committee on S. 2920 Tribal Law and Order Reauthorization Act. We want to take full advantage of making TLOA stronger in order to make significant steps toward the goals of TLOA, which was and continues to aim at improving and addressing law and order in Indian country.

I am available to answer any questions the Committee may have.

**TESTIMONY OF
MICHAEL BLACK
DIRECTOR, BUREAU OF INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON
S. 2916**

MAY 18, 2016

Good afternoon Chairman Barrasso, Vice Chairman Tester, and members of the Committee. My name is Mike Black. I am the Director for the Bureau of Indian Affairs at the Department of the Interior (Department). I am here today to provide the Department's position on S. 2916, a bill to provide that the Pueblo of Santa Clara and the Ohkay Owingeh Pueblo may lease for 99 years certain restricted land.

The purpose of S. 2916 is to amend the Act of August 9, 1955, to authorize the Pueblo of Santa Clara and the Ohkay Owingeh Pueblo a 99-year lease authority for restricted land. The Administration strongly supports the principles of self-determination and self-governance, recognizing that intrinsic to these principles is tribal control over tribal resources, especially over tribal homelands, and the welfare of Native people. In line with these principles, the Administration believes that tribal governments are in the best position to determine the duration of tribal leases. Accordingly, the Department supports S. 2916.

Background

Since the enactment of the Act of June 30, 1834, 4 Stat. 730, codified as 25 U.S.C. Sec. 177, and predecessor statutes, land transactions with Indian tribes were prohibited unless specifically authorized by Congress. This law is commonly known as the Non-intercourse Act. Congress enacted the Act of August 9, 1955, codified at 25 U.S.C. Sec. 415, commonly known as the Long-Term Leasing Act, to overcome the prohibition of the Non-intercourse Act. The Long-Term Leasing Act permitted some land transactions between Indian tribes and nonfederal parties--specifically, the leasing of Indian lands. The Act required that leases of Indian lands be approved by the Secretary of the Interior and limited lease terms to 25 years.

As business opportunities and economic considerations changed over time, leases longer than 25 years were desired. To facilitate economic development on Indian lands, over the years, a number of tribes have obtained amendments to the Long-Term Leasing Act so that they could enter into leases for terms longer than 25 years. Approximately 50 tribes have obtained these amendments and all are listed in the Long-Term Leasing Act as having authority to enter into leases for terms as long as 99 years.

S. 2916

S. 2916 would further amend the Long-Term Leasing Act by amending the Long-Term Leasing Act to add the Pueblo of Santa Clara and the Ohkay Owingeh Pueblo to the list of tribes that may enter into 99-year leases within the boundaries of their respective Pueblo lands. The Pueblo of Santa Clara and the Ohkay Owingeh Pueblo are currently listed in 25 U.S.C. Section 415(a), but the listing is restricted to “lands held in trust for the Pueblo of Santa Clara” and “lands held in trust for the Ohkay Owingeh Pueblo.” There exists, and in the future there could exist, lands within the boundaries of either Pueblo’s boundaries, owned by either Pueblo, but not held in trust for the Pueblo of Santa Clara or Ohkay Owingeh Pueblo. Thus, S. 2916 seeks to include all the lands within the boundaries either Pueblo. The Department supports S. 2916.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.