



# Department of Justice

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**STATEMENT OF**

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WESTERN DISTRICT OF NORTH CAROLINA  
UNITED STATES DEPARTMENT OF JUSTICE**

**BEFORE THE**

**UNITED STATES SENATE  
COMMITTEE ON INDIAN AFFAIRS**

**CONCERNING**

**“TRIBAL JUSTICE IMPROVEMENT ACT”**

**PRESENTED**

**JUNE 19, 2008**

Mr. Chairman, Madame Vice-Chair and members of the Committee:

My name is Gretchen Shappert. I am the United States Attorney for the Western District of North Carolina, and the chair of the Native American Issues Subcommittee of the Attorney General Advisory Council. My fellow U.S. Attorneys and the Department of Justice (“the Department”) as a whole share the Committee’s goal of improving law enforcement in Indian Country. We appreciate your highlighting this important issue and I thank you for the opportunity to testify today. We look forward to working with the Committee to achieve this goal.

I have worked hard in my own district and with colleagues across the country to provide effective law enforcement in Indian Country. In my district, I have had the opportunity to work closely with the Eastern Band of Cherokees, an Indian tribe numbering over 13,000. We have established a close working relationship, and I am proud of what we have accomplished together. For example, my office has seen a number of criminal defendants sentenced in federal court for crimes committed in Indian Country, including several serious domestic violence cases. This was the result of the excellent work of federal law enforcement agencies, including the Federal Bureau of Investigation (“FBI”) and the National Park Service, and our partners in the Cherokee Indian Police Department. Because of this cooperation, we were able to investigate and to successfully prosecute these federal offenses which occurred in Indian Country.

That experience has benefited my service as Chair of the Native American Issues Subcommittee (NAIS), the oldest subcommittee of the Attorney General’s Advisory Committee (AGAC). The NAIS consists of U.S. Attorneys from across the United States who have significant amounts of Indian Country in their districts. The purpose of this body is to develop

policies for consideration and approval by the Attorney General pertaining to the establishment and development of effective law enforcement in Indian Country.

In an effort to ensure more effective coordination and communication, especially in the upcoming transition period, the Department's tribal liaisons and NAIS met jointly in Rapid City, South Dakota earlier this month. As the Committee knows, tribal liaisons are the Assistant United States Attorneys ("AUSAs") who are responsible for coordinating Indian Country relations and prosecutions. The tribal liaisons work diligently to identify and respond to the needs of the distinct tribes within their districts. Our meeting included a visit to the Pine Ridge reservation where the NAIS, tribal liaisons, tribal leaders and law enforcement officers were able to discuss some of the important matters affecting that particular tribe, including the need for additional law enforcement resources and the importance of community involvement in solving the difficult social issues that often accompany criminal activity. I also have participated in numerous national and regional tribal conventions, training sessions, symposiums and events. At those meetings, I have regularly provided my direct phone number for those who need assistance with an issue affecting Indian Country.

In addition to my own work, let me describe the overall successes of my colleagues in the U.S. Attorney community and the Department generally. The Department's dedicated public servants are successfully prosecuting cases in Indian Country. Approximately 25 percent of all violent crimes investigated by U.S. Attorneys nationally occur in Indian Country. In addition, in Fiscal Year (FY) 2006 the Department's efforts in Indian Country have been above average across the board. For example, in FY 2006, the Department filed 606 cases against 688 defendants in Indian Country, which is nearly 5 percent higher than the average since 1994 of 580 cases against 643 defendants per year. In FY 2006, 82 cases went to trial, 13.8 percent more

than the average of 72 cases each year since 1994. The conviction rate for Indian Country prosecutions in FY 2006 was 89.4 percent, slightly higher than the 86.2 percent average since 1994. Eighty percent of those guilty of violent crime in Indian Country were sentenced to prison in that year. The number of defendants convicted of violent crimes receiving sentences greater than 61 months has also increased from 31 percent on average to 36 percent in FY 2006.

The FBI also plays a significant role in Indian Country. Even with the heightened demands on the FBI from terrorism investigations, Indian Country law enforcement remains important to the FBI. The FBI has increased the number of agents working Indian Country cases by 7 percent since 2001.

Most recently, the FBI has initiated a Joint Indian Country Training Initiative with the BIA to sponsor and promote training activities pertaining to drug trafficking. In FY 2007, the FBI provided more than 30 training conferences for local, tribal, and federal investigators regarding gang assessment, crime scene processing, child abuse investigations, forensic interviewing of children, homicide investigations, interviewing and interrogation, officer safety and survival, crisis negotiation, and Indian gaming. Furthermore, the FBI's Office for Victim Assistance dedicates 31 Victim Specialists to Indian country, representing approximately one third of the entire FBI Victim Specialist workforce.

Also, the FBI recently deployed the Law Enforcement National Data Exchange initiative (N-DEx) system with participation from tribal governments. N-DEx is a criminal justice information sharing system that will provide nationwide connectivity to disparate local, state, tribal, and federal systems for the exchange of information. The N-DEx system will provide law enforcement agencies with a powerful new investigative tool to search, link, analyze and share criminal justice information such as, incident/case reports, incarceration data, and

parole/probation data on a national basis to a degree never before possible. The vision of the Law Enforcement N-DEx is to share complete, accurate, timely and useful criminal justice information across jurisdictional boundaries and to provide new investigative tools that enhance the Nation's ability to fight crime and terrorism. The Oneida Nation police department is the first tribal law enforcement agency (LEA) to participate in the N-DEx project. Currently, the Onieda Nation police department contributes data by manually entering incident information in the N-DEx system. The N-DEx Program office is developing relationships with other tribal agencies to submit data to the N-DEx system. Toward that end, the office has met with various tribal LEAs, including Paiute, Mashantucket Pequot, Mohegan, Eastern Band of Cherokee, and Navajo Tribes. The N-DEx Program office is dedicated to creating a relationship with Tribal LEAs to assist in the defense against crime and terrorism.

My colleagues at the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") have also been committed to reducing violence in Indian Country. ATF has assisted Tribal Governments in combating firearms and gang violence through the Project Safe Neighborhoods ("PSN") initiative. Through the creation of grassroots partnerships in those tribal communities where gun crime has been identified as a problem, ATF vigorously enforces existing firearms laws to prevent the violent criminal misuse of firearms. ATF has entered into Memorandums of Understanding ("MOUs") with several tribes in order to increase cooperation with local tribal law enforcement and address the problem of gun violence in tribal areas. ATF also works closely with tribes in providing training and instruction on firearms and gang related issues. This training includes information on domestic violence and its impact on firearms possession.

Furthermore, the Drug Enforcement Administration ("DEA") actively investigates significant Drug Trafficking Organizations ("DTO") operating in, and within proximity to Indian

Country. One of the investigative techniques DEA employs on reservations is wire intercepts. A dramatic example of the success resulting from this method occurred on the Wind River Reservation in Wyoming. The Wind River Reservation covers an area of over 3,500 square miles, only slightly smaller than the state of Connecticut. Wyoming law enforcement did not have the authority to conduct investigations on the reservation and Bureau of Indian Affairs investigators had no jurisdiction beyond the reservation's boundaries. DEA was able to bridge this gap working with both of these law enforcement organizations, using wire intercepts to investigate methamphetamine trafficking onto the reservation. The investigation uncovered an organization with international ties responsible for trafficking over 100 pounds of methamphetamine to Indians at Wind River. The case resulted in eight indictments and extended to multiple judicial districts. This investigation is just an example of the successful cooperation of tribal, state, and federal law enforcement to improve safety and security in Indian Country.

In addition, as part of the effort to strengthen the tribal response to crime in Indian Country, our Office of Justice Programs ("OJP") spearheaded Interdepartmental Tribal Consultation, Training and Technical Assistance Sessions held in FY 2007 and FY 2008. OJP's next session will begin on August 18 in Billings, Montana. Another example is the work of OJP's National Institute of Justice, which, in response to Congressional direction, is developing a program of research on violence against American Indian and Alaska Native ("AIAN") women.

Finally, the Deputy Attorney General recently established and convened the Advisory Council on Tribal Justice Issues within the Department to periodically review and discuss issues and major actions affecting the Department's work in Indian country. The goal of the Council is to coordinate the actions of the many components at the Department involved in the issues and activities impacting Indian country. The Council will provide a forum for these components to

consider avenues and share ideas that would strengthen the Department's dialogue with tribal governments about law enforcement and policy issues affecting Indian country.

Now, let me turn to some areas of interest to the Committee. We join the Committee's efforts to strengthen the important relationship between the United States and those living in Indian Country. Federal law enforcement officers share a great responsibility with state and tribal law enforcement officers in responding to crimes in Indian Country. The Department shares the Committee's desire to increase law enforcement accountability in Indian Country through improved data collection and by leveraging tribal resources. The Department supports the effort to clarify the law with respect to tribal Special Assistant U.S. Attorneys. Additionally, we believe that it is important to ensure that there is a coordinated Department response to law enforcement needs in Indian Country. The Department is also committed to helping increase cooperation between tribal, state and local governments through our cross-deputization program and the re-authorization of various grant programs. Finally, we also share the Committee's desire to strengthen the tribal response to crime in Indian Country through training, additional resources and improved access to information.

While the Department does not comment on proposed legislation, I would, however, like to highlight a few general areas of concern for the Department.

#### *Declination Reports*

The Department is committed to improving Indian Country crime data; however, we oppose the concept of requiring the publication and disclosure of declination reports. While significant Indian Country cases are primarily handled in federal courts, caution should be used when comparing Indian Country statistics to other federal statistics. As was emphasized by my

colleague, U.S. Attorney Diane Humetewa, previously before this Committee, declination rates do not show the full picture of the Department's actions in a given case. Indeed, "declination" does not necessarily mean that the case will not be prosecuted. "Declination" may mean that the case will be prosecuted in a different forum, that additional work-up is needed or that no crime was committed. By requiring U.S. Attorney's Offices and other investigative agencies to prepare a detailed written report that contains information about why an investigation was either declined or terminated, the legislation would create potentially discoverable material outlining weaknesses in any subsequent criminal case.

Furthermore, there is a significant difference in the type of cases that are often found in Indian Country. Indian Country cases often include reactive cases, such as assaults, robberies or homicides. In many instances, because of the unique nature of Indian Country, victims and witnesses may not be willing or able to come forth to testify against a defendant. Also, much time may pass before a victim comes forth, making the gathering of evidence more difficult than in a typical case. In contrast to those reactive cases, which often rely on the cooperation of lay witnesses, the typical federal case involves a proactive investigation by law enforcement personnel that may take months or years to complete and which will include wiretaps, document collection, and extensive grand jury proceedings. The typical federal case is therefore far less likely to be declined or fail to meet the very high burdens placed on the prosecution in a criminal case.

*Establishment of an Office of Indian Crime in the Criminal Division at the Department of Justice.*

The Department strongly opposes the concept of establishing an Office of Indian Crime in the Criminal Division at the Department of Justice. While the Department understands and



appreciates the concerns related to the prosecution of crimes in Indian Country, creating an office within the Criminal Division could have the practical effect of inhibiting the Department's efforts to combat violent crime. Foremost, creation of an Indian Crime office in the Criminal Division would take valued criminal justice experts away from the field. Currently, the Department's most experienced professionals on Indian issues serve in Indian Country, where their expertise has the greatest impact. Staffing an office centralized in Washington, D.C. would necessarily precipitate transferring many of these experts out of Indian Country, resulting in a significant gap of experience in the field.

Within the Criminal Division, specific criminal matters are handled by attorneys with experience in that subject matter. For example, gaming matters related to Indian Country are handled by our Organized Crime and Racketeering Section ("OCRS"), matters involving child pornography on Indian Country are handled by the Child Exploitation and Obscenity Section ("CEOS"), and matters involving violent crime on Indian Country are handled by the Gang Squad ("GS"). The proposed office would risk removing attorneys from their subject matter expertise and have the unintended effect of hampering the Criminal Division's efforts to support the prosecution of crimes in Indian Country.

#### *The Office of Tribal Justice and Tribal Liaisons*

The Office of Tribal Justice ("OTJ") has been effectively serving Indian Country for many years. OTJ was established to provide a single point of contact within the Department of Justice for meeting the broad and complex Department responsibilities related to Indian tribes. The Office facilitates coordination between Departmental components working on Indian issues, and provides a permanent channel of communication for Indian tribal governments with the Department of Justice. The Department believes that the Attorney General is in the best position to evaluate and adjust the staffing and roles of those offices internally, as needed to maintain the

appropriate allocation of resources, so the general proposal to elevate OTJ within the Department is unnecessary.

Along the same lines, the Department strongly opposes the codification of the tribal liaison's responsibilities. As noted above, the Department fully recognizes the importance of tribal liaisons and currently has 44 tribal liaisons in districts with some Indian Country within their jurisdiction. Tribal liaisons have been effectively serving U.S. Attorney's Offices since that program began in 1995. Each tribal liaison is an expert in Indian Country crimes, but each U.S. Attorney's Office handles varying types of crimes and in differing numbers. For example, in districts where white collar crimes such as embezzlement and fraud are more prevalent the tribal liaison may focus on the Indian gaming industry. Other districts have more cases and matters dealing with violent crime. This diversity would make the suggested codification of the duties of tribal liaisons difficult and it would greatly reduce the discretion of each U.S. Attorney's Office to ably serve the Indian community in their district. The Department believes that each individual district is in the best position to evaluate the nature and volume of crimes within the district and to appropriately allocate resources. It is essential that U.S. Attorneys maintain this discretion in tailoring the role and scope of the tribal liaison program in their districts.

#### *Expanding Tribal Court Sentencing Authority and BIA Arrest Authority*

The Department strongly opposes the concept of permitting tribal courts to direct offenders convicted by tribal courts to serve their sentences in federal prisons. The Bureau of Prisons ("BOP") is responsible for the incarceration of inmates who have been sentenced to imprisonment for federal crimes. Based on continuing federal law enforcement efforts and limited resources for construction of new institutions, federal prisons continue to be very crowded. System-wide, BOP is operating at 37 percent above its capacity, and it does not expect

crowding to decrease substantially in the next few years. Crowding is especially significant at high-security institutions (operating at 50 percent above capacity) and medium-security institutions (operating at 47 percent above capacity), where the majority of violent offenders are confined.

For purposes of maintaining family ties and to effect an optimal reentry back into the community after release, the Department believes that the incarceration of tribal court offenders is best handled by local jurisdictions and BIA. The BOP attempts to designate an inmate to the appropriate security level institution that is within 500 miles of his or her release residence. Nevertheless, due to the location of BOP institutions and population pressures, this is not always possible; and many inmates are much further than 500 miles from their homes and families. BOP policy requires that inmates remain at an institution for at least 18 months with clear conduct before consideration of a transfer closer to their release residence. In all likelihood, if transferred to BOP facilities, tribal court offenders with short sentences would remain at their designated BOP institution for their entire sentence. Visits by family and friends to these tribal offenders would be severely restricted due to the great distance between the BOP institution and their home, and these tribal offenders would not be afforded the opportunity to participate in tribal reentry programs currently operating near the reservation out of the tribal jails.

The proposals to expand tribal court sentencing authority to up to three years of imprisonment and to permit BIA law enforcement officers to make arrests for any misdemeanor crimes are significant changes in the current legal and law enforcement framework. While recognizing the purpose behind these proposals, as a former defense attorney, I am concerned about the impact of these provisions on defendants' constitutional rights and legal protections. It would be quite unusual, for example, for law enforcement officers to have blanket arrest

authority for misdemeanors not committed in the officer's presence. The Department has had insufficient time to evaluate these proposals, but we will thoroughly and carefully examine them.

*Conclusion*

Mr. Chairman, Madame Vice Chair, this concludes my statement. While the Department does not comment on proposed legislation, I will be happy to attempt to answer any questions you may have.