



## PUBLIC SAFETY & JUSTICE

One of the most fundamental aspects of the federal government’s trust responsibility is the obligation to protect public safety on tribal lands. Congress and the United States Supreme Court have long acknowledged this obligation, which Congress most recently reaffirmed in the Tribal Law and Order Act expressly “acknowledging the federal nexus and distinct federal responsibility to address and prevent crime in Indian Country.”

The inadequate funding for tribal criminal justice and public safety has resulted in staggering rates of violent crime and victimization on many Indian reservations. A recent DOJ study found that more than four in five American Indian and Alaska Native adults have experienced some form of violence in their lifetime. Among American Indian and Alaska Native women, 55.5 percent have experienced physical violence by intimate partners in their lifetime, and 56.1 percent have experienced sexual violence. The lack of funding for justice and victims’ services in Indian Country contributes to the high rates of suicide, substance abuse, and other issues that plague many tribal communities.

Recent experience demonstrates that it is simply a lack of justice funding causing so much harm. With the new authorities in the Tribal Law and Order Act and related laws, some tribes have made rapid and dramatic strides toward improving public safety. But these are a handful of tribes with independent financial resources. Tribal justice systems now have much better legal tools, they just need the resources to put those tools to work so they can protect women, children and families, address substance abuse, rehabilitate first-time offenders, and put serious criminals behind bars.

The underfunding of tribal law enforcement and justice systems is well-documented. Most recently, the BIA submitted a report to Congress in 2016 estimating that to provide a minimum base level of service to all federally-recognized tribes: \$1 billion is needed for tribal law enforcement, \$1 billion is needed for tribal courts, and \$222.8 million is needed to adequately fund existing detention centers.<sup>22</sup> Based on recent appropriation levels, BIA is generally funding tribal law enforcement at about 20% of estimated need, tribal detention at about 40% of estimated need, and tribal courts at a dismal 3% of estimated need.

Due to the obvious inadequacy of the base funding provided by BIA, tribal governments rely on short-term, competitive grants to try and address a portion of the shortfall. The bulk of these grants are administered by the Department of Justice. Tribal funding at DOJ has steadily declined in recent years falling from approximately \$165 million in FY10 to \$115 million in FY17.

Increased and targeted funding in the following program areas will have a significant impact on safety in tribal communities for tribal citizens, residents, and visitors to tribal lands. Highly-functioning criminal justice systems, basic police protection, and services for victims are fundamental priorities of any government; tribal governments are no different.

## Key Recommendations

### DEPARTMENT OF THE INTERIOR

#### Interior - Environment Appropriations Bill

- *Allocate \$83 million in additional funding to the Bureau of Indian Affairs to increase base funding for tribal courts, including courts in PL 280 jurisdictions, and to incrementally move towards fully meeting the need for tribal court funding.*

The highest priority with regard to BIA funding is to increase base funding for tribal courts. The BIA estimates that full funding for tribal courts would cost \$1 billion. FY 17 funding for tribal courts was \$30.7 million, or 3% of the estimated need.

Originally enacted in 1993, the Indian Tribal Justice Act authorized an additional \$50 million per year for each of seven years for tribal court base funding. In today's dollars this would be \$83 million per year, which would be less than 10 percent of the overall need estimated by BIA. Despite numerous congressional reauthorizations of the Act over the past couple of decades – most recently in TLOA – funds have never been appropriated to implement the Act. The Act does not differentiate between tribes subject to PL 280 jurisdiction or not. The promise of this much-needed base funding must be fulfilled. We ask Congress to commit to fully funding tribal courts within the next five years by incrementally increasing funding each year.

- *Increase funding for Bureau of Indian Affairs (BIA) law enforcement and detention by at least \$200 million over the FY 2017 funding level of \$353 million.*

More than 200 tribal police departments, ranging from small departments with only two officers to those with more than 200 officers, help to maintain public safety on the more than 50 million acres of tribal lands within the 48 contiguous states. Tribal law enforcement officers are usually the first responders to crime scenes on tribal lands, but their current funding lags well behind that of their non-tribal counterparts.

BIA recently conducted an analysis of law enforcement and detention needs pursuant to the Tribal Law and Order Act, and found that the total need for basic law enforcement and detention services in Indian country is \$1.2 billion. This estimate includes tribes without regard to whether they are located in a PL 280 jurisdiction. Given the gross inadequacy of current funding levels, the BIA has had a policy for many years to generally provide law enforcement and detention funding only to tribes in non-PL280 jurisdictions. This has left tribes in many areas completely without BIA support for tribal police and detention needs.<sup>23</sup> We ask Congress to commit to fully funding tribal law enforcement and detention within the next five years by incrementally increasing funding each year, starting with a \$200 million increase this year.

## DEPARTMENT OF JUSTICE

### Commerce, Justice, Science Appropriations Bill

#### Tribal Grants across the Department of Justice

- *Eliminate competitive grant funding process and utilize Justice Department appropriations as base funding where tribes and tribal courts themselves determine their own priorities.*

One of the most significant issues with DOJ funding is that it is competitive funding awarded at the discretion of DO. In order to obtain this funding, tribes – on behalf of their justice systems – must compete against each other under DOJ’s priorities and guidelines. In the end, often the tribes that have the financial and human resources to employ experienced grant writers end up receiving funding, while the under-resourced tribes may be left without. Moreover, tribes cannot count on funding continuing beyond the current grant period, and Indian Country has numerous stories of successful programs disappearing at the end of a two- or three-year grant cycle.

Tribal governments have been asking for reforms to the DOJ grant making process for years in order to reduce administrative inefficiencies, improve program effectiveness, and increase the ability of tribal governments to leverage available DOI and DOJ funding to best address the comprehensive public safety and justice needs in their communities. Beginning in 2012, Congress has responded to this request from tribal leaders by appropriating a fixed amount for “tribal assistance” rather than appropriating funds for specifically authorized tribal programs. This approach gives DOJ considerable flexibility to work with tribal governments to determine how best to administer the appropriated funds. In FY 17, Congress shifted from a lump sum for tribal assistance to a percentage set-aside model for the first time, creating a 7% tribal set-aside from some COPS and OJP programs. Appropriators carved out several of the largest appropriation lines from the tribal allocation, however, resulting in an overall tribal funding decrease from FY16 levels. Both the House and Senate CJS bills for FY18 that are currently pending include a 7% tribal allocation from across a wider range of OJP and COPS programs. If enacted, this would help restore funding levels for DOJ tribal justice programs to a more appropriate level.

DOJ is currently engaged in government-to-government consultation with Indian tribes about its grant-making process, which we hope will improve the effectiveness of DOJ funding in tribal communities.

## OFFICE OF JUSTICE PROGRAMS

- *Create a 10 percent tribal set-aside from funding for all discretionary Office of Justice Programs (OJP) programs, ensure that those funds, along with tribal funds outside of OJP, are allocated as flexible base funding.*

A flexible tribal set-aside from across OJP programs would allow for a more flexible funding structure at DOJ. In 2010, the Department of Justice launched its Coordinated Tribal Assistance Solicitation (CTAS). CTAS attempts to streamline the grant application process for tribes, enabling them to submit a single application for DOJ programs, as opposed to previous years in which they were required to submit multiple grant applications. However, this streamlined application model still results in multiple grant awards with separate reporting requirements, award periods, and grant managers. CTAS will not achieve its intended purpose of streamlining tribal grants until it is accompanied by a streamlined funding mechanism.

A 10 percent OJP tribal set-aside would streamline the federal funding process by which tribes receive resources to establish tribal courts; assist in developing detention facilities; provide legal assistance; develop and maintain juvenile delinquency prevention programs; and provide substance abuse prevention programs. Further, the tribal set-aside gives tribes the flexibility to develop a comprehensive strategy on how best to spend those resources. It would also create new possibilities for coordinating BIA and DOJ funding to reduce inefficiencies and unnecessary administrative costs.

- *Create a 5 percent set-aside for tribal governments from Crime Victims Fund disbursements.*

The Victims of Crime Act (VOCA) is the largest source of federal funding for crime victims. Currently, the Crime Victims Fund (CVF) contains more than \$12 billion collected as fines and penalties in federal criminal cases. In FY 2015, distributions from the Crime Victims Fund were increased more than three times to over \$2.3 billion. In FY 2016 2017, distributions increased again to more than \$3 billion. Despite having the highest rates of crime victimization in the country, none of these funds are directed to tribal governments. Instead, tribal governments are forced to rely on pass-through funding from the states. Over the past five years, states have passed-through less than 0.5 percent of available funds. NCAI recommends that 5 percent of CVF distributions should be directed to tribal governments in order to ensure that tribal crime victims are able to access victim services and victim compensation.

- *If Congress declines to adopt the flexible 10 percent set-aside across OJP programs, restore FY 2010 levels of \$25 million in funding for the Tribal Youth Program under the Juvenile Accountability Block Grants program.*

Although American Indian and Alaska Native children comprise only 2.2 percent of the overall youth population, they are arrested at a rate of more than two-to-three times that of other ethnic groups. According to a recent DOJ report, “[s]ubstance abuse, depression, and gang involvement fuel a vast majority of the offenses for which American Indian juveniles are disproportionately confined.” Currently, there is very little financial support for tribal youth programs, justice systems, and prevention programs. The Tribal Youth Program is the only program through which tribal governments regularly receive juvenile justice funding. Funding for the Program has decreased significantly in recent years – for FY 2016 it was \$10 million – and should be restored to its FY 2010 level of \$25 million.

- *Provide funding for the Tribal Civil and Criminal Legal Assistance, Training, and Technical Assistance (TCCLA) grant program at a level of \$2 million.*

The Indian Tribal Justice Technical and Legal Assistance Act of 2000 (Public Law 106-559) authorized the Department of Justice (DOJ) to award grants to non-profit entities which provide legal assistance services pursuant to federal poverty guidelines to offer civil and criminal legal assistance to both tribal governments and their justice systems, and to individual indigent tribal citizens. Among these entities are the Indian Legal Services programs connected with the Legal Services Corporation (LSC). In FY 2010, DOJ established the Tribal Civil and Criminal Legal Assistance, Training, and Technical Assistance (TCCLA) grant program. TCCLA has always been funded separately from DOJ’s Consolidated Tribal Assistance Solicitation (CTAS) program using a portion of the overall amount of funding Congress appropriates for assistance to Indian tribes through DOJ.

Over the past eight years, many of the 24 Indian Legal Services programs that operate in 23 states have shared in funding awarded under TCCLA to provide civil and criminal legal assistance to thousands of Native American clients, including juveniles, who meet the required federal poverty guidelines, as well as to assist more than 160 tribal governments and/or tribal judicial systems. These programs are an integral part of the legal structure of the tribal communities they serve, with attorneys well-versed in the uniqueness and complexities of Indian law, specialized legal practitioners, and familiar with arguing cases in tribal court. In at least 46 tribal courts, these programs provide the only public defender service available.

In FY17 the appropriations language for the tribal funding at OJP changed from “assistance to Indian tribes” to “tribal criminal justice assistance.” DOJ has interpreted the bill language to limit FY 2017 funding for tribal assistance to criminal justice assistance, only. As a result, an FY 2017 funding award to Indian Legal Services is not being used for programs’ assistance in civil work with tribes and tribal citizens. Examples of such tribal civil justice assistance work done under prior years’ TCCLA awards include revisions to civil codes, policies and procedures; representation of individuals in tribal courts in family law, probate, employment, disability benefits claims, public housing, property disputes, debt collection, child welfare and juvenile delinquency matters; and guardian ad litem work in high conflict custody, guardianship, and parental termination cases. Language in the FY19 appropriations bill should be clear that funds can be used for civil legal assistance.

#### OFFICE OF COMMUNITY ORIENTED POLICING SERVICES

- *Increase funding of tribal law enforcement programs under the Department of Justice’s Community Oriented Policing Services (COPS) Grants to \$52 million.*

Since the creation of the COPS Office under the Violent Crime Control and Law Enforcement Act of 1994, the COPS Office has awarded over 2,000 grants totaling more than \$400 million to tribal nations to hire more than 1,700 new or redeployed law enforcement officers. It has also helped tribes to obtain necessary law enforcement training, equipment, vehicles, and technology. Through its Tribal Resources Grant Program and Tribal Methamphetamine Program and historical programs and funding initiatives such as the Tribal Hiring Renewal Grant Program (THRGP), Tribal Mental Health and Community Safety Initiative, and the Tribal Court Pilot Program, the COPS Office has taken a proactive approach toward addressing the needs of tribal nations and has become one of the primary resources available to tribal law enforcement agencies attempting to develop and maintain a fundamental policing infrastructure and upgrade outdated equipment. Yet, there is still a tremendous unmet need within tribal justice systems for more COPS funding.

The COPS Office has acknowledged that due to limited resources, it has not been able to adequately fund tribal justice systems, particularly in the area of hiring and retaining tribal law enforcement officers. In a report released in December 2010, the COPS Office described its practice of intermittent funding as “problematic,” especially “when referring to hiring of officers.” Hiring more tribal police officers should be a top priority for reasons of public safety. Indian Country urges Congress to significantly increase funding for tribal law enforcement programs under the COPS program.

## DEPARTMENT OF JUSTICE

### Commerce, Justice, Science Appropriations Bill

#### Office on Violence Against Women

- *Fully fund the programs authorized in the Violence Against Women Act (VAWA), including the \$5 million authorized for tribal implementation of VAWA special domestic violence criminal jurisdiction.*

It is estimated that over 85% of American Indians and Alaska Natives will experience intimate partner violence, stalking, or sexual violence in their lifetime.<sup>24</sup> This violence threatens the lives of Native women and children and the future of American Indian tribes and Alaska Native villages.

OVW provides funding to tribal governments to address violence against women in their communities. OVW's largest source of funding for tribal governments is the Grants to Tribal Governments Program, which is funded via statutory allocations from other OVW programs. Fully-funding these OVW programs results in full funding for the Grants to Tribal Governments Program.

In 2013, Congress passed the Violence Against Women Reauthorization Act (VAWA 2013), which recognizes and affirms the inherent sovereign authority of Indian tribes to exercise Special Domestic Violence Criminal Jurisdiction (SDVCJ) over all persons – Indian and non-Indian – who commit crimes of dating violence, domestic violence, and violations of protection orders within Indian country. The bill authorized \$5 million for tribes to implement the new VAWA provisions and otherwise strengthen tribal justice systems. In FY 2017, \$4 million was appropriated for these purposes.

Tribal justice systems need additional resources to exercise this jurisdictional authority.

- *Continue to fund the Indian Country Sexual Assault Clearinghouse at \$500,000.*

The Office on Violence Against Women has funded a national clearinghouse on the sexual assault of Native women, which provides a place where tribes can request free on-site training and technical assistance on a host of sexual assault-related topics, including development of tribal sexual assault and domestic violence codes, sexual assault forensic evidence collection training, and more. This clearinghouse is an important resource for tribes, law enforcement officials, medical professionals, and victim advocates and should continue to be funded.