



The Pawnee Nation Police department was established in the early 1980's and receives operational funding from the Bureau of Indian Affairs. Photo credit: Flickr.com/badge764

Public Safety & Justice

The bi-partisan Indian Law and Order Commission (ILOC) recently released its report to Congress and the President emphasizing that “[n]ow is the time to eliminate the public safety gap that threatens so much of Native America.”⁶ The public safety problems that continue to plague tribal communities are the result of decades of gross underfunding for tribal criminal justice systems; a uniquely complex jurisdictional scheme; and the historic, abject failure by the federal government to fulfill its public safety obligations on American Indian and Alaska Native lands. Residents and visitors on tribal lands deserve the safety and security that is taken for granted outside of Indian Country. The time is now to remedy the disparities.

Congress has taken historic steps in recent years with the passage of the Tribal Law and Order Act in 2010 and the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), both of which begin to address some of the structural barriers to public safety in tribal communities. For the promise of these laws to be fully realized, however, these laws must be fully implemented, which requires sufficient resources for tribal justice systems and ongoing coordination and consultation between various federal agencies and tribal governments. The Department of Justice recognized this reality in its recently issued Proposed Statement of Principles. The Proposed Statement articulates DOJ’s belief that stable funding at sufficient levels for essential tribal justice functions is critical to the long-term growth of tribal institutions.⁷

Increased and targeted funding in the following program areas will have a huge impact on safety in tribal communities for tribal citizens, residents, and visitors to tribal lands.

Residents and visitors on tribal lands deserve the safety and security that is taken for granted outside of Indian Country.

This would also help foster economic development on tribal lands and improve the quality of life in immeasurable ways. The following budget recommendations also ensure that tribal law enforcement officers, emergency responders, and justice personnel are able to find work in the communities that need their services the most. As the federal government balances the national budget, it must also pledge to honor its distinct legal, treaty, and trust obligations to assist tribal nations in providing public safety to their citizens.

Highly-functioning criminal justice systems and basic, on-the-ground police protection are fundamental priorities of any government; tribal governments are no different.

As the ILOC asserts, “[h]ow we choose to deal with the current public safety crisis in Native America—a crisis largely of the Federal government’s own making over more than a century of failed laws and policies—can set our generation apart from the legacy that remains one of [the] great unfinished challenges of the Civil Rights Movement.⁸ Lives are at stake, and there is no time to waste.”⁹

Key Recommendations

Shared Responsibility:

DEPARTMENTS OF THE INTERIOR, JUSTICE, AND HEALTH AND HUMAN SERVICES

Interior – Environment; Commerce, Justice, Science; and Labor, HHS Appropriations Bills

Tribal Law & Order Act

- *Fully fund each provision of the TLOA that authorizes additional funding for law and order programs that affect tribal nations, both for FY 2015 and future years.*

The Tribal Law & Order Act (TLOA) takes a much-needed, comprehensive approach to improving public safety on Indian reservations and reforming the entire justice system in Indian Country—from prevention, to law enforcement, to courts, to detention, and rehabilitation. However, the TLOA has yet to receive the appropriations required to meet its goals. The ILOC report highlights these inadequacies. Critical investments in tribal justice systems must be made immediately. The safety of American Indians and Alaska Natives depends upon it.

DEPARTMENT OF THE INTERIOR

Interior - Environment Appropriations Bill

- *Allocate additional funding to the Bureau of Indian Affairs to increase base funding for tribal courts and to finally fund the Indian Tribal Justice Act at \$50 million.*

The highest priority with regard to Bureau of Indian Affairs funding in the area of law enforcement is to increase base funding for tribal courts and to fund the Indian Tribal Justice Act. It is well-documented by the US Commission on Civil Rights and the American Bar Association that tribal courts have been historically underfunded by the federal government and that this underfunding negatively impacts their law enforcement operations.

Although there have been federal grants – particularly through the US Department of Justice (DOJ) – to address discrete justice and safety concerns, those grants are time-limited and do not support the ongoing and daily operating needs of tribal courts. 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. Despite numerous congressional reauthorizations of the Act over the past couple of decades – most recently through FY 2015 in TLOA – not one penny has been appropriated to implement the Act. VAWA 2013 adds even more costs to the operating needs of tribal courts. The promise of this much-needed base funding must be fulfilled.

Further, the method by which BIA supplemental court funding is distributed is seriously flawed and needs to be overhauled. Currently, in order to obtain necessary additional operating funds, a tribal court must undergo – and fail – a court evaluation. This deters tribes from seeking additional funding because first they must be assessed as being sub-standard; and when this information becomes public, it undermines the reputation and credibility of the tribal court. In addition, the innovative tribal courts that achieve success with pilot programs are unable to obtain funding to continue the programs or to allow for replication as best practices by other tribal nations. A confidential evaluation process and award system that allow for under-functioning courts to receive additional funding and also support successful pilot programs should be developed and implemented.

- *Increase funding for Bureau of Indian Affairs (BIA) law enforcement by at least \$50 million over the FY 2010 funding level of \$328 million, including an increase in funds for officer recruitment and training and for tribal detention facilities operations and maintenance.*

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 conducted an analysis of law enforcement staffing in Indian Country in 2006 and found that Indian Country has 2,555 law enforcement officers, yet needs a total of 4,409, resulting in a gap of 1,854 officers, or a 42 percent unmet staffing need.¹⁰ According to the DOJ's Bureau of Justice Statistics, the police-to-citizen ratio nationwide is 367 full-time employees per 100,000 residents.¹¹ By comparison, virtually no tribal police department has more than two officers per 1,000 residents—almost half the national police-to-citizen ratio.¹² To put this in perspective, Indian Country law enforcement officers patrol approximately two percent of the landmass of the United States and assist one percent of the population, but represent less than 0.004 percent of the total of 675,734 state, city, and county law enforcement officers in the United States.¹³

- *Allocate additional resources to the BIA to enable it to expand its Safe Indian Communities Initiative to include at least four additional tribes.*

In 2009, the Secretary of the Interior and the Assistant Secretary-Indian Affairs established a High Priority Performance Goal (HPPG) to reduce violent crime by five percent on four targeted reservations over a two-year period. To do so, the Department of the Interior instituted a highly-effective community policing strategy known as the Safe Indian Communities Initiative. Since its inception, there has been a 35 percent overall reduction in violent crime across the four targeted tribal communities, far exceeding the initiative's goal. The Safe Indian Communities Initiative achieved a 68 percent decrease in violent crime at the Mescalero Reservation in New Mexico, a 40 percent reduction at Rocky Boy's in Montana, and a 27 percent reduction in violent crime at Standing Rock in North and South Dakota.

During the 2011 White House Tribal Nations Summit, Interior Secretary Ken Salazar stated that his Department is “committed to building on that progress and will be expanding the Safe Indian Communities Initiative to other reservations that are experiencing high levels of violent crime.” The successful program is now being expanded to two additional reservations: the Rosebud Sioux Reservation in South Dakota and the San Carlos Apache Reservation in Arizona. The BIA also developed a comprehensive handbook, *Crime-Reduction Best Practices Handbook: Making Indian Communities Safe 2012*, which is a collection of best practices identified through the Initiative that is intended to serve as a guide for law enforcement entities operating on tribal lands. While the handbook is a very useful tool, increased BIA appropriations are necessary to ensure that the success of the Initiative continues. Indian tribes would like to see the Initiative expanded further to reach additional tribes. The Safe Indian Communities Initiative has been a proven success, and these are the types of efforts that can make a real difference on the ground, provided there is funding available to pursue them.

DEPARTMENT OF JUSTICE

Commerce, Justice, Science Appropriations Bill

Tribal Grants

- *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 biggest issues with DOJ funding is that it is competitive funding for whatever issue DOJ deems the priority at that particular moment (which changes frequently). In order to obtain this funding, tribes – on behalf of their tribal courts – must compete against each other under DOJ’s priorities and guidelines. In the end, the tribes that have the financial and human resources to employ experienced grant writers end up receiving funding, while the under-resourced tribes are left without.

The approach instead should be to utilize Justice Department appropriations as base funding where tribes are encouraged to determine their own priorities. DOJ posed the idea of base funding in the form of a block grant at the most recent Office on Violence Against Women (OVW) tribal consultation. While this is a welcome step in the right direction, tribal governments should be afforded base funding from DOJ appropriations across the board, and not limited to solely the OVW.

- *Create a seven percent tribal set-aside from funding for all discretionary Office of Justice Programs (OJP) programs, ensure that those funds are allocated as flexible base funding, and see that each formerly separate program area receives funding at or above the FY 2010 funding level of \$50 million, including tribal courts and jails construction, legal assistance, juvenile delinquency prevention, and substance abuse prevention.*

Through passage of the Consolidated and Further Continuing Appropriations Act for FY 2012, Congress removed the proposed seven percent tribal set-aside of funding from discretionary Office of Justice Programs (OJP) programs – which had previously garnered support by both the House and Senate CJS Appropriations Subcommittees – and drastically cut funding for tribal justice programs across the board. Funding for tribal law enforcement assistance within OJP was reduced to only \$38 million—representing a \$12 million cut from the actual FY 2011 amount and a mere fraction of the \$100 million proposed by the Senate for FY 2011. The Community Oriented Policing Services (COPS) Tribal Resources Grant Program and the Tribal Youth Program also experienced very large cuts.

Congress should adopt the seven percent tribal set-aside in OJP funding and, at a minimum, restore funding levels for DOJ tribal justice programs to their FY 2010 level of \$50 million. Tribal nations are in a unique place right now, where Congress has opened the door to new possibilities through passage of the comprehensive TLOA, but they lack the resources necessary to make huge strides in providing public safety on the reservation. We urge Congress to act now to restore funding for DOJ tribal justice programs.

In particular, the seven percent tribal set-aside of OJP programs is extremely important to tribes, because it would allow for a more flexible funding structure, and because it complements the Department of Justice's Coordinated Tribal Assistance Solicitation (CTAS). CTAS attempts to streamline the grant application process for tribes, enabling them to submit a single application and select multiple purpose areas, as opposed to previous years in which they were required to submit multiple grant applications. However, this streamlined application model will not achieve its intended success unless and until it is accompanied by a streamlined funding mechanism.

A seven percent OJP tribal set-aside would not commit new funds to Indian Country; rather, it 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 detailed strategy on how best to spend those resources.

- *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.¹⁴ 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/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."¹⁵ 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.

- *Reauthorize tribal funding under the Juvenile Justice and Delinquency Prevention Act (JJDP) and restore FY 2010 levels of \$25 million in funding for the Tribal Youth Program under the Juvenile Accountability Block Grants program in an effort to strengthen tribal juvenile justice systems and hold tribal youth accountable.*

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.¹⁶ 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.”¹⁷ Currently, there is very little financial support for tribal youth programs, justice systems, and prevention programs. Historically, the Juvenile Justice and Delinquency Prevention Act (JJDP A) has been the only source of non-detention funding for youth and although the Act has its limitations, such as not recognizing tribes as directly eligible for most of its grants and providing non-existent or insufficient tribal set-asides, it is still an important funding stream for tribes. The JJDP A should be reauthorized, with funding for the Tribal Youth Program restored to its FY 2010 level of \$25 million.

- *Increase funding for Part D of the JJDP A – Research, Evaluation, Technical Assistance, and Training (42 U.S.C. §5661 et seq.) – and amend the Act to include a corresponding tribal set-aside to ensure that at least a portion of appropriated funds are required to be spent on projects centered on tribal youth.*

Tribes need access to accurate data in order to know the nature, magnitude, and pervasiveness of the problems facing juveniles in their communities. These data are critical to developing effective strategies to address those problems. A comprehensive nationwide study is needed to collect data on Native youth in the justice system, compiling information like the percentage of Native youth in the justice system, whether their educational and cultural needs are being met, and the number of those who have disabilities. Funds could also be used to implement better testing and early intervention procedures for Native children to ensure that problems are being acknowledged and addressed before being manifested in the form of delinquent or criminal behavior.

- *Continue to fully fund the 28 new Indian Country Assistant United States Attorney positions that have been created over the past several years, as well as the six new FBI agents hired to work on Indian Country investigations.*

Due to the geographical remoteness of many Indian reservations, international drug trafficking organizations target these lands to smuggle, produce, and/or cultivate illicit drugs. These activities bring corruption, violence, drug abuse, sex trafficking, and gang activity into tribal communities and place American Indians and Alaska Natives at greater risk than they already were.

In the past, the problem has been compounded by the failure of the federal government to make public safety and crime fighting in tribal communities a priority. Given the complex jurisdictional status of tribal lands, a disproportionate number of Indian Country cases are investigated and prosecuted by federal law enforcement officials. The Department of Justice’s addition of 28 Assistant United States Attorneys and six FBI agents to work on Indian Country investigations and prosecutions over the past two years is encouraging. Tribal leaders urge continued funding for these new positions and are hopeful that these additions will make the federal justice system more responsive to the needs of tribal nations.

DEPARTMENT OF JUSTICE

Commerce, Justice, Science Appropriations Bill

Office on Violence Against Women - Violence Against Native Women

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

It is estimated that one in three Indian women will be raped and that six in ten will be physically assaulted in their lifetimes.¹⁸ This violence threatens the lives of Native women and the future of American Indian tribes and Alaska Native villages. No area of need is more pressing or compelling than the plight of American Indian and Alaska Native women and children fleeing physical and sexual violence.

On March 7, 2013, President Obama signed into law 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.

Tribal justice systems are going to need additional resources to exercise this new jurisdictional authority and VAWA funding streams are going to be critical to the success of their efforts.

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

The Office on Violence Against Women is in the process of establishing a national clearinghouse on the sexual assault of Native women, which will provide 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. If fully funded, this clearinghouse has the potential to be a tremendous resource for tribes, law enforcement officials, medical professionals, and victim advocates.

DEPARTMENT OF JUSTICE

Commerce, Justice, Science Appropriations Bill

Tribal Civil and Criminal Legal Assistance Training and Technical Assistance Grant Program

- *Maintain funding within the Department of Justice's State and Local Law Enforcement Assistance account, which funds assistance to Indian tribes – either as an overall sum or as a tribal set-aside of a percentage of DOJ funding – for the Bureau of Justice Assistance's Tribal Civil and Criminal Legal Assistance, Training and Technical Assistance (TCCLA) grant program at the level of approximately \$3 million provided in recent years.*

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 to provide civil and criminal legal assistance and training and technical assistance.

For the past four years, the 25 Indian Legal Services programs connected with the Legal Services Corporation (LSC) are among the non-profit entities which have been awarded funding from the Bureau of Justice Assistance under the Tribal Civil and Criminal Legal Assistance, Training and Technical Assistance (TCCLA) grant program. Most recently, in FY 2013, the Indian Legal Services programs were awarded just over \$1.2 million in both a tribal civil legal assistance and a tribal criminal legal assistance award.

Operating in 23 states, these Indian Legal Services programs annually provide both civil and criminal legal representation in tribal courts to hundreds of Native American clients, including juveniles, who meet federal poverty guidelines. Legal work encompasses a broad array of cases, including domestic violence, *pro se* assistance, disability benefits claims, family member prisoner visitation and re-entry, child welfare, guardianship and adoption, and employment and home foreclosure assistance.

In addition to individual representation, the Indian Legal Services programs are currently assisting more than 160 tribes and/or tribal judicial systems in such activities as tribal court development and improvement, development of tribal dispute resolution and peacemaker/mediation systems, drafting of civil and criminal codes and rules of procedure and other structural development for court implementation, and training of tribal court and justice systems personnel and tribal court lay advocates and guardians *ad litem*. The programs' work with tribal justice systems is particularly important given added responsibilities from the enactment of the Tribal Law and Order Act and the Violence Against Women Reauthorization Act of 2013.