



PUBLIC SAFETY & JUSTICE

In 2013, the bi-partisan Indian Law and Order Commission (ILOC) released its report to Congress and the President concluding that “[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. Lives are at stake, and there is no time to waste.” 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 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.

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) to 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, they must be fully implemented. Implementation cannot occur without sufficient resources for tribal justice systems.

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

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 2018 and future years.
- Extend the Bureau of Prisons Pilot Project for Violent Offenders.

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 Bureau of Prisons Pilot should be extended as a successful model for handling violent offenders. The safety of American Indians and Alaska Natives depends upon it.

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 Bureau of Indian Affairs funding in the area of public safety is to increase base funding for tribal courts. It is well-documented that tribal courts have been historically underfunded by the federal government, and that this underfunding negatively impacts their law enforcement operations.⁴⁷ In September 2015, the Bureau of Indian Affairs submitted a report to Congress that revealed that the BIA is funding most tribal courts at a dismal six percent of estimated need.⁴⁸ The BIA estimates that full funding for tribal courts would cost \$1 billion. For tribal courts operating in PL 280 jurisdictions, funding has been even lower. BIA estimates that for tribes in mandatory PL 280 jurisdictions to achieve funding parity with other tribes at the current 6 percent level, it would cost an additional \$16.9 million noting that “while \$16.9 million would not be widely viewed as robust or perhaps even adequate, it would match existing levels of funding in non-PL 280 states, which reflect a constrained fiscal environment.”

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 2016 funding level of \$348 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.

The 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 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.⁴⁹ 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 for whatever issue DOJ deems the priority. 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, 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 countless stories of successful programs disappearing at the end of a two- or three-year grant cycle.

The approach instead should be to utilize Justice Department appropriations as base funding where tribes are encouraged to determine their own priorities. The Senate has endorsed a seven percent tribal set-aside across Office of Justice Programs (OJP) programs for the past several years. While this would be a welcome step in the right direction, the set-aside should also include DOJ grant funding outside of OJP and should be allocated as flexible base funding. All of our specific recommendations below should be folded into the new flexible base funding model.

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.*

In recent years, Congress has significantly cut funding for many of DOJ’s tribal justice programs. The Tribal Youth Program, for example, has decreased from \$25 million to \$10 million.

In its November 2014 report, the Attorney General’s Advisory Committee on American Indian/Alaska Native Children Exposed to Violence urged Congress to adopt a baseline 10 percent set-aside from across OJP programs in order for tribal justice systems to adequately implement programs impacting children exposed to violence.

A set-aside across OJP programs, an idea which has been endorsed by both the House and Senate Appropriations Committees in the past but never enacted, would restore funding levels for DOJ tribal justice programs to a more appropriate level. The 10 percent tribal set-aside of OJP programs is particularly important because it would allow for a more flexible funding structure. 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 will not achieve its intended success unless and 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 detailed strategy on how best to spend those resources.

- *Create a 5 percent set-aside for tribal governments from distributions out of the Crime Victims Fund.*

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, 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, create a 10 percent tribal set-aside for Title II delinquency prevention block grants.*

Tribal youth offenders have been shown to have better outcomes when they receive culturally- and community-based, targeted preventative and rehabilitative services. However, when taking into account the reality that tribal juvenile justice systems face greater challenges in serving their youth populations than many non-tribal juvenile justice systems, they continue to be drastically underfunded and thus limited in their abilities to creatively shape better outcomes for their communities.

By far the greatest share of funding under the Juvenile Justice and Delinquency Prevention Act (JJDP A) is distributed to states as a block grant. States receive a minimum of \$600,000, and some receive up to \$7.5 million in formula funds, depending on populations, which includes tribal communities. The Act requires that funds be allocated among the states according to population and that all eligible tribes are to be treated collectively as one state, with funding to this “51st state” determined based on population relative to the other states and allocated through a competitive grant process. In practice, this would result in a tribal set-aside of less than one percent of all appropriated funds.

Further, the Title II grant program was initially funded at \$126 million in FY 2003, but has not received funding since that time. Instead, Congress has continued to appropriate money for specific, targeted grant programs. This is particularly troubling as the block grant program is the only JJDP A funding stream with a mandatory tribal set-aside.

This model is unworkable for tribal communities, many of which lack administrative resources to compete in the grant process every two years and face the realities of high juvenile offender populations, underfunded justice systems, and rural locations. Because of this disproportionate need in Indian Country, NCAI encourages Congress, using the model of the Violence Against Women Act, to create a 10 percent set-aside for tribal juvenile justice programs.

- *If Congress declines to adopt the flexible 10 percent set-aside across OJP programs, create a 10 percent tribal set-aside for Title V incentive grants for local delinquency prevention programs.*

Title V of the JJDP A authorizes funds to encourage collaborative and community-based delinquency prevention services, such as alcohol and substance abuse, mental health tutoring, recreation and job training. The funds are divided equally among states, with each state determining how to apportion funds among units of local government. In FY 2007, each state received \$75,000. Tribes are eligible to apply to the state for funding as a “unit of local government,” but states are not required to allocate any funding to tribes. Tribes must be able to access these preventative services, as the Attorney General Advisory Committee found that the widespread incarceration of tribal youth results in “another infliction of violence” on children who have already experienced a great deal of trauma.

- *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 \$3 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 such as the Indian Legal Services programs connected with the Legal Services Corporation (LSC) to provide civil and criminal legal assistance to both tribal governments and their justice systems and to individual indigent tribal citizens. The Tribal Civil and Criminal Legal Assistance, Training, and Technical Assistance (TCCLA) grant program is funded separately from DOJ’s Consolidated Tribal Assistance Solicitation (CTAS) program.

Over the past seven years, many of the 24 Indian Legal Services programs connected with the Legal Services Corporation that operate in 23 states have shared in funding awarded under the Tribal Civil and Criminal Legal Assistance, Training and Technical Assistance grants program. In FY 2016, DOJ’s Bureau of Justice Assistance awarded the National Association of Indian Legal Services a total of \$1.2 million 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.

In many instances, these Indian Legal Services programs and their attorneys have been “on the ground,” serving reservation and Alaska Native communities for decades, and are an integral part of the legal structure of the tribal communities they serve. The attorneys are well-versed in the uniqueness and complexities of Indian law, are specialized legal practitioners, and are familiar with arguing cases in tribal court. They provide the only public defender service available in at least 46 tribal courts.

These Indian Legal Services programs, through both individual representation and assistance to tribal judicial systems, work to insure a sound legal infrastructure that provides the assurances of solid law and codes and legal representation to individual tribal members, non-Indians who do business, attend school, collaborate with tribal enterprises and live in these tribal communities, and the tribal governments which operate a host of programs and services to all the residents of their homelands.

These Indian Legal Services programs also assist tribal governments and their justice systems in being grounded in solid codes and laws and training. This work now includes such assistance as tribal court development, restructuring and improvement; development of tribal dispute resolution and peacemaker/mediation systems; drafting of civil and criminal codes, including children’s codes and toward implementation of the Tribal Law and Order Act and Violence Against Women Reauthorization of 2013; drafting of policies and rules of procedure; and training of law enforcement and tribal court and justice systems personnel, guardians ad litem, and locally-based, culturally-integrated lay tribal court advocates (this last done with tribal colleges and university law schools).

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 percent of American Indians and Alaska Natives will experience intimate partner violence, stalking, or sexual violence in their lifetime.⁵⁰ 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.

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. In FY 2016, \$2.5 million was appropriated for these purposes for the first time.

Tribal justice systems require 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.