



A member of the Salt River Pima Maricopa police force joins in celebrating the passage of the Tribal Law and Order Act—considered a bipartisan victory in 2010.

Credit: National Congress of American Indians.

PUBLIC SAFETY AND JUSTICE

Although they have taken various forms, the public safety problems that plague tribal communities are not new. They are the result of decades of gross underfunding for tribal criminal justice systems, a painfully complex jurisdictional scheme, and a centuries-old failure by the federal government to fulfill its public safety obligations on American Indian and Alaska Native lands. In recent years, tribal leaders from across the nation have highlighted the shortcomings in the current justice system in numerous formal consultations, informal dialogues, conference calls, meetings, and Congressional hearings surrounding issues of public safety and justice in Indian Country. At every turn, they have emphasized that the current lack of resources for law enforcement on tribal lands poses a direct threat to Native citizens and the future of Indian Country. However, these words seem to have fallen on deaf ears. Even the 2010 passage of the Tribal Law & Order Act (TLOA) has not prompted Congress to invest more money in public safety on reservations. In fact, in the recently passed FY 2012 Consolidated and Further Continuing Appropriations Act, making appropriations for Agriculture, Commerce, Justice, Science (CJS) and Transportation-Housing and Urban Development, lawmakers not only removed the proposed 7 percent tribal set-aside from discretionary Office of Justice Programs (OJP) programs—which has previously been supported by both the House and Senate CJS Committees—but they slashed funding for tribal justice programs across the board. This is unfortunate and unacceptable.

Congress claims that improving the economy is its number one priority right now. It claims that decreased unemployment levels and increased economic development are truly the answer to our nation's problems. As such, we urge Congress to recognize that public safety in tribal communities is economic development.

Law enforcement infrastructure and basic police protection on tribal lands are not optional; they are not trivial; and they are not up for debate. They are a fundamental function of government, and if they are not provided at the highest quality, no one will be willing to invest in tribal economies. Tribes have some of the most valuable resources in the nation—natural and human—and tribal lands are prime locations for new business ventures and economic development. Yet, issues of perceived safety on the reservation continue to hinder successful growth of tribal economies. Increased and targeted funding in the following program areas will not only have a huge impact on safety in tribal communities, it will help attract new business to tribal lands and will ensure that tribal law enforcement officers, emergency responders, and justice personnel are able to find work in the communities that most need their services. In the current climate, the economic implications of failing to keep tribal communities safe are too great to ignore. Now is the time for the federal government to finally live up to its distinct legal, treaty, and trust obligations to provide adequate funding for law enforcement infrastructure in tribal communities.

Key Recommendations

Shared Responsibility:

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

Commerce, Justice, Science; Labor, Health and Human Services; and Interior-Environment Appropriations Bills

Tribal Law & Order Act

- Fully fund all of the provisions of the Tribal Law & Order Act of 2010 that authorize additional funding for law and order programs that affect Indian tribes, both for FY 2013 and for the future.

American Indian and Alaska Native tribes commend President Obama for signing the Tribal Law & Order Act (TLOA) into law on July 29, 2010. This new law takes a 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. The passage of the TLOA created momentum for improving law enforcement on Indian reservations, but this effort cannot succeed without effective implementation and adequate funding. Partial funding for the TLOA-authorized programs is unacceptable.

The investment in tribal justice systems must be substantial, and it must be now.

The safety of American Indians and Alaska Natives depends upon it.

DEPARTMENT OF THE INTERIOR

Interior-Environment Appropriations Bill

Law Enforcement

- Increase funding for Bureau of Indian Affairs (BIA) law enforcement by at least \$30 million over FY 2010 funding levels, 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 land that comprise Indian Country. 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.⁶ According to the Department of Justice's Bureau of Justice Statistics, the police-to-citizen ratio nationwide is 367 full-time employees per 100,000 residents.⁷ On the other hand, virtually no tribal police department has more than two officers per 1,000 residents—almost half the national police-to-citizen ratio. To put this in perspective, Indian Country law enforcement officers patrol approximately 2 percent of the landmass of the United States and 1 percent of the population, but only represent 0.004 percent of the total of 675,734 state, city, and county law enforcement officers in the United States.

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

During the White House Tribal Nations Leadership Conference in December 2011, 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. Indian Country would like to see it expanded even further—to reach even more tribes—and we would like to see Congress appropriate adequate funding to ensure the Initiative’s continued success. This Initiative has been a proven success, and these are the types of efforts that can make a real difference on the ground level, provided there is funding available to pursue them.

Last year, the Department of the Interior launched the Safe Indian Communities Initiative, a two-year program that included targeted community policing on four reservations, and the program has achieved successful and encouraging results. Since its inception, there has been a 35 percent overall decrease in violent crime across the four tribal communities. With an initial target of reducing violent crime by at least 5 percent, the initiative far exceeded this goal, achieving a 68 percent decrease in violent crime at the Mescalero Reservation in New Mexico, a 40 percent reduction at Rocky Boy in Montana, and a 27 percent reduction in violent crime at Standing Rock in North and South Dakota.

DEPARTMENT OF JUSTICE

Commerce, Justice, Science Appropriations Bill

Tribal Grants

- *Create a 7 percent tribal set-aside from all discretionary Office of Justice Programs (OJP) programs, while at the same time ensuring that those funds are allocated in an equitable manner and that each formerly separate program area receives funding at or above FY 2010 funding levels, including tribal courts and jails construction, legal assistance, juvenile delinquency prevention, and substance abuse prevention.*

Just recently, Congress passed the Consolidated and Further Continuing Appropriations Act for FY 2012 which not only removed the proposed 7 percent tribal set-aside from discretionary Office of Justice Programs (OJP) programs—which has previously been supported by both the House and Senate CJS Committees—but drastically cut funding for tribal justice programs across the board. Funding for tribal law enforcement assistance within OJP was decimated, receiving only \$38 million, a mere fraction of the \$100 million proposed by the Senate for FY 2011 and a \$12 million cut from the actual FY 2011 amount. The Community Oriented Policing Services (COPS) Tribal Resources Grant Program and the Tribal Youth Program also took very large cuts.

Tribes urge Congress to reinstitute the 7 percent tribal set-aside in OJP funding and, at a minimum, restore funding levels for DOJ tribal justice programs to their FY 2011 levels. Now is not the time to slash funding for tribal justice programs. We urge Congress to act now to restore funding for DOJ tribal justice programs.

The 7 percent tribal set-aside of OJP programs is particularly important to tribes, because it would provide a more flexible funding structure to tribes and would also complement the Department of Justice’s Coordinated Tribal Assistance Solicitation (CTAS).

CTAS attempts to streamline the 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 7 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 for things like tribal courts and jails construction, legal assistance, juvenile delinquency prevention, and substance abuse prevention, and give tribes the flexibility to develop a detailed strategy on how best to spend those funds. To ensure that those funds are allocated in an equitable manner and that no program area is overlooked, each formerly separate program area should receive funding at or above the FY 2011 funding level. For example, it is critical that the Bureau of Justice Assistance's Tribal Civil and Criminal Legal Assistance Grants, Training and Technical Assistance grant program receive at least the same amount as it did in FY 2011, under the flexible 7 percent structure. Tribes rely heavily on this program to ensure that their tribal justice systems function properly.

There are 25 Indian Legal Services programs connected with the Legal Services Corporation which operate in 23 states, annually providing both civil and criminal legal representation in tribal courts and to hundreds of Native American clients who meet federal poverty guidelines. In addition to individual representation, the Indian Legal Services programs are currently assisting more than 160 tribes and/or tribal judicial systems in activities such 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. In many instances, these Indian Legal Services programs have been "on the ground" for decades, a linchpin in the legal structure of reservation communities that helps keep citizens safe, helps attract business investments because tribal justice systems are grounded in solid codes and laws, and provides economic opportunities by training tribal citizens to work in the justice system. It is critical that these programs continue to receive funding, either through the OJP 7 percent tribal set-aside, or as a separate line item.

- *Increase funding of tribal law enforcement programs under the Department of Justice's Public Safety Partnership and Community Oriented Policing Services (COPS) Grants program by at least 30 percent over FY 2011 funding levels.*

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 communities 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.⁸ 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 dollars.

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 inadvertent practice of intermittent funding as "problematic," especially "when referring to hiring of officers" (p. 18).⁹ Hiring more tribal police officers should be a top priority for reasons of public safety and the resulting economic opportunity it promotes. 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 (JJDPDA) and restore FY 2010 levels of 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 other ethnic groups.¹⁰ According to a recent US Department of Justice report, “Substance abuse, depression, and gang involvement fuel a vast majority of the offenses for which American Indian juveniles are disproportionately confined” (p. 13).¹¹

Currently, there is very little financial support for tribal youth programs, justice systems, and prevention programs. Historically, the Juvenile Justice and Delinquency Prevention Act (JJDPDA) has been the only source of non-detention funding for youth and although the Act has its problems—it does not recognize tribes as directly eligible for most of its grant programs and provides non-existent or wholly insufficient tribal set-asides—it is still an important funding stream for tribes. The JJDPDA should be reauthorized, with funding for the Tribal Youth Program restored to its FY 2010 levels.

- *Increase funding for Part D of the JJDPDA—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 to know the nature, magnitude, and pervasiveness of the problems facing juveniles in their communities before they can effectively address those problems. A comprehensive nationwide study is needed to collect data on Native youth in the justice system, including 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 individuals 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 they manifest themselves 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 two years, as well as the six new FBI agents hired to work on Indian Country investigations.*

Given the geographical remoteness of many Indian reservations, they are a prime target for international drug trafficking organizations who increasingly exploit these lands not only to smuggle illicit drugs, but also to produce and cultivate them. These activities invite corruption, violence, drug abuse, sex trafficking, and gang activity into tribal communities and place American Indians and Alaska Natives—an already vulnerable population—at greater risk.

In the past, the problem has been compounded by the failure of the federal government to make addressing crime in tribal communities a priority. Given the complex jurisdictional status of crimes on 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 Native peoples.

DEPARTMENT OF JUSTICE

Commerce, Justice, Science Appropriations Bill

Office of Violence Against Women - Violence Against Native Women

- *Maintain the authorized level of funding for the tribal programs under the Violence Against Women Act (VAWA), including the grants to Indian Tribal Governments Program, which funds initiatives to combat domestic violence and sexual assault in Indian Country.*
- *Continue to fund the Indian Country Sexual Assault Clearinghouse at \$500,000 and provide \$500,000 for regional summits in Indian Country that would provide training on the prosecution of cases involving violence against Native women.*

Congress must not ignore the devastating impact that violence against women has on tribal communities. It is estimated that one in three Indian women will be raped and that six in ten will be physically assaulted in their lifetimes. This violence threatens the lives of Native women and the future of American Indian tribes and Alaska Native villages. Ending this historic pattern of violence requires that the federal government fulfill its trust responsibility to assist tribal governments in safeguarding the lives of their citizens. 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.

When Congress unanimously reauthorized the Violence Against Women Act in 2005, the Act included a new title specifically focused on enhancing the safety of Native women. This was a major step forward; however, now it is necessary for the current Congress and Administration to take the next step toward ending domestic violence and sexual violence by making sure that the tribal provisions of VAWA are adequately funded in FY 2013.

The Office of 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.

Additionally, we urge Congress to appropriate \$500,000—the amount appropriated in FY 2012—to DOJ to develop and sponsor regional summits regarding violence against women in Indian Country. These proposed summits would provide training on the investigation and prosecution of federal cases involving domestic violence, sexual assault, and stalking in Indian Country, and they would seek to enhance collaboration among all the different entities charged with improving the safety of Native women.

Adequate funding for VAWA programs will be especially critical if S. 1925, the Violence Against Women Reauthorization Act 2011, is enacted into law. This bill proposes to restore the authority of tribes to investigate and prosecute all persons—Indian or non-Indian—who commit crimes of dating violence, domestic violence, and violations of protection orders on the reservation. 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 their efforts.