

## *Public Safety and Justice*



The various 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 involving jurisdiction by the federal, state, and/or tribal governments, and a centuries-old failure by the federal government to fulfill its public safety obligations on Indian lands.

The Major Crimes Act, General Crimes Act, and other federal laws codify the duty of the federal government to investigate and prosecute most crimes committed on Indian lands, yet many reservations still suffer from severe and ongoing crime and violence. Indian reservations nationwide have violent crime rates that are more than 2.5 times the national rate. More than one in three American Indian and Alaska Native women will be raped in her lifetime, yet U.S. attorneys decline to prosecute approximately 50 percent of all Indian Country cases referred to them.<sup>iii</sup> Congress and the Department of Justice (DOJ) have acknowledged that meeting this responsibility includes empowering and funding tribal justice systems, which serve as the most appropriate forums for ensuring public safety and maintaining law and order at a local level.

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. They have emphasized that the current lack of resources for law enforcement on Indian lands poses a direct threat to Native citizens and the future of Indian Country.

The recent passage of the Tribal Law & Order Act (TLOA) is proof that their words have not fallen on deaf ears. Congress and the Obama Administration have heard the concerns of Indian people and attempted to address them in this new law. TLOA takes a comprehensive approach to empowering tribal and federal agencies responsible for investigating and prosecuting reservation crime. The Act provides tribes with additional tools to combat crime locally and allows for increased evidence sharing and federal declination data recording, access to national criminal history records, improved tribal court sentencing, and deputization of either federal or tribal agents as the situation requires. It also establishes, amends, and reauthorizes various programs and offices within DOJ and Bureau of Indian Affairs (BIA) – Office of Justice Services to support the criminal justice system on Indian lands.

TLOA will not meet its intended goals if the Act is not fully implemented. This requires adequate federal funding for TLOA-authorized programs, as well as full funding of other critical tribal justice programs that will support the overarching TLOA vision of comprehensive law enforcement reform. Increased and targeted funding in the following program areas will help combat the violent crime epidemic on Indian lands and strengthen tribal justice systems for future generations. Native Americans—like all Americans—deserve to live free of fear in their communities, where their basic rights are protected and they can trust the justice system that serves them.

### *Key Recommendations*

#### *Shared Responsibility:*

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

#### **Commerce, Justice, Science; Labor, Health and Human Services, Education; 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 FY2012 and for the future.

TLOA takes a comprehensive approach to improving public safety on Indian reservations and reforming the entire justice system in Indian Country—including prevention, law enforcement, courts, detention, and rehabilitation. Passage of TLOA creates momentum for improving law enforcement on Indian reservations, but this effort cannot succeed without effective implementation and adequate funding. Partial funding for TLOA-authorized programs is unacceptable. Investment in tribal justice systems must be substantial and must happen now. The safety of American Indians, Alaska Natives, and all Americans depends on it.



*Shared Responsibility:*

**DEPARTMENTS OF THE INTERIOR AND JUSTICE**

**Commerce, Justice, Science and Interior, Environment Appropriations Bills**

**Law Enforcement**

- Increase funding for BIA law enforcement by at least \$30 million over FY2010 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 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 Indian 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 but needs a total of 4,409, resulting in a gap of 1,854 officers, or a 42 percent unmet staffing need.<sup>iv</sup> According to the Bureau of Justice Statistics, the police-to-citizen ratio nationwide is 367 full-time employees per 100,000 residents.<sup>v</sup> Virtually no tribal police department has more than two officers per 1,000 residents—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.

The past year has seen commendable improvements, as the Interior Department has increased the number of police officer recruits by 500 percent. The department also recently launched an intense policing program on four reservations, a program it hopes to expand in the next year. These types of efforts can make a real difference on the ground level provided there is funding available to pursue them.

- Increase funding for the Federal Bureau of Investigation (FBI) Indian Country activities by at least \$20 million to provide at least 50 new FBI agents tasked with investigating violent crimes within Indian Country, as well as the forensic support for those investigations.
- Continue to fully fund the 33 new Indian Country Assistant United States Attorney positions created in FY2010.

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

The federal government's failure to make addressing crime in tribal communities a priority has compounded the problem. Given the complex jurisdictional scheme on Indian lands, a disproportionate



number of Indian Country cases are investigated and prosecuted by federal law enforcement officials. Funding for additional FBI agent positions, whose sole job would be to focus on investigating crimes on Indian reservations, would go a long way toward addressing both the perception and the reality of lawlessness that exist in some tribal communities. The BIA and DOJ Native American Issues Subcommittee has already indicated that adding more agents is a priority. This personnel enhancement would enable the FBI to be more proactive in its approach to addressing crime on reservations.

The DOJ's recent addition of 33 new Indian Country Assistant United States Attorney positions in response to tribal concerns about high prosecution declination rates in Indian Country is encouraging. Tribal leaders urge continued funding for these new positions and expect that these additions will make the federal justice system more responsive to the needs of Indian people.

## 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), 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 FY2010 funding levels, including tribal courts and jails construction, legal assistance, juvenile delinquency prevention, and substance abuse prevention.

The DOJ provides funding to state, local, and tribal governments to supplement their justice systems for a broad array of activities, ranging from courts to corrections to juvenile justice. DOJ holds specific legal obligations to provide for public safety on Indian lands through the various federal laws, treaties, and a general course of dealing with tribal governments. The U.S. Supreme Court acknowledged this obligation in *U.S. v. Kagama*.

DOJ funding levels to support tribal justice systems and improve reservation public safety have not met these solemn obligations. For example, FY2000 funding for tribal justice programs relating to courts, police hiring and equipment, jails, and juvenile justice was \$91.5 million. Funding levels for these programs from FY2001 to FY2009 was below, and at times far below, the FY2000 level, reaching a low of \$42 million in FY2006. Not until FY2010 did Congress appropriate funding above the FY2000 levels when it granted \$159 million for these critical justice programs.

For FY2010, the Department of Justice for the first time issued a single Coordinated Tribal Assistance Solicitation (CTAS) for 10 of its tribal grant programs. This new solicitation attempted to streamline the application process for tribes, enabling them to submit a single application and select multiple purpose areas (ranging from juvenile justice to violence against women), as opposed to previous years in which they would have been required to submit multiple grant applications. However, this streamlined application model would benefit from an accompanying streamlined funding mechanism.



To accomplish this goal, the president's FY2011 budget included a request for a 7 percent set-aside from all discretionary OJP for tribal criminal justice assistance. At press time, Congress had not yet made final decisions on FY2011 spending. NCAI urges Congress to grant this groundbreaking request that will provide systemic change and improvement to reverse decades of violence in Indian Country.

A 7 percent OJP tribal set-aside would not commit new funds to Indian Country; rather, it would streamline the federal funding process for tribal courts and jails construction, legal assistance, juvenile delinquency prevention, and substance abuse prevention. Tribes would have the flexibility to develop a detailed strategy to best meet the particular needs of the local tribal community. However, 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 FY2010 funding levels.

- Increase funding of tribal law enforcement programs under the Department of Justice's Community Oriented Policing Services (COPS) Grants program by at least 50 percent over the level proposed in the president's FY2011 budget request.

As noted above, fewer than 3,000 tribal and Bureau of Indian Affairs police officers patrol more than 50 million acres of Indian lands, less than half the force needed to adequately police Indian country. This personnel deficiency means that victims of violence have to wait hours and in many cases days before receiving a response to a distress call. These delays compromise crucial evidence collection and ultimately result in failure to provide justice to the victim and the community.

To address this concern, the DOJ Tribal COPS program provides funding to tribal governments to hire and train new police officers, train existing police forces, and purchase new equipment, technology, vehicles, and other necessary law enforcement tools. The Tribal COPS program 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.

## DEPARTMENT OF JUSTICE

### Commerce, Justice, Science Appropriations Bill

#### 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.
- Provide \$500,000 for a new Indian Country Sexual Assault Clearinghouse and \$500,000 for regional summits in Indian Country that would provide training on the prosecution of cases involving violence against Native women.





- Increase the amount of money set aside for Analysis and Research on Violence Against Indian Women from \$1 million to \$3 million.

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 out of 10 will be physically assaulted in their lifetimes. This violence threatens the lives of Indian 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 legal trust responsibility to support tribal governments in safeguarding their citizens' lives. No area of need is more pressing or compelling than the plight of 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. Now the current Administration must take the next step toward ending domestic violence and sexual violence by ensuring that the tribal provisions of VAWA are reauthorized and adequately funded in FY2012.

The Office of Violence Against Women is 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 an array 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 has the potential to be a tremendous resource for tribes, law enforcement officials, medical professionals, and victim advocates.

Additionally, the president's FY2011 budget requested \$500,000 for 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 entities charged with improving the safety of Indian women. This program should be fully funded in FY2012.

VAWA 2005 provided for a national baseline study on rates of violence against Indian women by the National Institute of Justice, as well as for a Center for Disease Control and Prevention study on the costs of injury to Indian women due to violence. Since that time, research progress has been made but a significant increase in funding is necessary to complete the studies and fulfill the goals of the statute. Appropriation of such funding is necessary in order to produce the educational tools necessary to guide the federal, state, tribal and local response to the epidemic of violence against women.

