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### THE TRIBAL LAW AND ORDER ACT OF 2009

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OCTOBER 29, 2009.—Ordered to be printed

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Mr. DORGAN, from the Committee on Indian Affairs,  
submitted the following

### R E P O R T

[To accompany S. 797]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 797), to amend the Indian Law Enforcement Reform Act, the Indian Tribal Justice Act, the Indian Tribal Justice Technical and Legal Assistance Act of 2000, and the Omnibus Crime Control and Safe Streets Act of 1968 to improve the prosecution of, and response to, crimes in Indian country, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

#### I. PURPOSE

The criminal justice system on Indian lands consists of a complex and often overlapping matrix of federal, tribal, and in certain circumstances, state jurisdiction. The complexity of this system has contributed to a crisis of violent crime on many Indian reservations<sup>1</sup> that has persisted for decades. Federal reports have consistently found that the divided system of justice in place on Indian reservations lacks coordination, accountability, and adequate and consistent funding. These shortfalls, the reports find, serve to fos-

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<sup>1</sup> The terms “Indian reservations”, “Indian country”, “Indian communities”, and “tribal communities” are used interchangeably throughout this Report to refer to the lands on which federally recognized Indian tribes reside. The term Indian country is a term used for purposes of federal criminal jurisdiction defined at 18 U.S.C. §1151. Nothing in S. 797 would alter the legal status or meaning of “Indian country” as that term is used in 18 U.S.C. §1151.

ter reservation violence and disrupt the peace and public safety of tribal communities.

For example, in 1975, the Ford Administration in its Report of the Task Force on Indian Matters acknowledged that “[l]aw enforcement on Indian reservations is in serious trouble.”<sup>2</sup> Regarding the system of justice, the Report found that the “chaotic” state of criminal jurisdiction was one “source of many of the law enforcement problems Indians face.”<sup>3</sup> With regard to resources, the Report found that “[m]ost Indian reservations receive totally inadequate police services given their size and extraordinary high rate of crime.”<sup>4</sup>

In 1997, the Clinton Administration’s Report of the Executive Committee for Indian Country Law Enforcement Improvements again acknowledged that “[t]here is a public safety crisis in Indian Country.”<sup>5</sup> The Executive Committee concluded that a substantial infusion of resources into Indian Country law enforcement was essential to addressing the crisis, and that the delivery of law enforcement services must be consolidated and improved.<sup>6</sup>

More than a decade after this latest report little has changed in either the makeup of the system of justice in place on Indian lands or the consistency of funding for the system.<sup>7</sup> Violent crime rates in Indian country are more than twice the national average, with violent crime rates exceeding 20 times the national average on some reservations. There is an epidemic of domestic and sexual violence in Indian country. Federal reports indicate that 34% of American Indian and Alaska Native women will be raped in their lifetimes, and 39% will suffer domestic violence. American Indian and Alaska Native youth experience 50% higher rates of child abuse compared to non-native youth.<sup>8</sup> Federal Bureau of Investigation agents and U.S. Attorneys have seen a proliferation of gang activity in Indian country.<sup>9</sup> The police presence in Indian country continues to lag far behind the rest of the nation, with an approximate

<sup>2</sup>Doris M. Meissner, U.S. Department of Justice, *Report of the Task Force on Indian Matters*, at 77 (Oct. 1975).

<sup>3</sup>*Id.* at 21.

<sup>4</sup>*Id.* at 77. *The Department of Justice Report was critical of the Government’s failures, noting “It is particularly embarrassing that the present problem exists in an area of primarily federal responsibility. This is not a situation where the federal government serves as a model for other law enforcement efforts.” Id.*

<sup>5</sup>The Report, submitted by officials of the Departments of Interior and Justice to the Secretary and Attorney General, can be found online at: <http://www.usdoj.gov/otj/icredact.htm>.

<sup>6</sup>The President’s FY 1999 Budget included, for the first time, direct funding for programs to improve tribal justice systems administered by the Department of Justice (DOJ). Programs included the Community Oriented Policing Services-Tribal Resources Grant Program, the Tribal Courts Assistance Project, the Tribal Jails Construction Program, and the Tribal Youth Program. *Department of Justice/Department of Interior Tribal Justice Initiatives: Hearing Before the Senate Comm. on Indian Affairs*, 105th Cong., at 58-62 (June 3, 1998) (statement of United States Attorney General Janet Reno). Congress provided \$84 million in funding for these DOJ programs in FY 1999.

<sup>7</sup>Funding for tribal justice programs at the Department of Justice reached a high of \$91.5 million in FY 2000, and steadily declined over the next decade, reaching a low of \$42 million in FY 2006.

<sup>8</sup>*Child Maltreatment*, U.S. Department of Health and Human Services, Administration for Children and Families, at 28 (2006) (American Indian and Alaska Native youth suffer rates of abuse at 15.9 per 1,000 children).

<sup>9</sup>*Prosecution of Serious Crime in Indian Country*, U.S. Department of Justice (June 2009) (“Previously, Native gangs were chiefly associated with crimes of graffiti and vandalism. However, Native gangs are now involved in more violent offenses like sexual assault, gang rapes, home invasions, drive-by shootings, beatings and elder abuse.”).

According to information the BIA provided to Committee staff, the Wind River Indian Reservation experienced 37 assaults by gang members using weapons such as guns, knives, or brass knuckles. In one 2007 incident, a gang member driving a van ran over an opposing gang member and later ran down a BIA police officer who was responding to the incident.

40% unmet need in staffing for police officers on Indian lands. The federal response to reservation crime remains fragmented and fails to meet the justice needs of tribal communities.

The Tribal Law and Order Act of 2009 will improve the efficiency and effectiveness of the justice system on Indian lands. The bill will increase the federal response to and accountability for reservation crime, encourage greater cooperation between tribal, federal, and state law enforcement agencies that have an obligation to maintain public safety on Indian lands, provide tribal justice officials with additional tools to better combat violent crime, reauthorize and improve federal programs that strengthen tribal justice systems, establish consistent data collection of Indian country crimes, and foster information sharing between tribal, state, and federal law enforcement agencies.<sup>10</sup>

## II. THE CRIMINAL JUSTICE SYSTEM ON INDIAN LANDS

The criminal justice system in place on Indian lands was established through a piecemeal series of federal laws and United States Supreme Court decisions enacted and handed down over the past 120 plus years. These laws and court decisions limit tribal government authority to combat reservation crime, and place significant responsibility to investigate and prosecute reservation crimes in the Federal Government and some state governments.<sup>11</sup> As a result, tribal governments have no criminal jurisdiction over reservation crimes committed by non-Indians,<sup>12</sup> and tribal court penal authority over Indians is limited to no more than one year imprisonment for any one offense.<sup>13</sup> The system thus forces tribal communities to rely on federal officials to investigate and prosecute all reservation crimes committed by non-Indians against Indian victims and most serious crimes committed by Indians.

In addition, these laws and court rulings have established a jurisdictional maze that requires police officers and courts to answer a series of questions before making decisions to arrest a suspect, investigate a crime, or bring a defendant to trial. Some common questions include:

- Did the crime occur in Indian country?
- Is the suspect or defendant Indian or non-Indian?
- Is the victim Indian or non-Indian?
- What type of crime is involved?

While these questions seem simple on the surface, the definition of the terms alone involves complex questions of fact and law. The

<sup>10</sup> While S. 797 seeks to improve the system of justice in place on Indian lands, the Committee acknowledges that the system continues to suffer a lack of consistent funding.

<sup>11</sup> The Indian Country Crimes Act, 18 U.S.C. § 1152, extends Federal criminal laws to Indian lands, with the exception of offenses committed by one Indian against another Indian. The Major Crimes Act provides for Federal court jurisdiction over offenses committed by Indians in Indian country, 18 U.S.C. § 1153. 18 U.S.C. § 1162, enacted in 1953 and commonly known as Public Law 280 (P.L. 83-280), delegated Federal authority over reservation crimes to six mandatory States.

Traditionally, Indian tribes provided for the public safety and security of their communities through customary enforcement mechanisms, such as the leadership of cacique and the guardianship of warrior societies. Penalties for violations of tribal laws ranged from ridicule to banishment or execution. Fines in the form of compensation to the victim were the most common form of traditional punishment imposed.

<sup>12</sup> *Oliphant v. Suquamish*, 435 U.S. 191 (1978) (finding that tribal courts were implicitly divested of jurisdiction over reservation crimes committed by non-Indians).

<sup>13</sup> Indian Civil Rights Act, 25 U.S.C. § 1302(7) (“No Indian tribe in exercising power of self-government shall— . . . impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000, or both.”).

former U.S. Attorney from Colorado explained these difficulties in testimony before the Committee:

In some investigations, it can be difficult or even impossible to determine at the crime scene whether the victim, the suspect, or both is an “Indian” or a “non-Indian” for purposes of deciding which jurisdiction—federal and/or tribal, or state—has responsibility and which criminal laws apply. In those crucial first hours of an investigation, this can raise a fundamental question—which agency is really in charge? This is the antithesis of effective government.<sup>14</sup>

- In a separate hearing, the former United States Attorney from Minnesota made the following statement: “One hundred and twenty-plus years of court decisions and stop-gap legislation have created a jurisdictional mess, which means that law enforcement is difficult, delay is normal and respect for law enforcement and judicial process is low. The losers are the people of Indian Country.”<sup>15</sup>

- The result of these federal laws and Court decisions is that along with the authority that the United States imposed over Indian tribes, it incurred significant legal and moral obligations to provide for public safety on Indian lands.<sup>16</sup>

### III. DEVELOPMENT OF THE LEGISLATION

The Committee held twelve hearings during the 110th and 111th Congresses that focused on various aspects of the criminal justice system in place on Indian lands. The hearings confirmed that a longstanding and life threatening public safety crisis exists in many Indian communities.

On November 7, 2007, Senator Dorgan released a concept paper, based on testimony and comments received, recommending changes to improve the criminal justice system in place on Indian lands. On July 23, 2008, Senator Dorgan, with 12 co-sponsors including Senators Baucus, Biden, Bingaman, Cantwell, Domenici, Johnson, Kyl, Lieberman, Murkowski, Smith, Tester, and Thune, introduced S. 3320, the Tribal Law and Order Act of 2008. The bill was referred to the Senate Committee on Indian Affairs and hearings were held on the bill, but the Committee did not report out the bill during the 110th Congress.

### IV. COMMITTEE ACTION AND RECOMMENDATION

In the 111th Congress, Senator Dorgan introduced S. 797, the Tribal Law and Order Act of 2009 on April 2, 2009. The legislation

<sup>14</sup>*Examining S. 797, the Tribal Law and Order Act of 2009: Hearing Before the Senate Comm. on Indian Affairs*, 111th Cong. (June 25, 2009) (statement of Troy Eid, Shareholder, Greenberg Traurig, LLP).

<sup>15</sup>*Law Enforcement in Indian Country: Hearing Before the Senate Comm. on Indian Affairs*, 110th Cong., at 66 (June 21, 2007) (statement of Thomas Heffelfinger, Partner, Best and Flanagan, LLP).

<sup>16</sup>Letter from Ronald Weich, Assistant Attorney General, U.S. Department of Justice to Senator Dorgan (Oct. 2, 2009) (“Our responsibility to preserve public safety for Indian Country derives from the government to government relationship between the federal government and tribal governments, as well as specific statutes, such as the Major Crimes Act and the Indian Country Crimes Act, that provide for federal jurisdiction for certain serious felonies.”). See also, *United States v. Kagama*, 118 U.S. 375, 384 (1886) (“[D]ue to the course of dealing of the federal government with [the Tribes], and the treaties in which it has been promised, there arises the duty of protection, and with it the power.”).

has 18 co-sponsors including Senators Barrasso, Baucus, Bingaman, Begich, Bennet (CO), Boxer, Cantwell, Crapo, Johnson, Kyl, Lieberman, Merkley, Murkowski, Stabenow, Tester, Thune, Udall (NM), and Wyden. The bill was referred to the Committee, which held a hearing on S. 797 on June 25, 2009.

Co-sponsoring Members, the Administration, and other interested parties provided additional views on the bill as introduced. The Committee developed a substitute amendment to S. 797 that made a number of changes in response to comments offered by the Department of Justice (DOJ), tribal leaders, the National Association of Criminal Defense Lawyers, and other interested parties. The key changes made in the substitute amendment include the following:

- **Section 102—Disposition Reports.** The substitute amendment reflects a number of changes to Section 102 to address technical and substantive comments offered by DOJ. The provision retains the requirements that federal officials maintain and publish aggregate data on declinations, and coordinate with tribal justice officials on the use of evidence.

- **Section 104—Native American Issues Coordinator.** The substitute amendment reflects DOJ's request to establish the position of a "Native American Issues Coordinator" within the Executive Office of the U.S. Attorneys, instead of an "Office of Indian Country Crime" within the Criminal Division as was proposed in the bill as introduced.

- **Section 304—Bureau of Prisons Pilot Project.** The substitute amendment reflects DOJ's request to establish a pilot project to house offenders convicted in tribal court of major crimes at appropriate Bureau of Prisons facilities. The substitute proposes a 4-year pilot project. The bill as introduced included no end date for this program.

- **Section 304—Law Training for Tribal Public Defenders and Judges.** The substitute amendment clarifies that tribal governments must bear the costs of attorneys for indigent defendants who are subject to more than one year imprisonment for any one offense in tribal court. It also clarifies that both attorneys and tribal court judges must receive sufficient legal training to be eligible to provide defense services or preside over such cases.

- **Section 304—Tribal Court Sentencing for Multiple Crimes.** The substitute clarifies that tribal courts can charge suspects for multiple crimes and sentence offenders to consecutive sentences when at least one element of a crime differs from that of another crime.

The Committee received letters in support of the bill from a number of Indian tribes and organizations, including the National Congress of American Indians, the American Bar Association, Amnesty International U.S.A., the Friends Committee on National Legislation, the Family Violence Prevention Fund, Mending the Sacred Hoop, the New York State Coalition Against Sexual Assault, Strong Hearted Native Women's Coalition, Qualla Women's Justice Alliance, and other organizations.

In an open business meeting on September 10, 2009, and with a quorum present, the Committee, by unanimous voice vote approved S. 797 with an amendment in the nature of a substitute. Four amendments were offered to the amendment in the nature of

a substitute. One amendment was offered by Senator Franken to require a report on sex trafficking of Native women. Two amendments were offered by Senator Murkowski to address concerns relating specifically to Alaska Native Villages. A third amendment was offered by Senator Murkowski to require a report on the capacity of the Indian Health Service and tribal health facilities to acquire forensic evidence from victims of sexual assault and domestic violence. All four amendments were accepted by voice vote. By unanimous voice vote, the Committee then approved the amendment in the nature of a substitute as amended.

## V. DISCUSSION AND KEY PROVISIONS

S. 797 takes a comprehensive approach to improve the efficiency and effectiveness of the justice system on Indian lands to better meet the goal of combating and preventing reservation crime. The bill will increase federal response to and accountability for reservation crime, encourage greater cooperation between tribal, federal, and state law enforcement agencies, provide tribal justice officials with additional tools to combat crime locally, reauthorize and improve federal programs designed to strengthen tribal justice systems, establish and foster improved Indian country criminal data collection and criminal history information sharing, and require additional coordination and training among federal and tribal officials to enhance the investigation and prosecution of crimes of domestic and sexual violence in Indian country.

### *Police and corrections officer recruitment and retention*

The lack of police presence in Indian country is a major contributing factor to reservation crime. Less than 3,000 Bureau of Indian Affairs (BIA) and tribal law enforcement officers patrol more than 56 million acres of Indian lands in 35 states.<sup>17</sup> This total amounts to an approximate unmet staffing need of 40% when compared to similar rural communities nationwide.<sup>18</sup> The unmet staffing need is far greater on some reservations.<sup>19</sup>

The lack of resources is an unfortunate theme on many Indian reservations. The BIA FY 2008 Crime Report indicated that there were at least 30 Indian reservations where the violent crime rate exceeded the national average and additional officers were needed. For example, the Wind River Indian Reservation in Wyoming faced a violent crime rate 3.58 times the national rate, yet there were only 6–7 officers to patrol the entire 2.2 million acres of the Res-

<sup>17</sup>The FY 2009 Department of the Interior Budget Justifications for Indian Affairs noted that there were 2,758 BIA and tribal criminal investigators and police serving Indian country. *Interior Budget Justifications*, IA-PSJ-6.

<sup>18</sup>This comparison to rural communities used by BIA is based on population, and not by violent crime rate. The staffing need based on the violent crime rate in Indian country would elicit an altogether different comparable population. The high violent crime rate in Indian country is more comparable to inner city violent crime rates. Arguably if assessed based on that comparability, the Indian country staffing needs may be severely more drastic.

<sup>19</sup>BIA-Office of Justice Services District 1, which serves reservations in Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin, had an unmet staffing need of 78% according to the BIAs April 2006 Gap Analysis. The BIA acknowledged that “on many reservations, there is no 24-hour police coverage. Police officers often patrol alone and respond alone to both misdemeanor and felony calls. Our police officers are placed in great danger because backup is sometimes miles and hours away, if available at all.” *Law Enforcement in Indian Country: Hearing Before the Senate Comm. on Indian Affairs*, 110th Cong., at 6 (May 17, 2007) (statement of W. Patrick Ragsdale, Director, Bureau of Indian Affairs).

ervation during the entire 24 hour/7 day period. This staffing size translates into 2–3 officers on duty at any one time.

The lack of police personnel causes severe delays in response times to distress calls, prevents officers from securing the crime scene and gathering evidence, which in turn inhibits successful prosecutions.<sup>20</sup> The lack of resources also reduces the potential for crime prevention. According to Brian Nissen, Colville Tribal Council Member, “the officers know the individuals involved [in gang violence] and could make a dramatic impact on the proliferation of gangs . . . by preventing gang membership by vulnerable tribal youth. . . . This change cannot occur, however, until additional resources are available for tribal officers to allow for proactive, as opposed to reactive, policing.”<sup>21</sup>

While the lack of police personnel in Indian country is directly attributed to the lack of funding for BIA and tribal police officers, the difficulty in recruiting, training, and retaining new police and corrections officers adds to the problem. For example, the BIA requires all Bureau police officer candidates to receive their initial basic training at the Indian Police Academy (IPA) located in Artesia, New Mexico. The IPA provides an outstanding training opportunity for potential BIA and tribal police officer candidates. However, the Academy has an annual attrition rate of 47%, and only graduates an average of 220 new officers each year. Of those 220 graduates, it has been reported that one-half will leave Indian country law enforcement within two years.<sup>22</sup> Tribal communities are left with a considerable unmet need for additional trained officers.

Section 301(a) of the bill takes several steps to expand recruiting efforts for new BIA and tribal police and corrections officers. This section expands training opportunities to permit BIA and tribal police candidates to receive basic training from state or tribal police academies, local or tribal community colleges, or other training academies that meet training standards established by the Federal Law Enforcement Training Accreditation commission.<sup>23</sup> This section also increases the maximum age for new police and corrections officers, in an effort to target retired military personnel.<sup>24</sup> In addition, Section 301 requires BIA Office of Justice Services to complete background checks for tribal and BIA police officer candidates within 60 days upon a request of an Indian tribe.

<sup>20</sup> *Law Enforcement in Indian Country, Hearing Before the Senate Comm. on Indian Affairs*, 110th Cong., at 21 (June 21, 2009) (statement of Bonnie Clairmont, Victim Advocacy Program Specialist, Tribal Law and Policy Institute); *Examining the Prevalence of and Solutions to Stopping Violence Against Indian Women: Hearing Before the Senate Comm. on Indian Affairs*, 110th Cong., at 7 (Sept. 27, 2007) (Statement of Tammy Young, Director, Alaska Native Women’s Coalition). See also, Laura Sullivan, Rape Cases on Indian Lands Go Uninvestigated, National Public Radio (July 25, 2007) (online at <http://www.npr.org/templates/story/story.php?storyId=12203114>); Maze of Injustice, Amnesty International U.S.A., at 41–51 (April 2007).

<sup>21</sup> *Oversight Hearing to Examine the Increase of Gang Activity in Indian Country, Hearing Before the Senate Comm. on Indian Affairs*, 111th Cong. (July 30, 2009) (statement of Brian Nissen, Tribal Council, Confederated Tribes of the Colville Reservation).

<sup>22</sup> Report of the Executive Committee for Indian Country Law Enforcement Improvements, Tab E (Oct. 1997) (found online at: <http://www.usdoj.gov/otj/icredact.htm>).

<sup>23</sup> The BIA has recognized training at state Police Officer Standards and Training (POST) and state-certified POST equivalents for tribal police officers. The BIA has also entered into MOAs with tribal, state, and local colleges and universities to provide supplemental training to existing BIA and tribal law enforcement and corrections officers. Nothing in this section is intended to repeal the Secretary’s authority to enter into such agreements.

<sup>24</sup> Native Americans have the highest record of service per capita when compared to other ethnic groups. See <http://www.history.navy.mil/faqs/faq61-1.htm>.

*The BIA and tribal jails system*

The state of the BIA and tribal jails system exacerbates violent crime in Indian country. The majority of jails used by tribal courts to sentence offenders are either overcrowded, in disrepair, or both. In addition, jails operations lack sufficient staffing, training, and funding.<sup>25</sup> As a result, judges may be forced to release offenders early, and in some cases only the most violent offenders are incarcerated.

An Interior Department report on Indian jails entitled “Master Plan for Justice Services in Indian Country,” provided to the Committee on June 18, 2008, and made part of the June 19, 2008 Committee hearing record, made the following findings:

- The life and safety of officers and inmates are at risk due to the lack of adequate justice facilities and programs in Indian country.
- The character of offenses has changed from misdemeanors in years past to increasingly violent crimes in recent years.
- Ninety percent or more of the existing justice facilities that are older than 5 years should be replaced or require extensive improvements and repairs.
  - Jail policies are lax, and in many cases non-existent.
  - Jails are understaffed, and many staff lack adequate training.
  - It takes months to complete the hiring process for tribal corrections officers.
  - The lack of police personnel in Indian country causes a very low service call to arrest ratio in many jurisdictions.
  - Only half of the offenders are being incarcerated who should be incarcerated, the remaining are released through a variety of informal practices due to severe overcrowding.
  - Contract beds at state and local jails are not readily available due to the remote location of tribal communities and overcrowding at the state and local facilities.
  - Few tribal jails provide rehabilitation programs for inmates.
  - Little to no healthcare is provided for inmates, and the health care that is provided is often provided off-site at the nearest Indian Health Service facility.

One reason for problems with the jails system is the lack of coordination between federal agencies responsible for the system. The responsibility for construction of new BIA and tribal jails was transferred from the BIA to DOJ in the late 1990’s. The responsibility for staffing, operations, and maintenance of jails remained within the BIA’s budget. Because of the lack of inter-agency coordination, a number of new detention centers built in the last decade sit empty.<sup>26</sup> Other tribal jails remain severely overcrowded, and many tribal communities have no facility at all.

<sup>25</sup> See *Neither Safe nor Secure: An Assessment of Indian Detention Facilities*, U.S. Department of the Interior, Office of Inspector General (Sept. 2004). This report details the deficiencies at BIA and tribal jails, and makes 25 recommendations to improve the jails system.

The Committee notes that \$225 million was appropriated to the Department of Justice to construct detention centers in Indian country in the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (Feb. 17, 2009).

<sup>26</sup> “Given the poor coordination and planning of new jails between BIA and DOJ, . . . facilities have been built that cannot be opened.” *Neither Safe nor Secure*, at 39. This conclusion was confirmed by several witnesses before the Committee. See *Tribal Courts and the Administration of Justice in Indian Country: Hearing Before the Senate Comm. on Indian Affairs*, 110th Cong., at 80-81 (July 24, 2008).



Sections 101(b), 401(g)(1)(C), and 404(b)(3) of S. 797 require the Departments of Justice and Interior to coordinate with tribal justice officials to develop a long term plan for the incarceration needs of Indian country within one year of enactment of S. 797. The plan will address facilities for adults, youth in custody, at-risk youth, and alternatives to incarceration. The Committee expects the agencies to bring the full panoply of program expertise to bear in developing innovative solutions to fulfill these requirements.

In addition, Section 403 reauthorizes the Department of Justice tribal jails program. This section amends the program to permit funding for the construction of regional detention centers for long term incarceration, construction of tribal justice centers that combine tribal courts, police, and corrections services, and alternatives to incarceration. The amendment also removes requirement that tribal governments provide matching funds in order to be eligible to receive a jails construction grant.

#### *Jurisdictional gaps*

Consistent with previous federal reports, testimony before the Committee pointed to the jurisdictional divide among tribal, state, and Federal governments as a major contributing factor to reservation violence. One gap in the system is the lack of prosecution of misdemeanor crimes on Indian lands. Misdemeanor crimes including domestic violence, child abuse, disorderly conduct, traffic violations, petty drug possession, and property crimes are often overlooked by federal law enforcement officials due to resource concerns.<sup>27</sup> However, failure to address these crimes at the misdemeanor level creates a sense of lawlessness and provides no deterrent to those who may advance to more serious crimes.<sup>28</sup>

The Tribal Law and Order Act will take several steps to better address misdemeanor reservation crimes. Section 103 encourages the appointment and training of qualified attorneys to serve as Special Assistant United States Attorneys to aid in the prosecution of misdemeanor crimes that are not addressed in tribal court. It also encourages U.S. Attorneys to coordinate with magistrate and district courts to ensure that docket time is reserved for Indian country misdemeanors and to hold such trials on Indian lands when possible. In addition, section 101(c) acknowledges the existing authority of Bureau of Indian Affairs police officers to enforce against offenses processed by the Central Violations Bureau.<sup>29</sup>

<sup>27</sup>In answers to follow up questions from a June 2008 hearing, DOJ wrote that it “handles a very limited number of misdemeanor offenses that occur in Indian Country, focusing on those offenses that involve non-Indian defendants who are alleged to have committed crimes against Indian victims. Often those misdemeanors are assaults. In Fiscal Year (FY) 2006, the United States Attorneys’ Offices prosecuted 24 misdemeanor cases arising in Indian Country. In FY 2007, the United States Attorneys’ Offices prosecuted 21 misdemeanor cases.” Letter from Keith B. Nelson, Principal Deputy Assistant Attorney General, to Senator Dorgan (Sept. 17, 2008).

<sup>28</sup>“The pattern of domestic violence might begin at a misdemeanor level and escalate to a felony level of violence. Tribal law enforcement report that domestic violence is one of the largest categories of crime they respond to. Domestic violence, however, is rarely prosecuted by the United States Attorneys Offices.” *Law Enforcement in Indian Country: Hearing Before the Senate Comm. on Indian Affairs*, 110th Cong., at 85 (June 21, 2007) (written statement submitted by Dorothy Smith and Joan Henry, Qualla Womens Justice Alliance).

<sup>29</sup>The Department of Justice acknowledges that current law allows tribal law enforcement officers who hold Special Law Enforcement Commissions to “issue federal petty offense citations to any person including tribal members, non-member Indians, and non-Indians. Class A misdemeanors are charged either by an Information filed by the United States Attorneys’ Office or by Grand Jury Indictment.” Letter from Ronald Weich, Assistant Attorney General, to Senator Dorgan (Oct. 2, 2009).

*Key provisions*

## A. BUREAU OF INDIAN AFFAIRS RESPONSE AND ACCOUNTABILITY

In 1990, Congress enacted the Indian Act Law Enforcement Reform Act (ILERA) in response to many of the concerns with the system of justice in place on Indian lands.<sup>30</sup> The Act codified the authority and duties of BIA police, permitted the Secretary to grant special law enforcement commissions (SLECs) to tribal and local police officers, and permitted federal investigators and prosecutors to submit declination reports to tribal justice officials. Tribal leaders initially praised the passage of the bill. However, in recent years, tribes have expressed that the Act's implementation has fallen short of expectations.

Section 2802 of ILERA established a Division of Law Enforcement Services, now known as the Office of Justice Services (OJS), and set forth its duties. This section also established a separate Branch of Criminal Investigations, which is responsible for the investigation and presentation for prosecution of major crimes in Indian country. It provides that the Branch of Criminal Investigations is subject only to the supervision and direction of law enforcement personnel of the OJS, and no longer subject to supervision of the BIA Agency Superintendent as was the current organizational structure at the time.<sup>31</sup> OJS implemented this provision in the late 1990's, changing the command structure by requiring all BIA police and criminal investigators to report directly to the Office of Justice Services, headquartered in Washington, D.C.

In order to maintain communication between criminal investigators at the local reservation level, section 2802 required the Secretary to "prescribe regulations which shall establish a procedure for active cooperation and consultation of the criminal investigative employees . . . assigned to an Indian reservation with the governmental and law enforcement officials of the Indian tribe." To date, no such regulation has been promulgated.

A number of tribes have since complained about the lack of communication and consultation on behalf of BIA police with tribal governments and community members. Chairman Marcus Wells of the Three Affiliated Tribes of the Fort Berthold Reservation echoed these concerns in testimony before the Committee: "I believe we have been shorted when the line of authority for supervision was changed in 1999 or so, from the line superintendent of the BIA being the supervisor of the local police chief of the BIA, down to the Aberdeen area. Since then, we have lost communication and coordination."<sup>32</sup>

Tribes have also criticized the BIA-OJS for a lack of transparency in spending public safety and justice funding. Ron His Horse Is Thunder, Chairman of the Standing Rock Sioux Indian Tribe, testified before the Committee regarding concerns over the lack of accountability at the BIA:

<sup>30</sup> 25 U.S.C. §§ 2801–2809; Public Law 101–379.

<sup>31</sup> 25 U.S.C. § 2802(d)(4)(i). This provision also permits tribal governments, by tribal resolution, to ask the Secretary to reestablish line authority through the Agency Superintendent or Area Director. Such requests shall be granted absent good cause to the contrary. *Id.* § 2802(d)(4)(ii).

<sup>32</sup> *Law Enforcement in Indian Country: Hearing Before the Senate Comm. on Indian Affairs*, 110th Cong., at 33 (June 21, 2007) (statement of Marcus D. Wells, Jr., Chairman, Three Affiliated Tribes of the Fort Berthold Reservation).

It is a fundamental failure for the BIA not to have or to successfully implement a methodology for the distribution of public safety funds. This problem is equally evident on the detention service side of public safety. It is our understanding that the BIA cannot report to the Interior Inspector General or to Congress how it allocated the millions of dollars it receives from Congress for the staffing, operation and maintenance of detention facilities in Indian country.<sup>33</sup>

According to these tribal leaders, the former and even current command structures have not been responsive to concerns of the tribal leadership or communities being served.

To address these shortfalls, Section 101 of the bill seeks to improve BIA–OJS communication, coordination, and accountability. This section codifies the requirement that BIA–OJS officers communicate and consult with tribal leaders and members on a regular basis about public safety and justice concerns facing their communities. The intent is to require at least monthly communication between BIA police and the tribal community or communities that they serve. This section also requires BIA–OJS to submit annual reports to Congress detailing spending, unmet staffing needs, and formulas for disbursing public safety funding.

Another concern with the implementation of ILERA is in the granting of SLECs to tribal police officers. While the BIA recognizes the importance of the SLEC program in enabling officers to make arrests for all violations of federal criminal laws on Indian lands,<sup>34</sup> the Bureau has not established specific criteria, timeframes for approval, or provided training opportunities or technical assistance to tribal officers to obtain the commissions.

Tribal leaders testified before the Committee that the delays in negotiating agreements with the BIA for SLECs can take years. Diane Enos, President of the Salt River Pima Maricopa Indian Community (Arizona), testified that her Tribe had negotiated for more than four years on an MOU with the BIA to enable tribal officers to obtain special law enforcement commissions.<sup>35</sup>

To spur the SLEC program, the U.S. Attorney from Colorado in February of 2007 initiated a pilot program to train tribal, state and local law enforcement officers on-site in Southwestern Colorado in the enforcement of federal criminal laws. The goal was to increase the number of available police officers on Indian lands in Colorado and foster inter-jurisdictional collaboration. With the cooperation of other U.S. Attorneys, this pilot program grew into 14 separate training sessions throughout Indian country, attended by more than 400 officers representing 35 tribes and 17 states.<sup>36</sup>

<sup>33</sup>*Field Hearing to Examine Lessons Learned from Operation Dakota Peacekeeper: Hearing Before the Senate Comm. on Indian Affairs*, 111th Cong. (July 1, 2009) (statement of Ron His Horse Is Thunder, Chairman, Standing Rock Sioux Tribe).

<sup>34</sup>*Law Enforcement in Indian Country: Hearing Before the Senate Comm. on Indian Affairs*, 110th Cong., at 8 (May 17, 2007) (statement of W. Patrick Ragsdale, Director, Bureau of Indian Affairs). The BIA acknowledged through a policy guidance the “critical void in law enforcement in Indian country that . . . SLECs fill.” 69 Fed. Reg. 6321–22 (Feb. 10, 2004).

<sup>35</sup>*Law and Order in Indian Country: Hearing Before the Senate Comm. on Indian Affairs*, 110th Cong., at 14 (Mar. 17, 2008) (statement of Diane Enos, President, Salt River Pima-Maricopa Indian Community).

<sup>36</sup>*Examining S. 797, the Tribal Law and Order Act of 2009: Hearing Before the Senate Comm. on Indian Affairs*, 111th Cong. (June 25, 2009) (statement of Troy Eid, Shareholder, Greenberg Traurig, LLP).

To build on the success of this pilot program and to provide added guidance to the program, section 301(b) of the Tribal Law and Order Act will amend the ILERA to require the Secretary, within 180 days of enactment, to establish criteria for police officers to meet in order to qualify for SLEC certifications. The Secretary would also have 180 days to develop minimum requirements to be included in agreements with tribal governments, which must include protections for tribal officers listed in current section 2804(f) of the ILERA. To expand the opportunity for tribal police to obtain an SLEC, section 301(b) of the bill also requires the Secretary to hold regional training sessions in Indian country to train tribal and other police officers in the enforcement of federal criminal laws.

#### B. DECLINATIONS TO PROSECUTE RESERVATION CRIME

The justice system in place on Indian lands forces tribal communities to rely on federal officials to investigate and prosecute most violent crimes occurring in Indian country. Despite this reliance, tribal leaders and community members have, for decades, raised concerns that federal officials do not prioritize the investigation and prosecution of reservation crime. Tribal justice officials have also criticized the lack of communication, information sharing, and data collection on the part of federal officials regarding reservation crimes.

In hearings held from 1961–1964, that eventually led to enactment of the Indian Civil Rights Act (ICRA), tribal leaders and tribal justice officials lodged complaints that the Federal Bureau of Investigation (FBI) and U.S. Attorneys failed to adequately respond to reservation crime. In 1961, Judge Shirley Nelson of the Hualapai Tribal Court testified to the following:

[T]his seems to be one of our main problems in criminal cases, the major crimes—trying to get the Government to come in and take these crimes. . . . We have called the FBI, and they have run the investigation for us; we have called it to the attention of the U.S. attorney, and he has declined to take the case. He didn't give us any reason for not accepting the case.<sup>37</sup>

This and other statements led the Subcommittee on Constitutional Rights of the Senate Judiciary Committee to conclude that “Federal authorities are slow to investigate and accept jurisdiction over crimes committed on Indian reservations.”<sup>38</sup>

In 1975, the Ford Administration’s Department of Justice (DOJ) Report of the Task Force on Indian Matters acknowledged similar complaints from tribal leaders about the high rates of declinations. The Task Force studied the issue and made the following finding:<sup>39</sup>

While a review of the available evidence demonstrates that there is no conscious or systematic discriminatory

<sup>37</sup> *Constitutional Rights of the American Indian (Part II): Hearings Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary*, 87th Cong., at 383–84 (Nov. 25, 29, and Dec. 1, 1961).

<sup>38</sup> *Constitutional Rights of the American Indian: Summary Report of Hearings by the Subcomm. on Constitutional Rights of the Senate Committee on the Judiciary*, 88th Cong., at 6 (1964).

<sup>39</sup> Doris Meissner, U.S. Department of Justice, *Report of the Task Force on Indian Matters*, at 45 (Oct. 1975).

handling of Indian cases, it appears that current federal practices and standards applied in determining declinations in Indian cases have created a serious problem for the overall maintenance of law and order on reservations and have undermined the respect and confidence which the Indian people feel in the federal government's efforts to respond to the growing crime rate. . . . At a minimum there has been a breakdown in communication between the Justice Department and Indian communities. At a maximum, the federal government is exacerbating the reservation crime problem and undermining Indian confidence in a system of laws by prosecuting so few offenders.<sup>40</sup>

The Task Force acknowledged that the system in place requires federal prosecutors to also serve as the local prosecutor for Indian communities. The Task Force concluded that "[i]n failing to adapt prosecutive standards and practices to meet this responsibility, the government has contributed to the reservation crime problem and undermined the confidence of Indian people in a system of laws."<sup>41</sup>

The Task Force recommended that DOJ develop guidelines and procedures to meet the government's dual role as both federal and local prosecutor on Indian lands, improve communication and coordination with tribal justice officials, and discuss possible efforts by the federal district and magistrate courts to make justice less remote to reservation communities.<sup>42</sup>

Congress enacted the Indian Law Enforcement Reform Act (ILERA) in 1990, in part, to address concerns with high declination rates and a lack of communication between federal and tribal justice officials. Section 2809 of ILERA provides that "the United States attorney is authorized to submit a report to the appropriate governmental and law enforcement officials of the Indian tribe" when declining to prosecute an alleged violation of federal criminal law occurring in Indian country. A similar provision authorizes FBI agents and BIA police to submit reports to tribal officials when terminating criminal investigations. The provision also permits federal officials to share evidence with tribal officials to help build a prosecution in tribal court.

Tribes contend that despite this authorization, few U.S. Attorney offices share evidence or other case information when declining a case. They contend that the lack of coordination has prevented prosecutions in tribal court. One tribal court judge testified before the Committee that "We don't have information at all. . . . [T]ribal prosecutors and tribal courts are left with trying to decide whether they should use their resources to prosecute without any information from the Department of Justice."<sup>43</sup>

The Committee also faced difficulty in obtaining data regarding Indian country declinations from DOJ. In response to Committee requests for statistics on Indian country declinations during the 110th Congress, the Justice Department repeatedly stated that it

<sup>40</sup> *Task Force on Indian Matters*, at 49.

<sup>41</sup> *Id.* at 80.

<sup>42</sup> *Id.* at 82.

<sup>43</sup> *Tribal Courts and the Administration of Justice in Indian Country: Before the Senate Comm. on Indian Affairs*, 110th Cong., at 82 (July 24, 2008) (statement of Theresa Pouley, Judge, Tulalip Tribal Court).

did not believe that declination statistics “accurately reflect the rate of declinations in Indian Country.”<sup>44</sup> The Department also stated that there are profound differences in case tracking systems employed by the various U.S. Attorneys’ offices, thus, making it difficult to gather statistics for Indian country criminal cases.<sup>45</sup>

In written response to follow up questions from a June 25, 2009 Committee hearing, DOJ provided the Committee with declination data for FY 2007 and FY 2008. The Department reported that Indian country declination rates were 52.2% for FY 2007 and 47% for FY 2008. The Department also reported that the declination rates for non-Indian country federal prosecutions were 20.7% for FY 2007 and 15.6% for FY 2008. These statistics were gathered using DOJ’s case management system, the Legal Information Office Network System (LIONS). DOJ restated that its case management system is not designed to collect data to track Indian country criminal declinations. However, the Department stated that it is exploring ways to improve the tracking of declinations in Indian Country.<sup>46</sup>

The Committee acknowledges that declination statistics alone do not show the Department’s commitment to combating reservation crime. In fact, they likely reflect difficulties caused by the justice system in place. The lack of police on the ground in Indian country often results in delayed responses to criminal activity, which prevents officers from securing the crime scene and gathering evidence. The lack of rape kits and qualified interviewers and examiners in Indian country also makes it difficult to build a sexual assault case for prosecution. For these reasons, Committee Members explained, declination data could be used to target the appropriate federal district for increased funding to meet the shortfalls for training, forensics equipment, personnel, or to address other needs caused by the system.<sup>47</sup>

The investigation and prosecution of reservation crimes are to some extent subject to the priorities set forth by the Administration that is in place at any given time. Senator Dorgan highlighted concerns with prioritizing the prosecution of Indian country crimes in a discussion of recent firings of U.S. Attorneys who worked on Native American issues for the Department of Justice. The following are excerpts from the discussion between Senator Dorgan and Mr. Thomas Heffelfinger, the former U.S. Attorney from Minnesota:<sup>48</sup>

<sup>44</sup> See e.g., *Law and Order in Indian Country: Field Hearing Before the Senate Comm. on Indian Affairs*, 110th Cong., at 71 (Mar. 17, 2008) (statement of Diane Humetewa, U.S. Attorney for Arizona); Letter from Keith B. Nelson, Principal Deputy Assistant Attorney General, Views on S. 3320, to Senator Dorgan, at 3 (Sept. 17, 2008) (“Federal declination figures cannot give a complete picture of how Indian Country crimes are prosecuted, and could lead to inaccurate conclusions.”).

<sup>45</sup> *Examining Declinations to Prosecute Crimes in Indian Country: Hearing Before the Senate Comm. on Indian Affairs*, 110th Cong., at 7 (Sept. 18, 2008) (statement of Drew Wrigley, U.S. Attorney for North Dakota).

<sup>46</sup> In a series of investigative reports on violence in Indian country, the *Denver Post* reported that 62% of all Indian country criminal cases were declined for prosecution between 2004 and 2007. Michael Riley, *Principles, Politics Collide*, *Denver Post* (Nov. 13, 2007) (online at [http://www.denverpost.com/news/ci\\_7446439](http://www.denverpost.com/news/ci_7446439)). The highest declination rates found by the Post were for child sex crimes (72%) and adult sex crimes (76.5%). This data was compiled by the Transactional Records Access Clearinghouse (TRAC). While not directly disputing the Denver Post data, the Department noted that it also cannot confirm the accuracy of the figures provided to the *Denver Post* by TRAC.

<sup>47</sup> See *Examining Declinations to Prosecute Crimes in Indian Country: Hearing Before the Senate Comm. on Indian Affairs*, 110th Cong., at 17–34 (Sept. 18, 2008) (statements of Senators Dorgan, Murkowski, and Tester).

<sup>48</sup> Mr. Heffelfinger was placed on a list of U.S. Attorneys to be dismissed, but resigned in February of 2006. He is also former Chairman of the Attorney General’s Native American Issues Subcommittee.

Senator Dorgan: “I notice that either four of the eight or five of the eight U.S. Attorneys who were in fact replaced were on the committee, the committee that you were on, dealing with Native Americans. Is that purely coincidence?”

Mr. Thomas Heffelfinger: “I can tell you that all of those five people were zealous advocates in their own districts for improving public safety in Indian Country and improving Indian Country’s role in our broader homeland security infrastructure. . . . But it is not a mere coincidence that five of eight were leaders amongst Native American prosecutors.”<sup>49</sup>

The FY 2008 United States Attorneys’ Statistical Report states that “[i]n carrying out their criminal prosecution responsibilities, the United States Attorneys are guided by the law enforcement and special prosecution priorities of the Attorney General. These areas are set forth in the Department’s Strategic Plan and Performance Report.”<sup>50</sup> The stated priorities for FY 2008 included prosecution of crimes of terrorism, firearms, narcotics, Organized Crime Drug Enforcement Task Forces (OCDETF), non-OCDETF drugs, crimes against children, corporate fraud, cybercrimes, official corruption, civil rights prosecution, trafficking in persons, bias motivated crimes, and official police misconduct/color of law.<sup>51</sup> A nearly identical list was provided in the FY 2007 Report. To the Committee’s knowledge, during no Administration has the Department of Justice included the prosecution of violent crime in Indian country at or near the top of its priority list.

As noted at the onset of this Report, the United States has incurred a legal obligation to investigate and prosecute crimes in Indian country that has existed for more than 120 years. S. 797 was developed acknowledging the longstanding history of violence in Indian country. The bill seeks to ensure that the investigation and prosecution of reservation crimes is a priority for the current and all future Administrations by clarifying the Government’s obligations to combat and prevent Indian country crime.

The substitute amendment to S. 797 reflects a number of changes to Section 102 in response to comments from the Department of Justice. As amended, Section 102 will improve coordination between federal and tribal justice officials and accountability for the Federal Government’s obligations to investigate and prosecute reservation crime. Section 102 would amend section 2809 of ILERA, by requiring the Department to maintain data on reservation case terminations and declinations by federal district, including data on the type of crime, and the status of both the victim and defendant as Indian or not. In addition, the section will require DOJ to submit an annual report to Congress on the findings with an explanatory statement. The provision also requires federal investigators and prosecutors to coordinate with tribal justice officials regarding the use of evidence when terminating an investigation or declining a case for prosecution.

<sup>49</sup> *Law Enforcement in Indian Country: Hearing Before the Senate Comm. on Indian Affairs*, 110th Cong., at 68–69 (June 21, 2007).

<sup>50</sup> United States Attorneys’ Annual Statistical Report, U.S. Department of Justice, at 20 (FY 2008); online at [http://www.justice.gov/usao/reading\\_room/reports/asr2008/08statrpt.pdf](http://www.justice.gov/usao/reading_room/reports/asr2008/08statrpt.pdf).

<sup>51</sup> *Id.* at 20–37.

Section 102 makes clear that no federal agency or official is required to disclose confidential, privileged, or statutorily protected information. The intent of this provision is to protect future prosecutions and the safety and privacy of both the victim and the suspect. Communications between federal and tribal justice officials should be considered privileged information for purposes of this provision.

### C. TRIBAL COURT SENTENCING

When federal officials decline to prosecute alleged reservation crimes, tribal courts often provide the last opportunity for justice for the victim and the tribal community. However, the Indian Civil Rights Act (ICRA) limits the sentencing authority of tribal courts to no more than one year imprisonment for any one offense.<sup>52</sup> As a result, tribal courts cannot provide a full measure of justice when trying cases of homicide, rape, child sexual abuse, aggravated assault, or other serious crimes. Section 304 of the bill will amend ICRA to acknowledge a tribal court's authority to sentence offenders for up to three years where certain requirements are met.

The current limit on tribal court sentencing was imposed through enactment of ICRA. In the 1960's, during Senate hearings leading up to passage of ICRA, testimony revealed that tribal courts were essentially justices of the peace, which dealt primarily with petty offenses.<sup>53</sup> As a result, Congress initially passed ICRA limiting tribal court sentences to no more than 6 months for any one offense. Congress amended ICRA in 1986 to acknowledge tribal court authority to impose sentences of no more than one year for any one offense.<sup>54</sup>

Facts have changed dramatically in the past twenty years. Tribal courts are increasingly trying violent offenses and tribal jails are holding more violent offenders. In testimony before the Committee, one tribal prosecutor stated that "I have a jury trial that is scheduled on a murder, a homicide case on the end of this month. . . . We just finished a trial on a juvenile who was convicted of homicide in our court. . . ." <sup>55</sup> Former U.S. Attorney General Janet

<sup>52</sup> Indian Civil Rights Act (ICRA), 25 U.S.C. § 1302(7). ICRA, often referred to as the Indian Bill of Rights, provides that "[n]o Indian tribe in exercising powers of self-government shall—violate the right . . . against unreasonable search and seizures, nor issue warrants, but upon probable cause. . . ; subject any person for the same offense to be twice put in jeopardy; compel any person in any criminal case to be a witness against himself; deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense; require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000, or both; deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law; deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons. 25 U.S.C. § 1302. The Act also provides that "[t]he privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe." 25 U.S.C. § 1303.

<sup>53</sup> See *Constitutional Rights of the American Indian: Summary Report of Hearings by the Subcomm. on Constitutional Rights of the Senate Committee on the Judiciary*, 88th Cong., at 6 (1964).

<sup>54</sup> 25 U.S.C. § 1302(7) as amended by Pub. L. No. 99-570, Tit. IV, § 4217, 100 Stat. 3207 (Oct. 27, 1986).

<sup>55</sup> *Tribal Courts and the Administration of Justice in Indian Country: Before the Senate Comm. on Indian Affairs*, 110th Cong., at 82 (July 24, 2008) (statement of Dorma Sahneyah, Chief Prosecutor, Hopi Tribe). See also, *Examining Declinations to Prosecute Crimes in Indian Country: Hearing Before the Senate Comm. on Indian Affairs*, 110th Cong., at 40 (Sept. 18, 2008) (statement of Brent Leonhard, Deputy Attorney General, Confederated Tribes of the Umatilla Indian



Reno acknowledged that “[t]he lack of a system of graduated sanctions through tribal court . . . directly contributes to the escalation of adult and juvenile criminal activity.”<sup>56</sup>

To address these concerns and to enable tribal courts to dispense a greater measure of justice for the criminal cases presented to them, section 304 of the bill relaxes the sentencing limits imposed by the Indian Civil Rights Act (ICRA) where certain requirements are met. Section 304 leaves the current ICRA one year imprisonment limitation in effect. However, it offers tribal governments the option to subject a defendant to more than one year and up to three years of imprisonment for any one offense if the tribe meets the following requirements:

- Provide defendants with current ICRA protections against: unreasonable search and seizure, double jeopardy, being compelled to testify against oneself, being subject to excessive bail or cruel and unusual punishment, and the denial of equal protection or due process. Tribes must also continue to comply with ICRA requirements of affording defendants the right to a speedy trial, to be informed of the crime for which they have been accused, to be confronted by witnesses against them, to obtain witnesses in their favor, or to have a jury trial.
- Provide an indigent defendant a licensed attorney at the tribe’s expense.
- Require that the judge presiding over the criminal trial have sufficient legal training and be licensed in any jurisdiction in the United States.<sup>57</sup>
- Publish the tribe’s criminal laws.

All tribal justice systems may continue to operate under current ICRA sentencing limitations of no more than one year imprisonment for any one offense. The Committee emphasizes that the intent of section 304 is to provide tribal governments the option of enacting tribal criminal laws that would be subject to up to three years imprisonment. If, pursuant to new subsection (b) of ICRA, 25

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Reservation); Master Plan for Justice Services in Indian Country, Draft Final Report, at 9 (submitted to the Committee under cover letter dated June 17, 2008) (“The character of offenses has changed considerably with more severe crime than in the past. Increasingly, felons are being incarcerated in Indian Country instead of misdemeanors.”).

<sup>56</sup>*Department of Justice/Department of Interior Tribal Justice Initiatives: Hearing Before the Senate Comm. on Indian Affairs, 105th Cong.*, at 55 (June 3, 1998) (statement of United States Attorney General Janet Reno).

<sup>57</sup>The Committee received comments contending that tribal court judges and public defenders should be required to graduate from an accredited law school and licensed by a state supreme court. The Committee notes that the States of California, Maine, New York, Vermont, Virginia, Washington and Wyoming do not require attorneys to graduate from an accredited law school in order to practice law or serve as a judge.

The intent of the section 304 licensing requirements for public defenders and tribal court judges respects the dual purposes of the Indian Civil Rights Act to protect the rights of individuals before tribal courts, and to acknowledge and strengthen tribal self-government. Section 304 requires tribal governments that enact criminal laws subjecting offenders to more than one year imprisonment for any one offense to also require attorneys and judges presiding over such criminal trials to meet certain licensing standards. Whether the standard employed is a state, federal, or tribal standard will be a decision for the tribal government. Several tribal governments have developed their own tribal law standards and others have adopted state licensing standards. The Indian Civil Rights Act requires tribal governments to afford individual defendants basic rights at trial. If any of these rights are allegedly violated because an individual was provided ineffective representation, the offender has the right to ask for a review the tribal court’s decision in federal court through a writ of *habeas corpus*.

The Committee notes the importance of providing individuals subject to more than one year imprisonment for any one offense the effective assistance of defense counsel. To help implement this provision, the Committee encourages the Bureau of Indian Affairs in coordination with the Department of Justice to consult with tribal governments to establish recommended minimum guidelines for public defenders to be used by tribal justice systems in developing tribal government licensing standards where a tribe chooses not to adopt state standards.

U.S.C. §1302, a tribe enacts a law that subjects an offender to more than one year for any one offense, and the tribal prosecutor charges the suspect with a violation of that law, then the requirements of subsection (b) will have to be met in the criminal trial that would ensue. If, after trial, the suspect is found guilty in tribal court of the offense charged, the tribal court judge will retain authority and discretion under tribal law to sentence the offender to any term of imprisonment, up to three years for any one offense, or any alternative form of punishment the court deems necessary.

The Committee also acknowledges that in order for the options established under this section to be made available to all tribes, Congress must provide funding for tribal public defender programs. To address this concern, section 304(b) clarifies that legal services funding can be used for public defender services for all crimes charged in tribal court systems, as opposed to only misdemeanors as is provided under current law. Section 402 of the bill acknowledges that funding provided to tribal court programs administered by the Departments of the Interior and Justice can be used to improve public defender programs.

Former U.S. Attorney General Janet Reno supported the concept of increasing tribal court sanctions in testimony before the Committee in the 105th Congress, stating that “[t]he range of sanctions available to tribes should include detention for serious violent offenders, drug courts, and other alternatives.”<sup>58</sup> The current Administration made reference to this provision in a recent letter to the Committee: “The Department acknowledges that some tribal courts may have the capacity to impose sentences greater than one year for one offense, in accord with the required protections included in section 304 of S. 797. That provision serves as an acknowledgement of inherent tribal court authority.”<sup>59</sup>

#### *Bureau of Prisons pilot project*

Because of the limited sentencing authority of tribal courts, most tribal jails were built with short-term incarceration in mind, and many may not be fit for long term incarceration. However, because tribal courts have increasingly tried violent criminal cases that are declined for prosecution in the federal system, tribal jails house a mix of both petty criminals and violent offenders.

To address these concerns and to broaden the already wide array of sentencing options available to tribal courts, section 304 of the bill authorizes tribal courts, when subjecting defendants to more than one year for any one offense, to sentence offenders to serve the term:

- In a tribal jail that is approved by BIA for long term incarceration.
- In a state or local government facility pursuant to an agreement with the tribal government.
- In a tribe’s alternative rehabilitation center or pursuant to an alternative form of sentencing pursuant to tribal law.

<sup>58</sup>*Department of Justice/Department of Interior Tribal Justice Initiatives: Hearing Before the Senate Comm. on Indian Affairs, 105th Cong., at 4 (June 3, 1998)* (statement of United States Attorney General Janet Reno).

<sup>59</sup>Letter from Ronald Weich, Assistant Attorney General, to Senator Dorgan, at 8 (Oct. 2, 2009).

- In the nearest appropriate federal facility pursuant to a pilot program to be administered by the U.S. Bureau of Prisons.

The Bureau of Prisons (BOP) Pilot Project is intended to give tribal courts, without adequate facilities, the option to sentence violent offenders to serve their term of imprisonment in the nearest appropriate federal facility.<sup>60</sup> S. 797 requires the Director of the BOP to establish the program within 120 days of enactment. Under the program, tribal courts would initiate the request along with information relevant to the conviction to the DOJ. The Department would then have 30 days to act on the request. The pilot project is limited to no more than 100 offenders at any one time, and is limited in duration to four years from the date of establishment of the program unless reauthorized. The Attorney General is directed to submit a report to Congress no later than three years from the date of establishment of the program describing the status of the program and any recommendation for reauthorization.

#### D. COMBATING DOMESTIC AND SEXUAL VIOLENCE

Committee hearings revealed an epidemic of domestic violence and sexual assault in Indian country, far too many of which go unreported and unpunished. Government reports cite the facts that 34% of American Indian and Alaska Native women will be raped in their lifetimes,<sup>61</sup> and 39% of Indian women will suffer domestic violence.<sup>62</sup> The Committee received testimony pointing to several causes for the prevalence of violence against Native women: (1) a lack of resources for police to investigate these crimes and resources to collect evidence, (2) a lack of police training for investigations and evidence collection, and (3) a lack of urgency at the federal level in investigating and prosecuting crimes of domestic and sexual violence.<sup>63</sup>

<sup>60</sup>The concept for the Bureau of Prisons pilot project acknowledges the Federal Government's responsibility to provide public safety on Indian lands and was based in part on the National Capital Revitalization and Self-Government Improvement Act that directed the transfer of prisoners confined in Washington, D.C. prisons to the Federal Bureau of Prisons. Public Law 105-33 (Aug. 5, 1997). The analogy between the Federal responsibility for public safety in the Nation's Capitol and in Indian country was noted in the Ford Administration's Report of the Task Force on Indian Matters. Doris M. Meissner, U.S. Department of Justice, *Report of the Task Force on Indian Matters*, at 51 (Oct. 1975) ("The District of Columbia is also a federal enclave in which the federal government must play a state government role in the criminal justice area in a manner similar to that required of it with respect to Indian communities.").

<sup>61</sup>*Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women*, U.S. Department of Justice, Patricia Tjaden & Nancy Thoennes, at 22 (2000); *Maze of Injustice*, Amnesty International U.S.A., at 2 (April 2007).

<sup>62</sup>*Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence*, Centers for Disease Control, (Feb. 2008).

<sup>63</sup>*Examining the Prevalence of and Solutions to Stopping Violence Against Indian Women: Hearing Before the Senate Comm. on Indian Affairs*, 110th Cong., at 7 (Sept. 27, 2007) (statement of Alexandria Arriaga, Director of Government Relations, Amnesty International U.S.A.) ("Prosecutions for crimes of sexual violence against indigenous women are rare in Federal, State and tribal courts. The high levels of impunity can become an incentive for perpetrators to commit further crimes. As one interviewee told Amnesty, it feels as though the reservation has become lawless."); *id.* at 63 (statement of Karen Artichoker, Director, Sacred Circle National Resource Center to End Violence Against Native Women) ("A young woman came to me, she had been raped in her own home, in her own bed. And she had reported it, she said the criminal investigator told her, sounds to me like you need to change your lifestyle."); *id.* (statement of Tammy Young, Director, Alaska Native Women's Coalition) ("We have a young woman in a small village, about 150 people, called not just once, but three different times, feeling as though maybe they didn't understand what she was explaining to them, what had actually happened. An entire year went by and no response other than the interview on the phone. No other person was contacted."). See also, *Law Enforcement in Indian Country, Hearing Before the Senate Comm. on Indian Affairs*, 110th Cong., at 18 (June 21, 2009) (statement of Bonnie Clairmont, Victim Advocacy Program Specialist, Tribal Law and Policy Institute).

Other recent reports confirmed these findings. The Amnesty International U.S.A. April 2007 Report *Maze of Injustice: The Failure to protect Indigenous women from sexual violence in the USA* studied Indian communities in Alaska, North Dakota, and Oklahoma. On the topic of resources, the Report found that as of February 2006, only 7 BIA police officers patrolled the 2.3 million acre Standing Rock Sioux Reservation that straddles the border between North Dakota and South Dakota.<sup>64</sup> The Reservation had only 2–3 officers on duty at any one time. As a result, “[w]omen on the Reservation who report sexual violence often have to wait for hours or even days before receiving a response. . . . Sometimes there is no response at all.”<sup>65</sup> The Report noted when a victim’s call is answered the local health facility often lacks the necessary rape kit or specialized training. In addition, 44% of Indian Health Service (IHS) facilities lack personnel trained to provide emergency services to respond to sexual violence, and 30% lack the basic protocols for treating victims.<sup>66</sup>

The impact of the lack of resources is felt by the victim, the community, and the individual officers alike. A National Public Radio report also highlighted the problems of prosecuting domestic violence and sexual assaults in Indian country. In a report titled *Rape Cases on Indian Lands Go Uninvestigated*, one former BIA police officer was quoted as saying that he was too overwhelmed to keep up with distress calls for sexual assault. When it came to federal prosecutors, he stated, “We all knew they only take the ones with a confession . . . We were forced to triage our cases. . . . I felt like I was standing in the middle of the river trying to hold back the flood.”<sup>67</sup>

This predicament is aggravated by the difficulty in prosecuting offenders when crimes are reported. While no federal agency has provided detailed statistics regarding declinations to prosecute Indian country sexual assaults, the *Denver Post*, in a series of investigative reports, found that 76.5% of adult rapes against Indian women, and 72% of sex crimes against Indian children were declined for prosecution between 2004 and 2007.<sup>68</sup>

To address issues of federal accountability, section 102, discussed above, would require federal investigators and prosecutors to maintain data on all case terminations and declinations to prosecute allegations of sexual and domestic violence in Indian country. In addition, when a case is terminated or declined, section 102 requires federal officials to coordinate with tribal police and prosecutors on the use of evidence for a concurrent prosecution in tribal court. Section 304 acknowledges that tribal courts can sentence offenders for up to three years imprisonment for any one offense so that the possible punishment for rapes and sexual assaults prosecuted in tribal courts better meets the crime.

Title VI of S. 797 addresses a number of other issues to improve investigation, and prosecution of reservation domestic and sexual violence. Section 601 will require federal officials to notify the trib-

<sup>64</sup> *Maze of Injustice*, Amnesty International U.S.A., at 43 (April 2007).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 41–59.

<sup>67</sup> Laura Sullivan, *Rape Cases on Indian Lands Go Uninvestigated*, National Public Radio (July 25, 2007) (online at <http://www.npr.org/templates/story/story.php?storyId=12203114>).

<sup>68</sup> Michael Riley, *Principles, Politics Collide*, *Denver Post* (Nov. 13, 2007) (online at [http://www.denverpost.com/news/ci\\_7446439](http://www.denverpost.com/news/ci_7446439)).

al justice officials at least 5 days prior to releasing convicted sex offenders from custody onto Indian lands or approving the change of residence of offenders on probation into Indian country. Current law requires federal officials to only notify the state or local jurisdiction, leaving tribal communities uninformed about the presence of sexual predators.

Section 602 expands the duties of the Bureau of Indian Affairs (BIA) Office of Justice Services to require training of officers in interviewing victims of domestic and sexual violence and in collecting, preserving, and presenting evidence to federal and tribal prosecutors. The intent of this section is to improve the services provided to victims of domestic and sexual violence and increase the conviction rates for such offenses committed in Indian country.

Section 603 would require federal employees to testify in tribal or state court pursuant to subpoena on matters within the scope of their duties. This provision was adopted in response to statements from tribal court judges and prosecutors who noted that it was often difficult to obtain testimony from BIA police or Indian Health Service (IHS) doctors or nurses.

Section 604 would require the BIA, IHS, and DOJ to coordinate on the development of victim services, victim advocate training programs, and identification of obstacles to prosecuting crimes of domestic violence, sexual assault, and sex trafficking. The intent of this section is to enhance inter-agency coordination to combat the prevalence of domestic and sexual violence. This provision may be particularly useful in addressing the troubling victim and witness intimidation that occurs in these types of cases and the Committee encourages the agencies to include aggressive strategies to address this barrier.

Section 605 would require the IHS to establish standardized sexual assault protocol at tribal health facilities. This section was adopted in response to findings that 30% of IHS facilities did not have protocols in place for emergency services in cases of sexual violence.

Section 607 requires the Government Accountability Office to conduct a study of the capability of IHS facilities in remote Indian reservations and Alaska Native villages to collect, maintain and secure evidence of sexual assault and domestic violence incidents required for criminal prosecution and develop recommendations for improving those capabilities. The committee is concerned that the IHS may not be adequately funded to retain and/or train the personnel necessary to perform these functions and to ensure that this capacity exists in remote Indian communities.

## VI. SECTION-BY-SECTION ANALYSIS OF S. 797 AS AMENDED

### TITLE I. FEDERAL ACCOUNTABILITY AND COORDINATION

#### *Section 101. Office of Justice Services*

Section 101(b) would require the Interior Department's Office of Justice Services (OJS) to hold regular consultations with tribal leaders, and to provide technical assistance and training to tribal police. This provision would also require OJS to submit annual spending and unmet needs reports to Congress. OJS would be required to coordinate with the Department of Justice (DOJ) to develop a long term plan to address concerns with the Bureau of In-

dian Affairs (BIA) and tribal jails system. Finally, it would also require OJS to submit short and long term plans to fill BIA and tribal police officer vacancies.

Section 101(c) would authorize BIA police to make warrantless arrests where the officer has “probable cause” to believe that the suspect has committed or is committing certain crimes. Current law requires officers to have “reasonable grounds” to make a warrantless arrest. This provision also adds a list of offenses for which BIA police may make a warrantless arrest, including certain controlled substances, firearms, assaults, and liquor trafficking violations.

*Section 102. Dispositions reports*

This section would require U.S. Attorneys to coordinate with tribal justice officials on the use of evidence when declining to prosecute a reservation crime. It would also require U.S. Attorneys to maintain data on declinations, and to publish an annual report on declinations by federal district, type of crime, and status of the defendant and victim as Indian or not.

*Section 103. Prosecution of crimes in Indian country*

Section 103(a) would clarify that U.S. Attorneys may appoint tribal prosecutors and other Indian law experts as special Assistant U.S. Attorneys to prosecute reservation crimes in federal court. This provision would encourage such appointments, in consultation with affected tribes. Section 103 would also urge U.S. Attorneys to coordinate with federal courts when making such appointments.

Section 103(b) would require the appointment of Assistant United States Attorneys to serve as Tribal Liaisons. It would also define their responsibilities to include: coordinating the prosecution of reservation crimes, developing multi-disciplinary task forces, and communicating and providing technical assistance to tribal law enforcement officials.

*Section 104. Administration*

Section 104(a) would elevate and make permanent the Office of Tribal Justice (OTJ) within the Department of Justice. It would also define the OTJ’s role to develop and direct the Department’s Indian affairs policies, and coordinate and consult with tribal leaders on matters affecting tribal interests.

Section 104(b) would establish a Native American Issues Coordinator within the Executive Office of U.S. Attorneys. The Coordinator would be responsible for working with tribal liaisons to enhance prosecution of reservation crimes, coordinating task forces to address Indian country crime, and gathering information for criminal declination data reports to Congress.

*Section 105. Prescription drug monitoring*

This section would direct the Secretary of Health and Human Services to establish a prescription drug monitoring program to be carried out at Indian Health Service and tribal health facilities and require the Attorney General to provide training to prevent the abuse of prescription drugs.

## TITLE II. STATE ACCOUNTABILITY AND COORDINATION

*Section 201. State criminal jurisdiction and resources*

Section 201 would permit an Indian tribe to request federal assistance in investigating and prosecuting reservation crimes, which, upon consent to the request by the Attorney General, would provide the United States with concurrent authority over certain reservation crimes.

*Section 202. Incentives for tribal-state cooperation*

Section 202 would authorize the Attorney General to provide grants, technical, and other assistance to encourage tribal, state, and local law enforcement agencies to enter into cooperative law enforcement agreements to combat crime in Indian country and nearby communities.

## TITLE III. EMPOWERING TRIBAL JUSTICE SYSTEMS

*Section 301. Tribal police officers*

Section 301(a) would require the Department of the Interior-OJS to permit greater flexibility in training of police officers serving Indian country, including permitting candidates to train at state and tribal academies, tribal colleges and other training centers that meet relevant federal training standards. This provision would also raise the maximum age for new officers to 46 and would require the BIA to expedite background checks for police and corrections officer candidates.

Section 301(b) would enhance existing law to grant Special Law Enforcement Commissions (SLEC) to officers serving Indian lands to enforce violations of federal law. It would require the BIA to provide regional trainings to certify officers, and add requirements to set timelines for SLEC-related agreements between the BIA and tribal governments.

Section 301(c) would establish an Indian Law Enforcement Foundation that would be tasked with advancing the role of BIA and tribal law enforcement officers and the provision of public safety and justice services in American Indian and Alaska Native communities.

*Section 302. Drug enforcement in Indian country*

Section 302 would authorize the Drug Enforcement Administration (DEA) to provide grants and technical assistance to tribal police to address drug trafficking in Indian country. This provision would also require the DEA to place tribal officers on the advisory panel to develop and coordinate educational programs to fight drug trafficking.

*Section 303. Access to national crime databases*

Section 303 would enhance tribal police officer access and ability to input information into the National Crime Information Center and similar federal criminal databases. The provision establishes tribal officers as authorized law enforcement officials for purposes of access to such databases.

*Section 304. Tribal court sentencing*

This section would acknowledge the ability of tribal courts to sentence offenders for up to 3 years imprisonment for any one offense of a tribal criminal law. If a tribe exercises this option, the tribe must provide indigent defendants a licensed defense attorney, the tribal court judges presiding over the case must be licensed and law trained, and the tribe must publish its criminal laws. Tribal courts exercising this option may to sentence offenders to serve time in: (1) a tribal facility that meets minimum federal standards; (2) the nearest appropriate federal facility pursuant to a pilot project administered by the Bureau of Prisons; (3) in a state facility pursuant to a tribal-state agreement; or (4) the tribe's alternative rehabilitation center or an alternative form of sentencing pursuant to tribal law.

*Section 305. Indian Law and Order Commission*

Section 306 would establish an Indian Law and Order Commission made up of tribal, federal, and state & local justice officials, and other experts. The Commission would be tasked with reviewing the current justice system as it relates to Indian lands and providing recommendations to enhance the prosecution and prevention of crime in Indian country. Specific items to be reviewed include: criminal jurisdiction; the tribal jails system; and the tribal juvenile justice system.

## TITLE IV. RESOURCES FOR TRIBAL JUSTICE PROGRAMS

*Section 401. Indian alcohol and substance abuse*

This section would reauthorize and amend the Indian Alcohol and Substance Abuse Act (IASA), which provides grants for summer youth programs, to develop tribal juvenile codes, and to construct shelters and detention and treatment centers for at risk youth and juvenile offenders. This provision would also direct the Substance Abuse and Mental Health Administration (SAMHSA) to take the lead role in interagency coordination on tribal substance abuse programs. SAMHSA would establish and appoint a Director of the Office of Indian Alcohol and Substance Abuse that would develop a framework for setting interagency communication goals, and provide technical assistance to tribal governments to develop and enhance alcohol and substance abuse prevention programs.

*Section 402. Tribal courts programs*

Section 402 would reauthorize the Indian Tribal Justice Support and Technical & Legal Assistance Acts, which provide funding for tribal court judicial personnel, public defenders, court facilities, development of records management systems, and other needs of tribal court systems.

*Section 403. Tribal COPS program*

Section 403 would reauthorize and amend the Tribal Resources Grant Program within the Community Oriented Policing Services Office of DOJ. It would authorize long term funding for the hiring and retention of tribal law enforcement officers, remove matching requirements, and permit tribes to use funds to cover indirect costs.



*Section 404. DOJ tribal jails program*

This section would reauthorize and amend the DOJ tribal jails construction program. It would authorize and encourage the construction of regional detention centers for long-term incarceration, tribal justice centers that combine courts, police, and corrections services, and would require DOJ, in coordination with the BIA, to develop a long-term plan for the construction, maintenance, and operation of tribal detention and alternative rehabilitation centers.

*Section 405. Assistant probation officers*

Section 405 would authorize and encourage the appointment of Indian country residents to serve as assistant probation officers to monitor federal prisoners living on or reentering Indian lands. This provision would also encourage the federal courts to offer services on or near Indian lands.

*Section 406. Tribal youth program*

Section 406 would amend the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. 5783, by establishing a Tribal Youth Program in Title V of that Act, authorizing competitive grants to tribes for activities aimed at preventing juvenile delinquency and treating and rehabilitating juvenile offenders.

*Section 407. Improving public safety in rural Alaska*

This section would make Alaska Village Public Safety Officer positions eligible for Community Oriented Policing Services funding. This provision is intended only to provide access to training and establish a training grant program, and neither directly nor by implication defines the jurisdiction of tribes in Alaska.

TITLE V. INDIAN COUNTRY CRIME DATA COLLECTION AND  
INFORMATION SHARING

*Section 501. Uniform Indian country crime reporting*

Section 501(a) requires the National Gang Intelligence Center to collect, analyze, and disseminate information on gang activity in Indian country. Section 501(b) would make tribal governments eligible for federal grants that promote criminal data collection and criminal history reporting. It would also require the DOJ's Bureau of Justice Statistics to report Indian country criminal data to Congress on an annual basis.

*Section 502. Tribal data collection program*

This section would authorize and direct the Interior Department's Office of Justice Services, in coordination with the Department of Justice, to develop a program to aid tribal police department efforts to establish and improve criminal data collection systems.

*Section 503. Tribal criminal history record improvement program*

Section 503 would authorize the DOJ Bureau of Justice Assistance to provide grants to Indian tribes to establish secure information sharing systems to enhance tribal police investigations and tribal court prosecutions.

TITLE VI. DOMESTIC VIOLENCE AND SEXUAL ASSAULT ENFORCEMENT  
AND PREVENTION*Section 601. Notification of tribal governments*

Section 601 would require the Director of the Bureau of Prisons and the Director of the Administrative office of the U.S. Courts to notify tribal justice officials when a person in federal custody will return or move to Indian country.

*Section 602. Domestic and sexual violence training*

Section 602 would require the BIA Office of Justice Services to develop trainings and provide BIA and tribal officers with specialized training in interviewing victims of domestic and sexual violence, and evidence collection and preservation techniques, with the goal of increasing the conviction rates of such offenses.

*Section 603. Testimony by Federal employees*

Section 603 would require federal employees to testify pursuant to tribal or state court subpoenas on matters within the scope of their duties.

*Section 604. Coordination of Federal agencies*

Section 604 would require the Bureau of Indian Affairs, the Indian Health Service (IHS), and the Department of Justice to coordinate to develop victim services and victim advocate training programs, and identify obstacles to prosecuting crimes of domestic violence, sexual assault, and human trafficking in Indian country.

*Section 605. Sexual assault protocol*

This section would require the IHS to establish and implement standardized sexual assault protocol at IHS and tribal health facilities.

*Section 606. Alaska Native Village community safety demonstration project*

This section would authorize a demonstration project within the DOJ Office of Justice Programs to develop innovative approaches to improving public safety in up to 30 Alaska Native Villages.

*Section 607. Study of IHS sexual assault and domestic violence response capabilities*

This section would direct the Government Accountability Office to study the capability of IHS to collect and secure evidence of domestic and sexual assaults in rural tribal and Alaska Native communities.

## VII. COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 797, as calculated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, September 25, 2009.

Hon. BYRON L. DORGAN,  
*Chairman, Committee on Indian Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 797, the Tribal Law and Order Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

DOUGLAS V. ELMENDORF,  
*Director.*

Enclosure.

*S. 797—Tribal Law and Order Act of 2009*

Summary: S. 797 would establish or reauthorize various programs and offices within the Bureau of Indian Affairs (BIA) and the Department of Justice (DOJ) to support the criminal justice system on Indian lands. Assuming appropriation of the necessary amounts, CBO estimates that implementing S. 797 would cost nearly \$1.1 billion over the 2010–2014 period and about \$380 million after 2014. Enacting the bill would not affect direct spending or revenues.

S. 797 would authorize the appropriation of \$566 million over the 2010–2014 period for BIA and DOJ to carry out the bill's provisions. In addition, CBO estimates that appropriations totaling another \$880 million over the five-year period would be necessary for those purposes.

S. 797 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 797 is shown in the following table. The costs of this legislation fall within budget functions 450 (community and regional development) and 750 (administration of justice).

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2010– 2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Programs with Specified Funding Levels:						
Authorization Level .....	106	115	115	115	115	566
Estimated Outlays .....	53	85	102	110	115	465
Other Programs:						
Estimated Authorization Level .....	175	176	176	177	179	883
Estimated Outlays .....	27	101	136	162	179	605
Total Spending Under S. 797:						
Estimated Authorization Level .....	281	291	291	292	294	1,449
Estimated Outlays .....	80	186	238	272	294	1,070

Basis of estimate: For this estimate, CBO assumes that S. 797 will be enacted near the start of fiscal year 2010, that the necessary amounts will be appropriated each year, and that spending

will follow the historical spending patterns for those or similar activities.

*Programs with specified funding levels*

S. 797 would authorize the appropriation of \$566 million over the 2010–2014 period for BIA and DOJ programs to improve the operation of the criminal justice system on Indian lands. Specifically, the bill would authorize the appropriation of:

- \$50 million annually over the 2010–2014 period for BIA to support the development, enhancement, and operation of tribal justice systems;
- \$35 million annually over the 2010–2014 period for DOJ to make grants to Indian tribes for the construction and maintenance of detention facilities and tribal justice centers;
- \$10 million annually over the 2010–2014 period for BIA to operate emergency shelters for Indian youth who abuse alcohol or illegal substances;
- \$10 million annually over the 2011–2015 period for DOJ to make grants to Indian tribes to improve public safety in Alaska Native villages; and
- A total of \$10 million annually over the 2010–2014 period for other BIA programs to enhance tribal law enforcement, combat substance abuse on Indian lands, and support tribal courts.

*Other programs*

S. 797 also would authorize the appropriation of whatever sums are necessary over the 2010–2014 period for BIA and DOJ programs to support the operation of the criminal justice system on Indian lands. CBO estimates that appropriations for those purposes would total \$883 million. We estimate that, in total, implementing those programs would cost \$605 million over the 2010–2014 period.

Specifically, the bill would authorize appropriations for DOJ to make grants to:

- State, local, and tribal governments for programs to prevent juvenile delinquency and assist juvenile offenders (in 2009, about \$62 million was appropriated for this program);
- Tribes to hire and equip law enforcement officers (in 2009, about \$20 million was appropriated for this program); and
- Tribes to support tribal courts and legal assistance programs (in 2009, about \$9 million was appropriated for this program).

CBO estimates that continuing those programs at the current level and adjusting for anticipated inflation over the 2010–2014 period would cost \$286 million over the five-year period.

Section 401 would authorize appropriations for BIA to construct emergency shelters, halfway houses, and juvenile detention facilities for tribal youth. According to BIA, construction costs for similar facilities on Indian lands average about \$10 million per project. Based on information from BIA regarding the demand for such facilities in Indian country, CBO estimates that this provision would cost \$227 million over the 2010–2014 period.

Section 202 would authorize appropriations for DOJ to make grants and provide other assistance to state, local, and tribal governments for cooperative programs to reduce crime in Indian coun-

try and nearby communities. Based on funding levels in recent years for similar cooperative programs, CBO estimates that this provision would cost \$34 million over the 2010–2014 period.

There are several other provisions in the bill that authorize the necessary sums over the 2010–2014 period for certain BIA programs. CBO estimates that a program to train tribal law enforcement and judicial personnel to address matters related to substance abuse and illegal narcotics would cost about \$5 million a year. In addition, we estimate that a program to combat the trafficking of illegal narcotics on Indian lands along the northern and southern borders would cost about \$3 million a year. Finally, we estimate that several other programs aimed at reducing substance abuse and eliminating illegal narcotics in Indian country would cost a total of \$4 million annually. In total, CBO estimates that implementing those provisions would cost \$58 million over the five-year period.

**Intergovernmental and private-sector impact:** S. 797 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Tribal governments would benefit from the authorization of appropriations for law enforcement and criminal justice activities. Any costs to those governments would be incurred voluntarily as a condition of receiving federal assistance.

**Estimate prepared by:** Federal Costs: Mark Grabowicz and Jeff LaFave; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Marin Randall.

**Estimate approved by:** Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### VIII. REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 797 will have a minimal impact on regulatory or paperwork requirements.

#### IX. CHANGES IN EXISTING LAW

In accordance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 797, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new language to be added in italic, existing law to which no change is proposed is shown in roman):

18 U.S.C. § 1162. State jurisdiction over offenses committed by or against Indians in the Indian country.

\* \* \* \* \*

*(d) Notwithstanding subsection (c), at the request of an Indian tribe, and after consultation with and consent by the Attorney General—*

*(1) sections 1152 and 1153 shall apply in the areas of the Indian country of the Indian tribe; and*

(2) *jurisdiction over those areas shall be concurrent among the Federal Government and State and tribal governments.*

\* \* \* \* \*

18 U.S.C. § 4042. Duties of Bureau of Prisons

(a) IN GENERAL.—The Bureau of Prisons, under the direction of the Attorney General, shall—

\* \* \* \* \*

(4) provide technical assistance to State, *tribal*, and local governments in the improvement of their correctional systems;

\* \* \* \* \*

(b) NOTICE OF RELEASE OF PRISONERS.—

(1) At least 5 days prior to the date on which a prisoner described in paragraph (3) is to be released on supervised release, or, in the case of a prisoner on supervised release, at least 5 days prior to the date on which the prisoner changes residence to a new jurisdiction, written notice of the release or change of residence shall be provided to the chief law enforcement *officers of each State, tribal, and local jurisdiction* [officer of the State and of the local jurisdiction] in which the prisoner will reside. Notice prior to release shall be provided by the Director of the Bureau of Prisons. Notice concerning a change of residence following release shall be provided by the probation officer responsible for the supervision of the released prisoner, or in a manner specified by the Director of the Administrative Office of the United States Courts. The notice requirements under this subsection do not apply in relation to a prisoner being protected under chapter 224.

\* \* \* \* \*

(c) NOTICE OF SEX OFFENDER RELEASE.—

(1) In the case of a person described in paragraph (3), or any other person in a category specified by the Attorney General, who is released from prison or sentenced to probation, notice shall be provided to—

(A) the chief law enforcement *officer of each State, tribal, and local jurisdiction* [officer of the State and of the local jurisdiction] in which the person will reside; and

(B) a State, *tribal*, or local agency responsible for the receipt or maintenance of sex offender registration information in the State, *tribal*, or local jurisdiction in which the person will reside.

\* \* \* \* \*

18 U.S.C. § 4352.—Authority of Institute; time; records of recipients; access; scope of section

(a) In addition to the other powers, express and implied, the National Institute of Corrections shall have authority—

(1) to receive from or make grants to and enter into contracts with Federal, State, *tribal*, and general units of local government, public and private agencies, educational institutions, organizations, and individuals to carry out the purposes of this chapter;

\* \* \* \* \*

(3) to assist and serve in a consulting capacity to Federal, State, *tribal*, and local courts, departments, and agencies in the development, maintenance, and coordination of programs, facilities, and services, training, treatment, and rehabilitation with respect to criminal and juvenile offenders;

(4) to encourage and assist Federal, State, *tribal*, and local government programs and services, and programs and services of other public and private agencies, institutions, and organizations in their efforts to develop and implement improved corrections programs;

\* \* \* \* \*

(6) to develop technical training teams to aid in the development of seminars, workshops, and training programs within the several States *and tribal communities* and with the State, *tribal*, and local agencies which work with prisoners, parolees, probationers, and other offenders;

\* \* \* \* \*

(8) to formulate and disseminate correctional policy, goals, standards, and recommendations for Federal, State, *tribal*, and local correctional agencies, organizations, institutions, and personnel;

\* \* \* \* \*

(12) to confer with and avail itself of the assistance, services, records, and facilities of State, *tribal*, and local governments or other public or private agencies, organizations, or individuals;

\* \* \* \* \*

21 U.S.C. § 872. Education and research programs of Attorney General

(a) AUTHORIZATION.—The Attorney General is authorized to carry out educational and research programs directly related to enforcement of the laws under his jurisdiction concerning drugs or other substances which are or may be subject to control under this subchapter. Such programs may include—

(1) educational and training programs on drug abuse and controlled substances law enforcement for local, State, *tribal*, and Federal personnel;

\* \* \* \* \*

(c) IDENTIFICATION OF RESEARCH POPULATIONS; AUTHORIZATION TO WITHHOLD.—The Attorney General may authorize persons engaged in research to withhold the names and other identifying characteristics of persons who are the subjects of such research. Persons who obtain this authorization may not be compelled in any Federal, State, *tribal*, or local civil, criminal, administrative, legislative, or other proceeding to identify the subjects of research for which such authorization was obtained.

\* \* \* \* \*

21 U.S.C. § 872a. Public-private education program

(a) ADVISORY PANEL.—The Attorney General shall establish an advisory panel consisting of an appropriate number of representatives from Federal, State, *tribal*, and local law enforcement and regulatory agencies with experience in investigating and pros-

ecuting illegal transactions of precursor chemicals. The Attorney General shall convene the panel as often as necessary to develop and coordinate educational programs for wholesale and retail distributors of precursor chemicals and supplies.

(b) CONTINUATION OF CURRENT EFFORTS.—The Attorney General shall continue to—

- \* \* \* \* \*
- (2) provide assistance to State, *tribal*, and local law enforcement and regulatory agencies to facilitate the establishment and maintenance of educational programs for distributors of precursor chemicals and supplies.
- \* \* \* \* \*

21 U.S.C. § 873.

(a) COOPERATION OF ATTORNEY GENERAL WITH LOCAL, STATE, AND FEDERAL AGENCIES.—The Attorney General shall cooperate with local, State, *tribal*, and Federal agencies concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, he is authorized to—

- \* \* \* \* \*
- (6) assist State, *tribal*, and local governments in suppressing the diversion of controlled substances from legitimate medical, scientific, and commercial channels by—
- \* \* \* \* \*

- (7) notwithstanding any other provision of law, enter into contractual agreements with State, *tribal*, and local law enforcement agencies to provide for cooperative enforcement and regulatory activities under this chapter.
- \* \* \* \* \*

(d) GRANTS BY ATTORNEY GENERAL.—

- (1) The Attorney General may make grants, in accordance with paragraph (2), to State, *tribal*, and local governments to assist in meeting the costs of—
- \* \* \* \* \*

21 U.S.C. § 878. Powers of enforcement personnel

(a) Any officer or employee of the Drug Enforcement Administration or any State, *tribal*, or local law enforcement officer designated by the Attorney General may—

\* \* \* \* \*

25 U.S.C. § 450 (sections 701–703). Title VII—Indian Law Enforcement Foundation

**TITLE VII—INDIAN LAW ENFORCEMENT  
FOUNDATION**

**SEC. 701. DEFINITIONS.**

*In this title:*

- (1) BOARD.—The term “Board” means the Board of Directors of the Foundation.
- (2) BUREAU.—The term “Bureau” means the Office of Justice Services of the Bureau of Indian Affairs.



(3) *COMMITTEE.*—The term “Committee” means the Committee for the Establishment of the Indian Law Enforcement Foundation established under section 702(e)(1).

(4) *FOUNDATION.*—The term “Foundation” means the Indian Law Enforcement Foundation established under section 702.

(5) *SECRETARY.*—The term “Secretary” means the Secretary of the Interior.

**SEC. 702. INDIAN LAW ENFORCEMENT FOUNDATION.**

(a) *ESTABLISHMENT.*—

(1) *IN GENERAL.*—As soon as practicable after the date of enactment of this title, the Secretary shall establish, under the laws of the District of Columbia and in accordance with this title, a foundation, to be known as the ‘Indian Law Enforcement Foundation’.

(2) *FUNDING DETERMINATIONS.*—No funds, gift, property, or other item of value (including any interest accrued on such an item) acquired by the Foundation shall—

(A) be taken into consideration for purposes of determining Federal appropriations relating to the provision of public safety or justice services to Indians; or

(B) otherwise limit, diminish, or affect the Federal responsibility for the provision of public safety or justice services to Indians.

(b) *NATURE OF CORPORATION.*—The Foundation—

(1) shall be a charitable and nonprofit federally chartered corporation; and

(2) shall not be an agency or instrumentality of the United States.

(c) *PLACE OF INCORPORATION AND DOMICILE.*—The Foundation shall be incorporated and domiciled in the District of Columbia.

(d) *DUTIES.*—The Foundation shall—

(1) encourage, accept, and administer, in accordance with the terms of each donation, private gifts of real and personal property, and any income from or interest in such gifts, for the benefit of, or in support of, public safety and justice services in American Indian and Alaska Native communities; and

(2) assist the Office of Justice Services of the Bureau of Indian Affairs and Indian tribal governments in funding and conducting activities and providing education to advance and support the provision of public safety and justice services in American Indian and Alaska Native communities.

(e) *COMMITTEE FOR THE ESTABLISHMENT OF THE INDIAN LAW ENFORCEMENT FOUNDATION.*—

(1) *IN GENERAL.*—The Secretary shall establish the a committee, to be known as the “Committee for the Establishment of the Indian Law Enforcement Foundation”, to assist the Secretary in establishing the Foundation.

(2) *DUTIES.*—Not later than 180 days after the date of enactment of this section, the Committee shall—

(A) carry out such activities as are necessary to incorporate the Foundation under the laws of the District of Columbia, including acting as incorporators of the Foundation;

(B) ensure that the Foundation qualifies for and maintains the status required to carry out this section, until the date on which the Board is established;

(C) establish the constitution and initial bylaws of the Foundation;

(D) provide for the initial operation of the Foundation, including providing for temporary or interim quarters, equipment, and staff; and

(E) appoint the initial members of the Board in accordance with the constitution and initial bylaws of the Foundation.

(f) BOARD OF DIRECTORS.—

(1) IN GENERAL.—The Board of Directors shall be the governing body of the Foundation.

(2) POWERS.—The Board may exercise, or provide for the exercise of, the powers of the Foundation.

(3) SELECTION.—

(A) IN GENERAL.—Subject to subparagraph (B), the number of members of the Board, the manner of selection of the members (including the filling of vacancies), and the terms of office of the members shall be as provided in the constitution and bylaws of the Foundation.

(B) REQUIREMENTS.—

(i) NUMBER OF MEMBERS.—The Board shall be composed of not less than 7 members.

(ii) INITIAL VOTING MEMBERS.—The initial voting members of the Board—

(I) shall be appointed by the Committee not later than 180 days after the date on which the Foundation is established; and

(II) shall serve for staggered terms.

(iii) QUALIFICATION.—The members of the Board shall be United States citizens with knowledge or experience regarding public safety and justice in Indian and Alaska Native communities.

(C) COMPENSATION.—A member of the Board shall not receive compensation for service as a member, but shall be reimbursed for actual and necessary travel and subsistence expenses incurred in the performance of the duties of the Foundation.

(g) OFFICERS.—

(1) IN GENERAL.—The officers of the Foundation shall be—

(A) a Secretary, elected from among the members of the Board; and

(B) any other officers provided for in the constitution and bylaws of the Foundation.

(2) CHIEF OPERATING OFFICER.—

(A) SECRETARY.—Subject to subparagraph (B), the Secretary of the Foundation may serve, at the direction of the Board, as the chief operating officer of the Foundation.

(B) APPOINTMENT.—The Board may appoint a chief operating officer in lieu of the Secretary of the Foundation under subparagraph (A), who shall serve at the direction of the Board.

(3) *ELECTION.*—*The manner of election, term of office, and duties of the officers of the Foundation shall be as provided in the constitution and bylaws of the Foundation.*

(h) *POWERS.*—*The Foundation—*

(1) *shall adopt a constitution and bylaws for the management of the property of the Foundation and the regulation of the affairs of the Foundation;*

(2) *may adopt and alter a corporate seal;*

(3) *may enter into contracts;*

(4) *may acquire (through gift or otherwise), own, lease, encumber, and transfer real or personal property as necessary or convenient to carry out the purposes of the Foundation;*

(5) *may sue and be sued; and*

(6) *may perform any other act necessary and proper to carry out the purposes of the Foundation.*

(i) *PRINCIPAL OFFICE.*—

(1) *IN GENERAL.*—*The principal office of the Foundation shall be located in the District of Columbia.*

(2) *ACTIVITIES; OFFICES.*—*The activities of the Foundation may be conducted, and offices may be maintained, throughout the United States in accordance with the constitution and bylaws of the Foundation.*

(j) *SERVICE OF PROCESS.*—*The Foundation shall comply with the law on service of process of each State in which the Foundation is incorporated and of each State in which the Foundation carries on activities.*

(k) *LIABILITY OF OFFICERS, EMPLOYEES, AND AGENTS.*—

(1) *IN GENERAL.*—*The Foundation shall be liable for the acts of the officers, employees, and agents of the Foundation acting within the scope of the authority of the officers, employees, and agents.*

(2) *PERSONAL LIABILITY.*—*A member of the Board shall be personally liable only for gross negligence in the performance of the duties of the member.*

(l) *RESTRICTIONS.*—

(1) *LIMITATION ON SPENDING.*—*Beginning with the fiscal year following the first full fiscal year during which the Foundation is in operation, the administrative costs of the Foundation shall not exceed the percentage described in paragraph (2) of the sum of—*

(A) *the amounts transferred to the Foundation under subsection (n) during the preceding fiscal year; and*

(B) *donations received from private sources during the preceding fiscal year.*

(2) *PERCENTAGES.*—*The percentages referred to in paragraph (1) are—*

(A) *for the first 2 fiscal years described in that paragraph, 25 percent;*

(B) *for the following fiscal year, 20 percent; and*

(C) *for each fiscal year thereafter, 15 percent.*

(3) *APPOINTMENT AND HIRING.*—*The appointment of officers and employees of the Foundation shall be subject to the availability of funds.*

(4) *STATUS.*—*A member of the Board or officer, employee, or agent of the Foundation shall not by reason of association with*

*the Foundation be considered to be an officer, employee, or agent of the United States.*

*(m) AUDITS.—The Foundation shall comply with section 10101 of title 36, United States Code, as if the Foundation were a corporation under part B of subtitle II of that title.*

*(n) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out subsection (e)(1) \$500,000 for each of the 5 fiscal years of operation of the Foundation.*

**SEC. 703. ADMINISTRATIVE SERVICES AND SUPPORT.**

*(a) PROVISION OF SUPPORT BY SECRETARY.—Subject to subsection (b), during the 5-year period beginning on the date on which the Foundation is established, the Secretary—*

*(1) may provide personnel, facilities, and other administrative support services to the Foundation;*

*(2) may provide funds for initial operating costs and to reimburse the travel expenses of the members of the Board; and*

*(3) shall require and accept reimbursements from the Foundation for—*

*(A) services provided under paragraph (1); and*

*(B) funds provided under paragraph (2).*

*(b) REIMBURSEMENT.—Reimbursements accepted under subsection (a)(3)—*

*(1) shall be deposited in the Treasury of the United States to the credit of the applicable appropriations account; and*

*(2) shall be chargeable for the cost of providing services described in subsection (a)(1) and travel expenses described in subsection (a)(2).*

*(c) CONTINUATION OF CERTAIN SERVICES.—The Secretary may continue to provide facilities and necessary support services to the Foundation after the termination of the 5-year period specified in subsection (a) if the facilities and services are—*

*(1) available; and*

*(2) provided on reimbursable cost basis.*

*(1) by redesignating title V (25 U.S.C. 458bbb et seq.) as title VIII and moving the title so as to appear at the end of the Act;*

*(2) by redesignating sections 501, 502, and 503 (25 U.S.C. 458bbb, 458bbb-1, 458bbb-2) as sections 801, 802, and 803, respectively; and*

*(3) in subsection (a)(2) of section 802 and paragraph (2) of section 803 (as redesignated by paragraph (2)), by striking “section 501” and inserting “section 801”.*

\* \* \* \* \*

**25 U.S.C. § 1302. Constitutional rights**

*(a) IN GENERAL.—No Indian tribe in exercising powers of self-government shall—*

\* \* \* \* \*

*(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year or a fine [and a fine] of \$5,000, or both;*

\* \* \* \* \*

*(b) ENHANCED SENTENCING AUTHORITY.—*

(1) *IN GENERAL.*—Notwithstanding paragraph (7) of subsection (a) and in addition to the limitations described in the other paragraphs of that subsection, no Indian tribe, in exercising any power of self-government involving a criminal trial that subjects a defendant to more than 1 year imprisonment for any single offense, may—

(A) deny any person in such a criminal proceeding the assistance of a defense attorney licensed to practice law in any jurisdiction in the United States, and shall provide counsel to any defendant who is unable to afford defense counsel at the expense of the tribal government;

(B) require excessive bail, impose an excessive fine, inflict a cruel or unusual punishment, or impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or

(C) deny any person in such a criminal proceeding the due process of law.

(2) *AUTHORITY.*—An Indian tribe exercising authority pursuant to this subsection shall—

(A) require that each judge presiding over an applicable criminal case—

(i) have sufficient legal training; and

(ii) be licensed to practice law in any jurisdiction in the United States; and

(B) make publicly available the criminal laws (including regulations and interpretive documents) of the Indian tribe.

(3) *SENTENCES.*—A tribal court acting pursuant to paragraph (1) may require a convicted offender—

(A) to serve the sentence—

(i) in a tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines developed by the Bureau of Indian Affairs, in consultation with Indian tribes;

(ii) in the nearest appropriate Federal facility, at the expense of the United States pursuant to the pilot program described in paragraph (4);

(iii) in a State or local government-approved detention or correctional center pursuant to an agreement between the Indian tribe and the State or local government; or

(iv) subject to paragraph (1), in an alternative rehabilitation center of an Indian tribe; or

(B) to serve another alternative form of punishment, as determined by the tribal court judge pursuant to tribal law.

(4) *BUREAU OF PRISONS TRIBAL PRISONER PILOT PROGRAM.*—

(A) *IN GENERAL.*—Not later than 120 days after the date of enactment of the Tribal Law and Order Act of 2009, the Director of the Bureau of Prisons shall establish a pilot program under which the Bureau of Prisons shall accept offenders convicted in tribal court pursuant to this section, subject to the conditions described in subparagraph (B).

(B) *CONDITIONS.*—The conditions referred to in subparagraph (A) are the following:

(i) *The tribal court shall submit to the Attorney General a request for confinement of the offender, for approval by the Attorney General (or a designee) by not later than 30 days after the date of submission.*

(ii) *Requests for confinement shall be limited to offenders convicted of a violent crime for which the sentence includes a term of imprisonment of 2 or more years, as determined by the Director of the Bureau of Prisons, in consultation with the appropriate tribal governments.*

(iii) *The imprisonment by the Bureau of Prisons shall be subject to the conditions described in section 5003 of title 18, United States Code, regarding the custody of State offenders, except that the offender shall be placed in the nearest available and appropriate Federal facility.*

(iv) *The Bureau of Prisons shall confine not more than 100 tribal offenders at any time.*

**(C) RESCINDING REQUESTS.—**

(i) *IN GENERAL.—The applicable tribal government shall retain the authority to rescind the request for confinement of a tribal offender by the Bureau of Prisons under this paragraph at any time during the sentence of the offender.*

(ii) *RETURN TO TRIBAL CUSTODY.—On rescission of a request under clause (i), a tribal offender shall be returned to tribal custody.*

**(D) REQUEST FOR REASSESSMENT.—***If tribal court demand for participation in the program under this paragraph exceeds the limitation described in subparagraph (B)(iv), a representative of the Bureau of Prisons shall submit to Congress a notice requesting reassessment of the program.*

**(E) REPORT.—***Not later than 3 years after the date of establishment of the program under this paragraph, the Attorney General shall submit to Congress a report describing the status of the program, including recommendations regarding the future of the program, if any.*

**(F) TERMINATION.—***Except as otherwise provided by an Act of Congress, the pilot program under this paragraph shall expire on the date that is 4 years after the date on which the program is established.*

**(c) SEPARATION OF OFFENSES.—***For purposes of this section, 2 or more offenses may be considered to be separate offenses for purposes of charging and sentencing if each offense requires proof of an element that the other offenses do not, without regard to—*

*(1) the accusatory pleading; or*

*(2) the proof adduced at trial.*

**(d) EFFECT OF SECTION.—***Nothing in this section affects the obligation of the United States, or any State government that has been delegated authority by the United States, to investigate and prosecute any criminal violation in Indian country.*

\* \* \* \* \*

[(a) Consent of United States; force and effect of criminal laws  
The consent of the United States]  
25 U.S.C. § 1321.—Assumption by State of criminal jurisdiction.

(a) CONSENT OF UNITED STATES.—

(1) IN GENERAL.—The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(2) CONCURRENT JURISDICTION.—At the request of an Indian tribe, and after consultation with and consent by the Attorney General, the United States shall accept concurrent jurisdiction to prosecute violations of sections 1152 and 1153 of title 18, United States Code, within the Indian country of the Indian tribe.

\* \* \* \* \*

25 U.S.C. § 1673. Sexual assault protocol

The Director of the Service, in coordination with the Director of the Office of Violence Against Women of the Department of Justice, in consultation with Indian tribes and tribal organizations, and in conference with urban Indian organizations, shall develop standardized sexual assault policies and protocol for the facilities of the Service, based on similar protocol that has been established by the Department of Justice.

\* \* \* \* \*

25 U.S.C. § 2411. Inter-Departmental memorandum of agreement

(a) IN GENERAL.—Not later than 120 days after [October 27, 1986] the date of enactment of the Tribal Law and Order Act of 2009, the Secretary of the Interior, the Attorney General, and the Secretary of Health and Human Services shall develop and enter into a Memorandum of Agreement which shall, among other things—

\* \* \* \* \*

(2) identify—

(A) the resources and programs of the Bureau of Indian Affairs, Bureau of Justice Assistance, Substance Abuse and Mental Health Services Administration, and Indian Health Service, and

\* \* \* \* \*

(4) coordinate the Bureau of Indian Affairs, Department of Justice, Substance Abuse and Mental Health Services Administration, and Indian Health Service alcohol and substance abuse programs existing on October 27, 1986, with programs or efforts established by this chapter,

(5) delineate the responsibilities of the Bureau of Indian Affairs, *Department of Justice, Substance Abuse and Mental Health Services Administration*, and Indian Health Service to coordinate alcohol and substance abuse-related services at the central, area, agency, and service unit levels,

\* \* \* \* \*

(7) provide for an annual review of such agreements by the Secretary of the Interior, *the Attorney General*, and the Secretary of Health and Human Services.

\* \* \* \* \*

(c) CONSULTATION.—The Secretary of the Interior, *the Attorney General*, and the Secretary of Health and Human Services shall, in developing the Memorandum of Agreement under subsection (a) of this section, consult with and solicit the comments of—

\* \* \* \* \*

(d) PUBLICATION.—The Memorandum of Agreement under subsection (a) of this section shall be submitted to Congress and published in the Federal Register not later than 130 days after [October 27, 1986] *the date of enactment of the Tribal Law and Order Act of 2009*. At the same time as publication in the Federal Register, the Secretary of the Interior shall provide a copy of this chapter and the Memorandum of Agreement under subsection (a) of this section to each Indian tribe.

§ 2412. Tribal Action Plans

\* \* \* \* \*

(b) COOPERATION.—At the request of any Indian tribe pursuant to a resolution adopted under subsection (a) of this section, the Bureau of Indian Affairs agency and education superintendents, where appropriate, *the Bureau of Justice Assistance, the Substance Abuse and Mental Health Services Administration*, and the Indian Health Service service unit director providing services to such tribe shall cooperate with the tribe in the development of a Tribal Action Plan to coordinate resources and programs relevant to alcohol and substance abuse prevention and treatment. Upon the development of such a plan, such superintendents and director, as directed by the Memorandum of Agreement established under section 2411 of this title, shall enter into an agreement with the tribe for the implementation of the Tribal Action Plan under subsection (a) of this section.

(c) PROVISIONS.—

(1) Any Tribal Action Plan entered into under subsection (b) of this section shall provide for—

(A) the establishment of a Tribal Coordinating Committee which shall—

(i) at a minimum, have as members a tribal representative who shall serve as Chairman and the Bureau of Indian Affairs agency and education superintendents, where appropriate, *the Bureau of Justice Assistance, the Substance Abuse and Mental Health Services Administration*, and the Indian Health Service service unit director, or their representatives,

\* \* \* \* \*



## (d) GRANTS.—

\* \* \* \* \*

(2) There are authorized to be appropriated for grants under this subsection not more than \$2,000,000 for [fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000] *the period of fiscal years 2010 through 2014.*

(e) FEDERAL ACTION.—If any Indian tribe does not adopt a resolution as provided in subsection (a) of this section within 90 days after the publication of the Memorandum of Agreement in the Federal Register as provided in section 2411 of this title, the Secretary of the Interior, *the Attorney General*, and the Secretary of Health and Human Services shall require the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director serving such tribe to enter into an agreement to identify and coordinate available programs and resources to carry out the purposes of this chapter for such tribe. After such an agreement has been entered into for a tribe such tribe may adopt a resolution under subsection (a) of this section.

## (f) GRANTS FOR TRAINING, EDUCATION, AND PREVENTION PROGRAMS.—

\* \* \* \* \*

(3) There are authorized to be appropriated to carry out the provisions of this subsection \$5,000,000 for [fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000] *fiscal years 2010 through 2014.*

## § 2413. Departmental responsibility

(a) IMPLEMENTATION.—The Secretary of the Interior, acting through the Bureau of Indian Affairs, *the Attorney General*, and the Secretary of Health and Human Services, acting through the Indian Health Service, shall bear equal responsibility for the implementation of this chapter in cooperation with Indian tribes.

## (b) OFFICE OF ALCOHOL AND SUBSTANCE ABUSE.—

[(1) In order to better coordinate the various programs of the Bureau of Indian Affairs in carrying out this chapter, there is established within the Office of the Assistant Secretary of the Interior for Indian Affairs an Office of Alcohol and Substance Abuse. The director of such office [FN1] shall be appointed by the Assistant Secretary of the Interior for Indian Affairs on a permanent basis at no less than a grade GS-15 of the General Schedule.]

## (1) ESTABLISHMENT.—

(A) IN GENERAL.—*To improve coordination among the Federal agencies and departments carrying out this subtitle, there is established within the Substance Abuse and Mental Health Services Administration an office, to be known as the “Office of Indian Alcohol and Substance Abuse” (referred to in this section as the “Office”).*

(B) DIRECTOR.—*The director of the Office shall be appointed by the Director of the Substance Abuse and Mental Health Services Administration—*

- (i) on a permanent basis; and
- (ii) at a grade of not less than GS-15 of the General Schedule.

[(2) In addition] (2) *RESPONSIBILITIES OF OFFICE.*—In addition to other responsibilities which may be assigned to such Office, it shall be responsible for—

[(A) monitoring the performance and compliance of programs of the Bureau of Indian Affairs in meeting the goals and purposes of this chapter and the Memorandum of Agreement entered into under section 2411 of this title, and]

(A) *coordinating with other agencies to monitor the performance and compliance of the relevant Federal programs in achieving the goals and purposes of this subtitle and the Memorandum of Agreement entered into under section 4205;*

(B) serving as a point of contact [within the Bureau of Indian Affairs] for Indian tribes and the Tribal Coordinating Committees regarding the implementation of this chapter, the Memorandum of Agreement, and any Tribal Action Plan established under section 2412 of this title[.]; and

(C) *not later than 1 year after the date of enactment of the Tribal Law and Order Act of 2009, developing, in coordination and consultation with tribal governments, a framework for interagency and tribal coordination that—*

(i) *establish the goals and other desired outcomes of this Act;*

(ii) *prioritizes outcomes that are aligned with the purposes of affected agencies;*

(iii) *provides guidelines for resource and information sharing;*

(iv) *provides technical assistance to the affected agencies to establish effective and permanent interagency communication and coordination; and*

(v) *determines whether collaboration is feasible, cost-effective, and within agency capability.*

[(3) The Assistant Secretary of the Interior for Indian Affairs shall appoint such employees to work in the Office of Alcohol and Substance Abuse, and shall provide such funding, services, and equipment as may be necessary to enable the Office of Alcohol and Substance Abuse to carry out its responsibilities.]

(3) *APPOINTMENT OF EMPLOYEES.*—*The Director of the Substance Abuse and Mental Health Services Administration shall appoint such employees to work in the Office, and shall provide such funding, services, and equipment, as may be necessary to enable the Office to carry out the responsibilities under this subsection.*

(c) *INDIAN YOUTH PROGRAMS OFFICER.*—

(1) There is established in the Office [of Alcohol and Substance Abuse] the position to be known as the Indian Youth Programs Officer. [The Assistant Secretary of the Interior for Indian Affairs] *The Director of the Substance Abuse and Men-*

tal Health Services Administration shall appoint the Indian [Youth] youth Programs Officer.

\* \* \* \* \*

(3) In addition to other responsibilities which may be assigned to the Indian Youth Programs Officer relating to Indian Youth, such Officer shall be responsible for—

(A) monitoring the performance and compliance of [programs of the Bureau of Indian Affairs] the applicable Federal programs in meeting the goals and purposes of this chapter and the Memorandum of Agreement entered into under section 2411 of this title as they relate to Indian youth efforts, and

(B) providing advice and recommendations, including recommendations submitted by Indian tribes and Tribal Coordinating Committees, to the Director of the Office [of Alcohol and Substance Abuse] as they relate to Indian youth.

\* \* \* \* \*

25 U.S.C. § 2414a. Review of programs

(a) IN GENERAL.—In the development of the Memorandum of Agreement required by section 2411 of this title, the Secretary of the Interior, the Attorney General, and the Secretary of Health and Human Services shall review and consider—

\* \* \* \* \*

25 U.S.C. § 2415. Federal facilities, property, and equipment; leasing of tribal property

(a) FACILITY AVAILABILITY.—In the furtherance of the purposes and goals of this chapter, the Secretary of the Interior, the Attorney General, and the Secretary of Health and Human Services shall make available for community use, to the extent permitted by law and as may be provided in a Tribal Action Plan, local Federal facilities, property, and equipment, including school facilities. Such facility availability shall include school facilities under the Secretary of the Interior’s jurisdiction: *Provided*, That the use of any school facilities shall be conditioned upon approval of the local school board with jurisdiction over such school.

(b) COSTS.—Any additional cost associated with the use of Federal facilities, property, or equipment under subsection (a) of this section may be borne by the Secretary of the Interior, the Attorney General, and the Secretary of Health and Human Services out of available Federal, tribal, State, local, or private funds, if not otherwise prohibited by law. This subsection does not require the Secretary of the Interior, nor the Attorney General, nor the Secretary of Health and Human Services to expend additional funds to meet the additional costs which may be associated with the provision of such facilities, property, or equipment for community use. Where the use of Federal facilities, property, or equipment under subsection (a) of this section furthers the purposes and goals of this chapter, the use of funds other than those funds appropriated to the Department of the Interior, the Department of Justice, or the Department of Health and Human Services to meet the additional costs associated with such use shall not constitute an augmentation of Federal appropriations.

## (c) LEASES.—

(1) The Secretary of the Interior, *the Attorney General*, and the Secretary of Health and Human Services are authorized to enter into long-term leases of tribally owned or leased facilities to house programs established by this chapter where they determine that there is no Federal facility reasonably available for such purpose and the cost of constructing a new Federal facility would exceed the cost of such Federal lease unless they determine that mitigating factors favor such a lease.

\* \* \* \* \*

## 25 U.S.C. § 2416. Newsletter

(a) IN GENERAL.—The Secretary of the Interior shall publish an alcohol and substance abuse newsletter in cooperation with *the Attorney General*, the Secretary of Health and Human Services and the Secretary of Education to report on Indian alcohol and substance abuse projects and programs. The newsletter shall—

\* \* \* \* \*

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section \$500,000 for [fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000] *the period of fiscal years 2010 through 2014.*

## 25 U.S.C. § 2431. Review of programs

(a) REVIEW.—In the development of the Memorandum of Agreement required by section 2411 of this title, the Secretary of the Interior, *the Attorney General*, and the Secretary of Health and Human Services, in cooperation with the Secretary of Education shall review and consider—

\* \* \* \* \*

## 25 U.S.C. § 2432. Indian education programs

[(a) PILOT PROGRAMS.—The Assistant Secretary of Indian Affairs shall develop and implement pilot programs in selected schools funded by the Bureau of Indian Affairs (subject to the approval of the local school board or contract school board) to determine the effectiveness of summer youth programs in furthering the purposes and goals of this chapter. The Assistant Secretary shall defray all costs associated with the actual operation and support of the pilot programs in the school from funds appropriated for this section. For the pilot programs there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993, 1994, 1995, 1996, 1997, 1998, 1999, and 2000.]

## (a) SUMMER YOUTH PROGRAMS.—

(1) IN GENERAL.—*The head of the Indian Alcohol and Substance Abuse Program, in coordination with the Assistant Secretary for Indian Affairs, shall develop and implement programs in tribal schools and schools funded by the Bureau of Indian Education (subject to the approval of the local school board or contract school board) to determine the effectiveness of summer youth programs in advancing the purposes and goals of this Act.*

(2) COSTS.—*The head of the Indian Alcohol and Substance Abuse Program and the Assistant Secretary shall defray all*

*costs associated with the actual operation and support of the summer youth programs in a school from funds appropriated to carry out this subsection.*

(3) *AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the programs under this subsection such sums as are necessary for each of fiscal years 2010 through 2014.*

\* \* \* \* \*  
25 U.S.C. § 2433. Emergency shelters

\* \* \* \* \*  
(e) **AUTHORIZATION.—**

(1) For the planning and design, construction, and renovation of, or purchase or lease of land or facilities for, emergency shelters and half-way houses to provide emergency care for Indian youth, there are authorized to be appropriated \$10,000,000 for fiscal year 1993 and such sums [as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.] *as are necessary for each of fiscal years 2010 through 2014.*

(2) For the staffing and operation of emergency shelters and half-way houses, there are authorized to be appropriated \$5,000,000 for fiscal year 1993 and [\$7,000,000 for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000] *\$10,000,000 for each of fiscal years 2010 through 2014.*

\* \* \* \* \*  
25 U.S.C. § 2441. Review of programs

(a) **LAW ENFORCEMENT AND JUDICIAL SERVICES.—**In the development of the Memorandum of Agreement required by section 2411 of this title, the Secretary of the Interior, *the Attorney General*, and the Secretary of Health and Human Services, in cooperation with the Attorney General of the United States, shall review and consider—

\* \* \* \* \*  
25 U.S.C. § 2442. Illegal narcotics traffic on Tohono O’odham and St. Regis Reservations; source eradication

(a) **INVESTIGATION AND CONTROL.—**

(1) The Secretary of the Interior shall provide assistance to—

(A) the Tohono O’odham Tribe of Arizona for the investigation and control of illegal narcotics traffic on the Tohono O’odham Reservation along the border with Mexico[.];

(B) the St. Regis Band of Mohawk Indians of New York for the development of tribal law enforcement and judicial systems to aid in the investigation and control of illegal narcotics traffic on the St. Regis Reservation along the border with Canada [ and];

(C) the Makah Indian Tribe of Washington for the investigation and control of illegal narcotic traffic on the Makah Indian Reservation arising from its proximity to international waters[.]; *and*

*(D) the Blackfeet Nation of Montana for the investigation and control of illegal narcotics traffic on the Blackfeet Indian Reservation along the border with Canada.*

(2) The Secretary shall ensure that tribal efforts under this subsection are coordinated with appropriate Federal law enforcement agencies, including the **United States Custom Service** *United States Customs and Border Protection, the Bureau of Immigration and Customs Enforcement, and the Drug Enforcement Administration.*

[(3) For the purpose of providing the assistance required by this subsection, there are authorized to be appropriated—

**[(A) \$500,000 under paragraph (1)(A) for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000,**

**[(B) \$500,000 under paragraph (1)(B) for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000, and**

**[(C) \$500,000 under paragraph (1)(C) for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.]**

(3) *AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2010 through 2014.*

(b) **MARIJUANA ERADICATION AND INTERDICTION.—**

\* \* \* \* \*

(2) For the purpose of establishing the program required by paragraph (1), there are authorized to be appropriated \$2,000,000 for fiscal year 1993 and such sums **[as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000]** *as are necessary for each of fiscal years 2010 through 2014.*

25 U.S.C. § 2451. Bureau of Indian Affairs law enforcement and judicial training

**[(a) IN GENERAL.—The Secretary of the Interior shall ensure, through the establishment of a new training program or through the supplement of existing training programs, that all Bureau of Indian Affairs and tribal law enforcement and judicial personnel shall have available training in the investigation and prosecution of offenses relating to illegal narcotics and in alcohol and substance abuse prevention and treatment. Any training provided to Bureau of Indian Affairs and tribal law enforcement and judicial personnel as provided in this subsection shall specifically include training in the problems of youth alcohol and substance abuse prevention and treatment. Such training shall be coordinated with the Indian Health Service in the carrying out of its responsibilities under section 2475 of this title.]**

(a) *TRAINING PROGRAMS.—*

*(1) IN GENERAL.—The Secretary of the Interior, in coordination with the Attorney General, the Administrator of the Drug Enforcement Administration, and the Director of the Federal Bureau of Investigation, shall ensure, through the establishment of a new training program or by supplementing existing training programs, that all Bureau of Indian Affairs and tribal*

*law enforcement and judicial personnel have access to training regarding—*

*(A) the investigation and prosecution of offenses relating to illegal narcotics; and*

*(B) alcohol and substance abuse prevention and treatment.*

*(2) YOUTH-RELATED TRAINING.—Any training provided to Bureau of Indian Affairs or tribal law enforcement or judicial personnel under paragraph (1) shall include training in issues relating to youth alcohol and substance abuse prevention and treatment.*

(b) AUTHORIZATION.—For the purposes of providing the training required by subsection (a) of this section, there are authorized to be appropriated \$2,000,000 for fiscal year 1993 and such sums as are necessary for each of fiscal years 2010 through 2014.

\* \* \* \* \*

25 U.S.C. § 2453. Juvenile detention centers

(a) PLAN.—

**【The Secretary】** (1) *IN GENERAL.—The Secretary of the Interior shall construct or renovate and staff new or existing juvenile detention centers.*

**【The Secretary shall】** (2) *CONSTRUCTION AND OPERATION.—The Secretary shall ensure that the construction and operation of the centers is consistent with the Juvenile Justice and Delinquency Prevention Act of 1974 [42 U.S.C.A. 5601 et seq.].*

(3) *DEVELOPMENT OF PLAN.—*

*(A) IN GENERAL.—Not later than 180 days after the date of enactment of this paragraph, the Secretary and the Attorney General, in consultation with tribal leaders and tribal justice officials, shall develop a long-term plan for the construction, renovation, and operation of Indian juvenile detention and treatment centers and alternatives to detention for juvenile offenders.*

*(B) COORDINATION.—The plan under subparagraph (A) shall require the Bureau of Indian Education and the Indian Health Service to coordinate with tribal and Bureau of Indian Affairs juvenile detention centers to provide services to those centers.*

(b) AUTHORIZATION.—

(1) For the purpose of constructing or renovating juvenile detention centers as provided in subsection (a) of this section, there are authorized to be appropriated \$10,000,000 for fiscal year 1993 and **【such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000】** such sums as are necessary for each of fiscal years 2010 through 2014.

(2) For the purpose of staffing and operating juvenile detention centers, there are authorized to be appropriated \$7,000,000 for fiscal year 1993 and **【such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000】** such sums as are necessary for each of fiscal years 2010 through 2014.

\* \* \* \* \*

25 U.S.C. § 2801. Definitions

For purposes of this chapter—

[(9)](1) The term “Branch of Criminal Investigations” means the entity the Secretary is required to establish within the [Division of Law Enforcement Services] *Office of Justice Services* under section 2802(d)(1) of this title.

[(1)](2) The term “Bureau” means the Bureau of Indian Affairs of the Department of the Interior.

[(2)](3) The term “employee of the Bureau” includes an officer of the Bureau.

[(3)](4) The term “enforcement of a law” includes the prevention, detection, and investigation of an offense and the detention or confinement of an offender.

[(4)](5) The term “Indian country” has the meaning given that term in section 1151 of Title 18.

[(5)](6) The term “Indian tribe” has the meaning given that term in section 1301 of this title.

[(6)](7) The term “offense” means an offense against the United States and includes a violation of a Federal regulation relating to part or all of Indian country.

[(7)](8) The term “Secretary” means the Secretary of the Interior.

[(8)](9) The term “Division of Law Enforcement Services” means the entity established within the Bureau under section 2802(b) of this title.]

(10) *The term “tribal justice official” means—*

*(A) a tribal prosecutor;*

*(B) a tribal law enforcement officer; or*

*(C) any other person responsible for investigating or prosecuting an alleged criminal offense in tribal court.”*

25 U.S.C. § 2802. Indian law enforcement responsibilities

\* \* \* \* \*

[(b) Division of Law Enforcement Services; establishment and responsibilities

[(There is hereby established within the Bureau a Division of Law Enforcement Services which,]

(b) *OFFICE OF JUSTICE SERVICES.—There is hereby established in the Bureau an office, to be known as the “Office of Justice Services”, that under the supervision of the Secretary, or an individual designated by the Secretary, shall be responsible for—*

\* \* \* \* \*

(c) *ADDITIONAL RESPONSIBILITIES OF DIVISION.—Subject to the provisions of this chapter and other applicable Federal or tribal laws, the responsibilities of the [Division of Law Enforcement Services] Office of Justice Services in Indian country shall include—*

\* \* \* \* \*

(8) the assessment and evaluation of program accomplishments in reducing crime; [and]

(9) the development and provision of law enforcement training and technical assistance, *including training to properly interview victims of domestic and sexual violence and to collect, preserve, and present evidence to Federal and tribal prosecutors*



to increase the conviction rate for domestic and sexual violence offenses for purposes of addressing and preventing domestic and sexual violent offenses.;

(10) the development and provision of dispatch and emergency and E-911 services;

(11) communicating with tribal leaders, tribal community and victims' advocates, tribal justice officials, and residents of Indian land on a regular basis regarding public safety and justice concerns facing tribal communities;

(12) conducting meaningful and timely consultation with tribal leaders and tribal justice officials in the development of regulatory policies and other actions that affect public safety and justice in Indian country;

(13) providing technical assistance and training to tribal law enforcement officials to gain access and input authority to utilize the National Criminal Information Center and other national crime information databases pursuant to section 534 of title 28, United States Code;

(14) in coordination with the Attorney General pursuant to subsection (g) of section 302 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3732), collecting, analyzing, and reporting data regarding Indian country crimes on an annual basis;

(15) on an annual basis, sharing with the Department of Justice all relevant crime data, including Uniform Crime Reports, that the Office of Justice Services prepares and receives from tribal law enforcement agencies on a tribe-by-tribe basis to ensure that individual tribal governments providing data are eligible for programs offered by the Department of Justice;

(16) submitting to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources of the House of Representatives, for each fiscal year, a detailed spending report regarding tribal public safety and justice programs that includes—

(A)(i) the number of full-time employees of the Bureau and tribal government who serve as—

(I) criminal investigators;

(II) uniform police;

(III) police and emergency dispatchers;

(IV) detention officers;

(V) executive personnel, including special agents in charge, and directors and deputies of various offices in the Office of Justice Services; or

(VI) tribal court judges, prosecutors, public defenders, or related staff; and

(ii) the amount of appropriations obligated for each category described in clause (i) for each fiscal year;

(B) a list of amounts dedicated to law enforcement and corrections, vehicles, related transportation costs, equipment, inmate transportation costs, inmate transfer costs, replacement, improvement, and repair of facilities, personnel transfers, detailees and costs related to their details, emergency events, public safety and justice communications and technology costs, and tribal court personnel, facilities, and related program costs;

(C) a list of the unmet staffing needs of law enforcement, corrections, and court personnel at tribal and Bureau of Indian Affairs justice agencies, the replacement and repair needs of tribal and Bureau corrections facilities, needs for tribal police and court facilities, and public safety and emergency communications and technology needs; and

(D) the formula, priority list or other methodology used to determine the method of disbursement of funds for the public safety and justice programs administered by the Office of Justice Services;

(17) submitting to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources of the House of Representatives, for each fiscal year, a report summarizing the technical assistance, training, and other support provided to tribal law enforcement and corrections agencies that operate relevant programs pursuant to self-determination contracts or self-governance compacts with the Bureau of Indian Affairs; and

(18) promulgating regulations to carry out this Act, and routinely reviewing and updating, as necessary, the regulations contained in subchapter B of title 25, Code of Federal Regulations (or successor regulations).

(d) BRANCH OF CRIMINAL INVESTIGATIONS; ESTABLISHMENT, RESPONSIBILITIES, REGULATIONS, PERSONNEL, ETC.—

(1) The Secretary shall establish within the [Division of Law Enforcement Services] Office of Justice Services a separate Branch of Criminal Investigations which, under such inter-agency agreement as may be reached between the Secretary and appropriate agencies or officials of the Department of Justice and subject to such guidelines as may be adopted by relevant United States attorneys, shall be responsible for the investigation, and presentation for prosecution, of cases involving violations of sections 1152 and 1153 of Title 18, within Indian country.

\* \* \* \* \*

(4)(i) Criminal investigative personnel of the Branch shall be subject only to the supervision and direction of law enforcement personnel of the Branch or of the [Division] Office of Justice Services. Such personnel shall not be subject to the supervision of the Bureau of Indian Affairs Agency Superintendent or Bureau of Indian Affairs Area Office Director. Nothing in this paragraph is intended to prohibit cooperation, coordination, or consultation, as appropriate, with nonlaw enforcement Bureau of Indian Affairs personnel at the agency or area levels, or prohibit or restrict the right of a tribe to contract the investigative program under the authority of Public Law 93-638 [25 U.S.C.A. § 450 et seq.] or to maintain its own criminal investigative operations.

\* \* \* \* \*

(e) STANDARDS OF EDUCATION AND EXPERIENCE AND CLASSIFICATION OF POSITIONS.—[Division of Law Enforcement Services personnel; standards of education, experience, etc.; classification of positions]

(1) STANDARDS OF EDUCATION AND EXPERIENCE.—

(A) *IN GENERAL.*—The Secretary shall establish appropriate standards of education, experience, training, and other relevant qualifications for law enforcement personnel of the [Division of Law Enforcement Services] Office of Justice Services who are charged with law enforcement responsibilities pursuant to section 2803 of this title.

(B) *REQUIREMENTS FOR TRAINING.*—*The training standards established under subparagraph (A)—*

(i) *should comply with standards accepted by the Federal Law Enforcement Training Accreditation commission for law enforcement officers attending similar programs, and*

(ii) *shall include, or be supplemented by, instruction regarding Federal sources of authority and jurisdiction, Federal crimes, Federal rules of criminal procedure, and constitutional law to bridge the gap between State training and Federal requirements.*

(C) *TRAINING AT STATE, TRIBAL, AND LOCAL ACADEMIES.*—*The training standards established under subparagraph (A) shall permit law enforcement personnel of the Office of Justice Services or an Indian tribe to obtain training at a State or tribal police academy, a local or tribal community college, or other training academy that meets the appropriate Peace Officer Standards of Training.*

(D) *MAXIMUM AGE REQUIREMENT.*—*Pursuant to section 3307(e) of title 5, United States Code, the Secretary may employ as a law enforcement officer under section 4 any individual under the age of 47, if the individual meets all other applicable hiring requirements for the applicable law enforcement position.*

\* \* \* \* \*

(3) In classifying positions in the Division of Law Enforcement Services under paragraph (2), the Secretary shall ensure that such positions are classified at GS grades comparable to those for other Federal law enforcement personnel in other Federal agencies [Agencies] in light of the responsibilities, duties, and qualifications required of such positions.

(4) *BACKGROUND CHECKS FOR TRIBAL JUSTICE OFFICIALS.*—*The Office of Justice Services shall develop standards and deadlines for the provision of background checks for tribal law enforcement and corrections officials that ensure that a response to a request by an Indian tribe for such a background check shall be provided by not later than 60 days after the date of receipt of the request, unless an adequate reason for failure to respond by that date is provided to the Indian tribe.*

(f) *LONG-TERM PLAN FOR TRIBAL DETENTION PROGRAMS.*—*Not later than 1 year after the date of enactment of this subsection, the Secretary, acting through the Bureau, in coordination with the Department of Justice and in consultation with tribal leaders, tribal law enforcement officers, and tribal corrections officials, shall submit to Congress a long-term plan to address incarceration in Indian country, including a description of—*

(1) *proposed activities for the construction of detention facilities (including regional facilities) on Indian land;*

- (2) proposed activities for the construction of additional Federal detention facilities on Indian land;
- (3) proposed activities for contracting with State and local detention centers, upon approval of affected tribal governments;
- (4) proposed activities for alternatives to incarceration, developed in cooperation with tribal court systems; and
- (5) other such alternatives to incarceration as the Secretary, in coordination with the Bureau and in consultation with tribal representatives, determines to be necessary.”

(g) GRANTS TO IMPROVE TRIBAL DATA COLLECTION SYSTEMS.—

(1) GRANT PROGRAM.—The Secretary, acting through the Director of the Office of Justice Services of the Bureau and in coordination with the Attorney General, shall establish a program under which the Secretary shall provide grants to Indian tribes for activities to ensure uniformity in the collection and analysis of data relating to crime in Indian country.

(2) REGULATIONS.—The Secretary, acting through the Director of the Office of Justice Services of the Bureau, in consultation with tribal governments and tribal justice officials, shall promulgate such regulations as are necessary to carry out the grant program under this subsection.

25 U.S.C. § 2803. Law enforcement authority

The Secretary may charge employees of the Bureau with law enforcement responsibilities and may authorize those employees to—

\* \* \* \* \*

(2) execute or serve warrants, summonses, or other orders relating to a crime committed in Indian country and issued under the laws of—

(A) the United States (including those issued by a Court of Indian Offenses under regulations prescribed by the Secretary or offenses processed by the Central Violations Bureau), or

\* \* \* \* \*

(3) make an arrest without a warrant for an offense committed in Indian country if—

\* \* \* \* \*

(B) the offense is a felony and the employee has [reasonable grounds] probable cause to believe that the person to be arrested has committed, or is committing, the felony[, or];

(C) the offense is a misdemeanor crime of domestic violence, dating violence, stalking, or violation of a protection order and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim, and the employee has [reasonable grounds] probable cause to believe that the person to be arrested has committed, or is committing the crime; or

(D)(i) the offense involves—

(I) a misdemeanor controlled substance offense in violation of—

(aa) the Controlled Substances Act (21 U.S.C. 801 et seq.);

(bb) title IX of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (21 U.S.C. 862a et seq.); or

(cc) section 731 of the USA PATRIOT Improvement and Reauthorization Act of 2005 (21 U.S.C. 865);

(II) a misdemeanor firearms offense in violation of chapter 44 of title 18, United States Code;

(III) a misdemeanor assault in violation of chapter 7 of title 18, United States Code; or

(IV) a misdemeanor liquor trafficking offense in violation of chapter 59 of title 18, United States Code; and

(ii) the employee has probable cause to believe that the individual to be arrested has committed, or is committing, the crime;

\* \* \* \* \*

#### 25 U.S.C. § 2804. Assistance by other agencies

[(a) Agreement for use of personnel or facilities of Federal, tribal, State, or other government agency]

(a) AGREEMENTS.—

(1) *IN GENERAL.*—Not later than 180 days after the date of enactment of the Tribal Law and Order Act of 2009, the Secretary shall establish procedures to enter into memoranda of agreement [The Secretary may enter into an agreement] for the use (with or without reimbursement) of the personnel or facilities of a Federal, tribal, State, or other government agency to aid in the enforcement or carrying out in Indian country of a law of either the United States or an Indian tribe that has authorized the Secretary to enforce tribal laws.

[The Secretary may]

(2) *CERTAIN ACTIVITIES.*—The Secretary may authorize a law enforcement officer of such an agency to perform any activity the Secretary may authorize under section 2803 of this title.

(3) *PROGRAM ENHANCEMENT.*—

(A) *TRAINING SESSIONS IN INDIAN COUNTRY.*—

(i) *IN GENERAL.*—The procedures described in paragraph (1) shall include the development of a plan to enhance the certification and provision of special law enforcement commissions to tribal law enforcement officials, and, subject to subsection (d), State and local law enforcement officials, pursuant to this section.

(ii) *INCLUSIONS.*—The plan under clause (i) shall include the hosting of regional training sessions in Indian country, not less frequently than biannually, to educate and certify candidates for the special law enforcement commissions.

(B) *MEMORANDA OF AGREEMENT.*—

(i) *IN GENERAL.*—Not later than 180 days after the date of enactment of the Tribal Law and Order Act of

2009, the Secretary, in consultation with Indian tribes and tribal law enforcement agencies, shall develop minimum requirements to be included in special law enforcement commission agreements pursuant to this section.

(ii) *SUBSTANCE OF AGREEMENTS.*—Each agreement entered into pursuant to this section shall reflect the status of the applicable certified individual as a Federal law enforcement officer under subsection (f), acting within the scope of the duties described in section 3(c).

(iii) *AGREEMENT.*—Not later than 60 days after the date on which the Secretary determines that all applicable requirements under clause (i) are met, the Secretary shall offer to enter into a special law enforcement commission agreement with the applicable Indian tribe.

\* \* \* \* \*

(g) *ACCEPTANCE OF ASSISTANCE.*—The Bureau may accept reimbursement, resources, assistance, or funding from—

(1) a Federal, tribal, State, or other government agency; or

(2) the Indian Law Enforcement Foundation established under section 701(a) of the Indian Self-Determination and Education Assistance Act.

#### 25 U.S.C. § 2809. Reports to tribes

[(a) Reports by law enforcement officials of Bureau or Federal Bureau of Investigation

[In any case in which law enforcement officials of the Bureau or the Federal Bureau of Investigation decline to initiate an investigation of a reported violation of Federal law in Indian country, or terminate such an investigation without referral for prosecution, such officials are authorized to submit a report to the appropriate governmental and law enforcement officials of the Indian tribe involved that states, with particularity, the reason or reasons why the investigation was declined or terminated.

[(b) Reports by United States attorney

[In any case in which a United States attorney declines to prosecute an alleged violation of Federal criminal law in Indian country referred for prosecution by the Federal Bureau of Investigation or the Bureau, or moves to terminate a prosecution of such an alleged violation, the United States attorney is authorized to submit a report to the appropriate governmental and law enforcement officials of the Indian tribe involved that states, with particularity, the reason or reasons why the prosecution was declined or terminated.

[(c) Case file included within reports

[In any case—

[(1) in which the alleged offender is an Indian, and

[(2) for which a report is submitted under subsection (a) or (b) of this section,

[the report made to the Indian tribe may include the case file, including evidence collected and statements taken, which might support an investigation or prosecution of a violation of tribal law.

[(d) Transfer or disclosure of confidential or privileged communication, information or sources to tribal officials

【Nothing in this section shall require any Federal agency or official to transfer or disclose any confidential or privileged communication, information, or sources to the officials of any Indian tribe. Federal agencies authorized to make reports pursuant to this section shall, by regulations, adopt standards for the protection of such communications, information, or sources.】

(a) *COORDINATION AND DATA COLLECTION.*—

(1) *INVESTIGATIVE COORDINATION.*—*Subject to subsection (c), if a law enforcement officer or employee of any Federal department or agency terminates an investigation of an alleged violation of Federal criminal law in Indian country without referral for prosecution, the officer or employee shall coordinate with the appropriate tribal law enforcement officials regarding the use of evidence relevant to the case to advance prosecution of the case in a tribal court with concurrent authority over the crime alleged.*

(2) *INVESTIGATION DATA.*—*The Federal Bureau of Investigation shall compile, on an annual basis and by Federal judicial district, information regarding decisions not to refer to an appropriate prosecuting authority cases in which investigations had been opened into a crime that occurred in Indian country, including—*

(A) *the types of crimes alleged;*

(B) *the statuses of the accused as Indians or non-Indians;*

(C) *the statuses of the victims as an Indians or non-Indians; and*

(D) *the reasons for deciding to terminate the investigations.*

(3) *PROSECUTORIAL COORDINATION.*—*Subject to subsection (c), if a United States Attorney declines to prosecute, or acts to terminate prosecution of, an alleged violation of Federal criminal law in Indian country, the United States Attorney shall coordinate with the appropriate tribal justice officials regarding the use of evidence relevant to the case to advance prosecution of the case in a tribal court with concurrent authority over the crime alleged.*

(4) *PROSECUTION DATA.*—*Each United States Attorney shall submit to the Native American Issues Coordinator relevant information regarding all declinations of alleged violations of Federal criminal law that occurred in Indian country, which were referred for prosecution by law enforcement agencies, including—*

(A) *the types of crimes alleged;*

(B) *the statuses of the accused as Indians or non-Indians;*

(C) *the statuses of the victims as Indians or non-Indians; and*

(D) *the reasons for deciding to decline or terminate the prosecutions.*

(b) *ANNUAL REPORTS.*—*The Attorney General shall submit to Congress annual reports containing, with respect to the applicable calendar year, the information complied under paragraphs (2) and (4) of subsection (a)—*

(A) *organized—*

(i) *in the aggregate; and*

(ii) *by Federal judicial district; and*

(B) including any relevant explanatory statements.

(2) AVAILABILITY TO CONGRESS.—The Attorney General shall submit to Congress an annual report containing the information compiled under paragraph (1), together with relevant explanatory statements, if any.

(c) EFFECT OF SECTION.—

(1) IN GENERAL.—Nothing in this section requires any Federal agency or official to transfer or disclose any confidential, privileged, or statutorily protected communication, information, or source to an official of any Indian tribe.

(2) FEDERAL RULES OF CRIMINAL PROCEDURE.—Rule 6 of the Federal Rules of Criminal Procedure shall apply to this section.

(3) REGULATIONS.—Each Federal agency required to submit a report pursuant to this section shall adopt, by regulation, standards for the protection of confidential or privileged communications, information, and sources under paragraph (1).

25 U.S.C. §2810 (Section 13). Assistant United States Attorney Tribal Liaisons.

(a) APPOINTMENT.—Each United States Attorney the district of which includes Indian country shall appoint not less than 1 assistant United States Attorney to serve as a tribal liaison for the district.

(b) DUTIES.—A tribal liaison shall be responsible for the following activities in the district of the tribal liaison:

(1) Coordinating the prosecution of Federal crimes that occur in Indian country.

(2) Developing multidisciplinary teams to combat child abuse and domestic and sexual violence offenses against Indians.

(3) Consulting and coordinating with tribal justice officials and victims' advocates to address any backlog in the prosecution of major crimes in Indian country in the district.

(4) Developing working relationships and maintaining communication with tribal leaders, tribal community and victims' advocates, and tribal justice officials to gather information from, and share appropriate information with, tribal justice officials.

(5) Coordinating with tribal prosecutors in cases in which a tribal government has concurrent jurisdiction over an alleged crime, in advance of the expiration of any applicable statute of limitation.

(6) Providing technical assistance and training regarding evidence gathering techniques to tribal justice officials and other individuals and entities that are instrumental to responding to Indian country crimes.

(7) Conducting training sessions and seminars to certify special law enforcement commissions to tribal justice officials and other individuals and entities responsible for responding to Indian country crimes.

(8) Coordinating with the Office of Tribal Justice, as necessary.

(9) Conducting such other activities to address and prevent violent crime in Indian country as the applicable United States Attorney determines to be appropriate.



(c) *EFFECT OF SECTION.*—Nothing in this section limits the authority of any United States Attorney to determine the duties of a tribal liaison officer to meet the needs of the Indian tribes located within the relevant Federal district.

(d) *SENSE OF CONGRESS REGARDING EVALUATIONS OF TRIBAL LIAISONS.*—

(1) *FINDINGS.*—Congress finds that—

(A) many tribal communities rely solely on United States Attorneys offices to prosecute felony and misdemeanor crimes occurring on Indian land; and

(B) tribal liaisons have dual obligations of—

(i) coordinating prosecutions of Indian country crime; and

(ii) developing relationships with tribal communities and serving as a link between tribal communities and the Federal justice process.

(2) *SENSE OF CONGRESS.*—It is the sense of Congress that the Attorney General should—

(A) take all appropriate actions to encourage the aggressive prosecution of all Federal crimes committed in Indian country; and

(B) when appropriate, take into consideration the dual responsibilities of tribal liaisons described in paragraph

(1)(B) in evaluating the performance of the tribal liaisons.

(e) *ENHANCED PROSECUTION OF MINOR CRIMES.*—

(1) *IN GENERAL.*—Each United States Attorney serving a district that includes Indian country is authorized and encouraged—

(A) to appoint Special Assistant United States Attorneys pursuant to section 543(a) of title 28, United States Code, to prosecute crimes in Indian country as necessary to improve the administration of justice, and particularly when—

(i) the crime rate exceeds the national average crime rate; or

(ii) the rate at which criminal offenses are declined to be prosecuted exceeds the national average declination rate;

(B) to coordinate with applicable United States magistrate and district courts—

(i) to ensure the provision of docket time for prosecutions of Indian country crimes; and

(ii) to hold trials and other proceedings in Indian country, as appropriate;

(C) to provide to appointed Special Assistant United States Attorneys appropriate training, supervision, and staff support; and

(D) if an agreement is entered into with a Federal court pursuant to paragraph (2), to provide technical and other assistance to tribal governments and tribal court systems to ensure the success of the program under this subsection.

(2) *SENSE OF CONGRESS REGARDING CONSULTATION.*—It is the sense of Congress that, in appointing Special Assistant United States Attorneys under this subsection, a United States Attorney

*should consult with tribal justice officials of each Indian tribe that would be affected by the appointment.*

25 U.S.C. §2811 (Section 14). *Native American Issues Coordinator.*

(a) *ESTABLISHMENT.*—*There is established in the Executive Office for United States Attorneys of the Department of Justice a position to be known as the Native American Issues Coordinator.*

(b) *DUTIES.*—*The Native American Issues Coordinator shall—*

(1) *coordinate with the United States Attorneys that have authority to prosecute crimes in Indian country;*

(2) *coordinate prosecutions of crimes of national significance in Indian country, as determined by the Attorney General;*

(3) *submit to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources of the House of Representatives annual reports describing the prosecution and declination rates of cases involving alleged crimes in Indian country referred to United States Attorneys;*

(4) *coordinate as necessary with other components of the Department of Justice and any relevant advisory groups to the Attorney General or the Deputy Attorney General; and*

(5) *carry out such other duties as the Attorney General may prescribe.*

25 U.S.C. §2812 (Section 15). *Indian Law and Order Commission*

**SEC. 305. INDIAN LAW AND ORDER COMMISSION.**

(a) *ESTABLISHMENT.*—*There is established a commission to be known as the Indian Law and Order Commission (referred to in this section as the “Commission”).*

(b) *MEMBERSHIP.*—

(1) *IN GENERAL.*—*The Commission shall be composed of 9 members, of whom—*

(A) *3 shall be appointed by the President, in consultation with—*

(i) *the Attorney General; and*

(ii) *the Secretary of the Interior;*

(B) *2 shall be appointed by the Majority Leader of the Senate, in consultation with the Chairperson of the Committee on Indian Affairs of the Senate;*

(C) *1 shall be appointed by the Minority Leader of the Senate, in consultation with the Vice Chairperson of the Committee on Indian Affairs of the Senate;*

(D) *2 shall be appointed by the Speaker of the House of Representatives, in consultation with the Chairperson of the Committee on Natural Resources of the House of Representatives; and*

(E) *1 shall be appointed by the Minority Leader of the House of Representatives, in consultation with the Ranking Member of the Committee on Natural Resources of the House of Representatives.*

(2) *REQUIREMENTS FOR ELIGIBILITY.*—*Each member of the Commission shall have significant experience and expertise in—*

(A) *the Indian country criminal justice system; and*

(B) *matters to be studied by the Commission.*

(3) *CONSULTATION REQUIRED.*—*The President, the Speaker and Minority Leader of the House of Representatives, and the*

*Majority Leader and Minority Leader of the Senate shall consult before the appointment of members of the Commission under paragraph (1) to achieve, to the maximum extent practicable, fair and equitable representation of various points of view with respect to the matters to be studied by the Commission.*

(4) *TERM.*—*Each member shall be appointed for the life of the Commission.*

(5) *TIME FOR INITIAL APPOINTMENTS.*—*The appointment of the members of the Commission shall be made not later than 60 days after the date of enactment of this Act.*

(6) *VACANCIES.*—*A vacancy in the Commission shall be filled—*

(A) *in the same manner in which the original appointment was made; and*

(B) *not later than 60 days after the date on which the vacancy occurred.*

(c) *OPERATION.*—

(1) *CHAIRPERSON.*—*Not later than 15 days after the date on which all members of the Commission have been appointed, the Commission shall select 1 member to serve as Chairperson of the Commission.*

(2) *MEETINGS.*—

(A) *IN GENERAL.*—*The Commission shall meet at the call of the Chairperson.*

(B) *INITIAL MEETING.*—*The initial meeting shall take place not later than 30 days after the date described in paragraph (1).*

(3) *QUORUM.*—*A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.*

(4) *RULES.*—*The Commission may establish, by majority vote, any rules for the conduct of Commission business, in accordance with this Act and other applicable law.*

(d) *COMPREHENSIVE STUDY OF CRIMINAL JUSTICE SYSTEM RELATING TO INDIAN COUNTRY.*—*The Commission shall conduct a comprehensive study of law enforcement and criminal justice in tribal communities, including —*

(1) *jurisdiction over crimes committed in Indian country and the impact of that jurisdiction on—*

(A) *the investigation and prosecution of Indian country crimes; and*

(B) *residents of Indian land;*

(2) *the tribal jail and Federal prisons systems and the effect of those systems with respect to—*

(A) *reducing Indian country crime; and*

(B) *rehabilitation of offenders;*

(3)(A) *tribal juvenile justice systems and the Federal juvenile justice system as relating to Indian country; and*

(B) *the effect of those systems and related programs in preventing juvenile crime, rehabilitating Indian youth in custody, and reducing recidivism among Indian youth;*

(4) *the impact of the Indian Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.) on—*

(A) *the authority of Indian tribes; and*

- (B) *the rights of defendants subject to tribal government authority; and*
- (5) *studies of such other subjects as the Commission determines relevant to achieve the purposes of the Tribal Law and Order Act of 2009.*
- (e) **RECOMMENDATIONS.**—*Taking into consideration the results of the study under paragraph (1), the Commission shall develop recommendations on necessary modifications and improvements to justice systems at the tribal, Federal, and State levels, including consideration of—*
- (1) *simplifying jurisdiction in Indian country;*
  - (2) *improving services and programs—*
    - (A) *to prevent juvenile crime on Indian land;*
    - (B) *to rehabilitate Indian youth in custody; and*
    - (C) *to reduce recidivism among Indian youth;*
  - (3) *enhancing the penal authority of tribal courts and exploring alternatives to incarceration;*
  - (4) *the establishment of satellite United States magistrate or district courts in Indian country;*
  - (5) *changes to the tribal jails and Federal prison systems; and*
  - (6) *other issues that, as determined by the Commission, would reduce violent crime in Indian country.*
- (f) **REPORT.**—*Not later than 2 years after the date of enactment of this Act, the Commission shall submit to the President and Congress a report that contains—*
- (1) *a detailed statement of the findings and conclusions of the Commission; and*
  - (2) *the recommendations of the Commission for such legislative and administrative actions as the Commission considers to be appropriate.*
- (g) **POWERS.**—
- (1) **HEARINGS.**—
    - (A) **IN GENERAL.**—*The Commission may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Commission considers to be advisable to carry out the duties of the Commission under this section.*
    - (B) **PUBLIC REQUIREMENT.**—*The hearings of the Commission under this paragraph shall be open to the public.*
  - (2) **WITNESS EXPENSES.**—
    - (A) **IN GENERAL.**—*A witness requested to appear before the Commission shall be paid the same fees as are paid to witnesses under section 1821 of title 28, United States Code.*
    - (B) **PER DIEM AND MILEAGE.**—*The per diem and mileage allowance for a witness shall be paid from funds made available to the Commission.*
  - (3) **INFORMATION FROM FEDERAL, TRIBAL, AND STATE AGENCIES.**—
    - (A) **IN GENERAL.**—*The Commission may secure directly from a Federal agency such information as the Commission considers to be necessary to carry out this section.*
    - (B) **TRIBAL AND STATE AGENCIES.**—*The Commission may request the head of any tribal or State agency to provide to*

*the Commission such information as the Commission considers to be necessary to carry out this section.*

(4) *POSTAL SERVICES.*—*The Commission may use the United States mails in the same manner and under the same conditions as other agencies of the Federal Government.*

(5) *GIFTS.*—*The Commission may accept, use, and dispose of gifts or donations of services or property.*

(h) *COMMISSION PERSONNEL MATTERS.*—

(1) *TRAVEL EXPENSES.*—*A member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.*

(2) *DETAIL OF FEDERAL EMPLOYEES.*—*On the affirmative vote of  $\frac{2}{3}$  of the members of the Commission and the approval of the appropriate Federal agency head, an employee of the Federal Government may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status, benefits, or privileges.*

(3) *PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.*—*On request of the Commission, the Attorney General and Secretary shall provide to the Commission reasonable and appropriate office space, supplies, and administrative assistance.*

(i) *CONTRACTS FOR RESEARCH.*—

(1) *RESEARCHERS AND EXPERTS.*—

(A) *IN GENERAL.*—*On an affirmative vote of  $\frac{2}{3}$  of the members of the Commission, the Commission may select nongovernmental researchers and experts to assist the Commission in carrying out the duties of the Commission under this section.*

(B) *NATIONAL INSTITUTE OF JUSTICE.*—*The National Institute of Justice may enter into a contract with the researchers and experts selected by the Commission under subparagraph (A) to provide funding in exchange for the services of the researchers and experts.*

(2) *OTHER ORGANIZATIONS.*—*Nothing in this subsection limits the ability of the Commission to enter into contracts with any other entity or organization to carry out research necessary to carry out the duties of the Commission under this section.*

(j) *TRIBAL ADVISORY COMMITTEE.*—

(1) *ESTABLISHMENT.*—*The Commission shall establish a committee, to be known as the “Tribal Advisory Committee”.*

(2) *MEMBERSHIP.*—

(A) *COMPOSITION.*—*The Tribal Advisory Committee shall consist of 2 representatives of Indian tribes from each region of the Bureau of Indian Affairs.*

(B) *QUALIFICATIONS.*—*Each member of the Tribal Advisory Committee shall have experience relating to—*

- (i) justice systems;*
- (ii) crime prevention; or*
- (iii) victim services.*

(3) *DUTIES.*—*The Tribal Advisory Committee shall—*

*(A) serve as an advisory body to the Commission; and*

(B) provide to the Commission advice and recommendations, submit materials, documents, testimony, and such other information as the Commission determines to be necessary to carry out the duties of the Commission under this section.

(k) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated such sums as are necessary to carry out this section, to remain available until expended.

(l) *TERMINATION OF COMMISSION.*—The Commission shall terminate 90 days after the date on which the Commission submits the report of the Commission under subsection (c)(3).

(m) *NONAPPLICABILITY OF FACCA.*—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

25 U.S.C. §2813 (Section 16). *Testimony by Federal Employees in Cases of Rape and Sexual Assault.*

(a) *APPROVAL OF EMPLOYEE TESTIMONY.*—

(1) *IN GENERAL.*—The Director of the Office of Justice Services or the Director of the Indian Health Service, as appropriate (referred to in this section as the ‘Director concerned’), shall approve or disapprove, in writing, any request or subpoena from a tribal or State court for a law enforcement officer, sexual assault nurse examiner, or other employee under the supervision of the Director concerned to provide testimony in a deposition, trial, or other similar criminal proceeding regarding information obtained in carrying out the official duties of the employee.

(2) *DEADLINE.*—The court issuing a subpoena under paragraph (1) shall provide to the appropriate Federal employee a notice regarding the request to provide testimony by not less than 30 days before the date on which the testimony will be provided.

(b) *APPROVAL.*—

(1) *IN GENERAL.*—The Director concerned shall approve a request or subpoena under subsection (a) if the request or subpoena does not violate the policy of the Department to maintain strict impartiality with respect to private causes of action.

(2) *FAILURE TO APPROVE.*—If the Director concerned fails to approve or disapprove a request or subpoena by the date that is 30 days after the date of receipt of notice of the request or subpoena, the request or subpoena shall be considered to be approved for purposes of this section.

25 U.S.C. §2814 (Section 17). *Coordination of Federal Agencies*

(a) *IN GENERAL.*—The Secretary, in coordination with the Attorney General, Federal and tribal law enforcement agencies, the Indian Health Service, and domestic violence or sexual assault victim organizations, shall develop appropriate victim services and victim advocate training programs—

(1) to improve domestic violence or sexual abuse responses;

(2) to improve forensic examinations and collection;

(3) to identify problems or obstacles in the prosecution of domestic violence or sexual abuse; and

(4) to meet other needs or carry out other activities required to prevent, treat, and improve prosecutions of domestic violence and sexual abuse.

(b) *REPORT.*—Not later than 2 years after the date of enactment of this section, the Secretary shall submit to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources of the House of Representatives a report that describes, with respect to the matters described in subsection (a), the improvements made and needed, problems or obstacles identified, and costs necessary to address the problems or obstacles, and any other recommendations that the Secretary determines to be appropriate, including recommendations on preventing sex trafficking of Indian women.

\* \* \* \* \*  
 25 U.S.C. § 3613. Base support funding for tribal justice systems

\* \* \* \* \*  
 (b) **PURPOSES FOR WHICH FINANCIAL ASSISTANCE MAY BE USED.**—Financial assistance provided through contracts, grants, or agreements entered into pursuant to this section may be used for—

\* \* \* \* \*  
 [(2) the employment of judicial personnel;]  
 (2) *the employment of tribal court personnel, including tribal court judges, prosecutors, public defenders, guardians ad litem, and court-appointed special advocates for children and juveniles.*

\* \* \* \* \*  
 25 U.S.C. § 3621. Tribal justice systems

(a) **OFFICE.**—There is authorized to be appropriated to carry out [the provisions of sections 3611 and 3612] *sections 101 and 102* of this title, \$7,000,000 for each of the [fiscal years 2000 through 2007] *fiscal years 2010 through 2014*. None of the funds provided under this subsection may be used for the administrative expenses of the Office.

(b) **BASE SUPPORT FUNDING FOR TRIBAL JUSTICE SYSTEMS.**—There is authorized to be appropriated to carry out [the provisions of section 3613] *section 103* of this title, \$50,000,000 for each of the [fiscal years 2000 through 2007] *fiscal years 2010 through 2014*.

(c) **ADMINISTRATIVE EXPENSES FOR OFFICE.**—There is authorized to be appropriated, for the administrative expenses of the Office, \$500,000 for each of the [fiscal years 2000 through 2007] *fiscal years 2010 through 2014*.

(d) **ADMINISTRATIVE EXPENSES FOR TRIBAL JUDICIAL CONFERENCES.**—There is authorized to be appropriated, for the administrative expenses of tribal judicial conferences, \$500,000 for each of the [fiscal years 2000 through 2007] *fiscal years 2010 through 2014*.

\* \* \* \* \*  
 25 U.S.C. § 3653. Definitions

For purposes of this chapter:

\* \* \* \* \*  
 (2) **DIRECTOR.**—The term “Director” means the Director of the Office of Tribal Justice.

- [(2)] (3) INDIAN LANDS.—  
\* \* \* \* \*
- [(3)](4) INDIAN TRIBE.—  
\* \* \* \* \*
- [(4)](5) JUDICIAL PERSONNEL.—  
\* \* \* \* \*
- [(5)](6) NON-PROFIT ENTITIES.—  
\* \* \* \* \*
- [(6)](7) OFFICE OF TRIBAL JUSTICE.—  
\* \* \* \* \*
- [(7)](8) TRIBAL JUSTICE SYSTEM.—  
\* \* \* \* \*

25 U.S.C. § 3662. Tribal civil legal assistance grants

Subject to the availability of appropriations, the Attorney General, in consultation with the Office of Tribal Justice, shall award grants to non-profit entities, as defined under section 501(c)(3) of Title 26, which provide legal assistance services for Indian tribes, members of Indian tribes, or tribal justice systems pursuant to Federal poverty guidelines that submit an application to the Attorney General in such form and manner as the Attorney General may prescribe for the provision of civil legal assistance (*including guardians ad litem and court-appointed special advocates for children and juveniles*) to members of Indian tribes and tribal justice systems, and/or other purposes consistent with this chapter.

25 U.S.C. § 3663. Tribal criminal assistance grants

Subject to the availability of appropriations, the Attorney General, in consultation with the Office of Tribal Justice, shall award grants to non-profit entities, as defined by section 501(c)(3) of Title 26, which provide legal assistance services for Indian tribes, members of Indian tribes, or tribal justice systems pursuant to Federal poverty guidelines that submit an application to the Attorney General in such form and manner as the Attorney General may prescribe for the provision of [criminal legal assistance to members of Indian tribes and tribal justice systems] *licensed public defender services to all defendants subject to tribal court jurisdiction and prosecution and judicial services for tribal courts*, and/or other purposes consistent with this chapter. Funding under this subchapter may apply to programs, procedures, or proceedings involving adult criminal actions, juvenile delinquency actions, and/or guardian-ad-litem appointments arising out of criminal or delinquency acts.

\* \* \* \* \*

25 U.S.C. § 3666 (Section 106). Office of Tribal Justice.

(a) *IN GENERAL.*—Not later than 90 days after the date of enactment of the Tribal Law and Order Act of 2009, the Attorney General shall establish the Office of Tribal Justice as a component of the Department.

(b) *PERSONNEL AND FUNDING.*—The Attorney General shall provide to the Office of Tribal Justice such personnel and funds as are necessary to establish the Office of Tribal Justice as a component of the Department under subsection (a).



(c) DUTIES.—*The Office of Tribal Justice shall—*

(1) *serve as the program and legal policy advisor to the Attorney General with respect to the treaty and trust relationship between the United States and Indian tribes;*

(2) *serve as the point of contact for federally recognized tribal governments and tribal organizations with respect to questions and comments regarding policies and programs of the Department and issues relating to public safety and justice in Indian country; and*

(3) *coordinate with other bureaus, agencies, offices, and divisions within the Department of Justice to ensure that each component has an accountable process to ensure meaningful and timely consultation with tribal leaders in the development of regulatory policies and other actions that affect—*

(A) *the trust responsibility of the United States to Indian tribes;*

(B) *any tribal treaty provision;*

(C) *the status of Indian tribes as a sovereign governments; or*

(D) *any other tribal interest.*

**[25 U.S.C. 3666.] 25 U.S.C. 3667. (Section 107)—**Authorization of appropriations

For purposes of carrying out the activities under this subchapter, there are authorized to be appropriated such sums as are necessary for fiscal years **[2000 through 2004]** *2010 through 2014.*

25 U.S.C. § 3681. Grants

\* \* \* \* \*

(d) AUTHORIZATION OF APPROPRIATIONS.—For purposes of carrying out the activities under this section, there are authorized to be appropriated such sums as are necessary for fiscal years **[2000 through 2004]** *2010 through 2014.*

\* \* \* \* \*

25 U.S.C. § 3683. (Section 203).—Assistant Probation Officers.

*To the maximum extent practicable, the Director of the Administrative Office of the United States Courts, in coordination with the Office of Tribal Justice and the Director of the Office of Justice Services, shall—*

(1) *appoint individuals residing in Indian country to serve as assistant probation officers for purposes of monitoring and providing service to Federal prisoners residing in Indian country; and*

(2) *provide substance abuse, mental health, and other related treatment services to offenders residing on Indian land.*

\* \* \* \* \*

28 U.S.C. § 534. Acquisition, preservation, and exchange of identification records and information; appointment of officials

(a) The Attorney General shall—

\* \* \* \* \*

(4) *exchange such records and information with, and for the official use of, authorized officials of the Federal Government,*

including the United States Sentencing Commission, the States, *Indian tribes*, cities, and penal and other institutions.

\* \* \* \* \*

[(d) INDIAN LAW ENFORCEMENT AGENCIES.—The Attorney General shall permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into Federal criminal information databases and to obtain information from the databases.]

(d) INDIAN LAW ENFORCEMENT AGENCIES.—*The Attorney General shall permit tribal and Bureau of Indian Affairs law enforcement agencies—*

(1) *to directly access and enter information into Federal criminal information databases; and*

(2) *to directly obtain information from the databases.*

\* \* \* \* \*

(f) \* \* \*

\* \* \* \* \*

(2) Federal, *tribal*, and State criminal justice agencies authorized to enter information into criminal information databases may include—

\* \* \* \* \*

Note to 28 U.S.C. § 534, Public Law 109–162 Gang violence.

National Gang Intelligence Center

Pub. L. 109–162, Title XI, 1107, Jan. 5, 2006, 119 Stat. 3093, provided that:

(a) ESTABLISHMENT.—The Attorney General shall establish a National Gang Intelligence Center and gang information database to be housed at and administered by the Federal Bureau of Investigation to collect, analyze, and disseminate gang activity information from—

\* \* \* \* \*

(8) *the Office of Justice Services of the Bureau of Indian Affairs;*

[(8)](9) *Tribal, State, [State] and local law enforcement;*

[(9)](10) *Federal, tribal, State, and local prosecutors;*

[(10)](11) *Federal, tribal, State, and local probation and parole offices;*

[(11)](12) *Federal, tribal, State, and local prisons and jails; and*

[(12)](13) *any other entity as appropriate.*

(b) INFORMATION.—The Center established under subsection (a) shall make available the information referred to in subsection (a) to—

(1) *Federal, tribal, State, and local law enforcement agencies;*

(2) *Federal, tribal, State, and local corrections agencies and penal institutions;*

(3) *Federal, tribal, State, and local prosecutorial agencies; and*

(4) *any other entity as appropriate.*

\* \* \* \* \*

28 U.S.C. § 543. Special attorneys

(a) The Attorney General may appoint attorneys to assist United States attorneys when the public interest so requires, *including the appointment of qualified tribal prosecutors and other qualified attorneys to assist in prosecuting Federal offenses committed in Indian country.*

\* \* \* \* \*

(c) *SENSE OF CONGRESS REGARDING CONSULTATION.—It is the sense of Congress that, in appointing attorneys under this section to serve as special prosecutors in Indian country, the Attorney General should consult with tribal justice officials of each Indian tribe that would be affected by the appointment.*

\* \* \* \* \*

42 U.S.C. § 2996f. Grants and contracts

\* \* \* \* \*

(b) *LIMITATIONS ON USES.—No funds made available by the Corporation under this subchapter, either by grant or contract, may be used—*

\* \* \* \* \*

**[(2) to provide legal assistance with respect to any criminal proceeding, except to provide assistance to a person charged with a misdemeanor or lesser offense or its equivalent in an Indian tribal court;]**

*(2) to provide legal assistance with respect to any criminal proceeding, except to provide assistance to a person charged with an offense in an Indian tribal court.*

\* \* \* \* \*

42 U.S.C. § 3732.—Bureau of Justice Statistics

\* \* \* \* \*

(c) *DUTIES AND FUNCTIONS OF BUREAU.—The Bureau is authorized to—*

\* \* \* \* \*

(3) collect and analyze data that will serve as a continuous and comparable national social indication of the prevalence, incidence, rates, extent, distribution, and attributes of crime, juvenile delinquency, civil disputes, and other statistical factors related to crime, civil disputes, and juvenile delinquency, in support of national, State, *tribal*, and local justice policy and decisionmaking;

(4) collect and analyze statistical information, concerning the operations of the criminal justice system at the Federal, State, *tribal*, and local levels;

(5) collect and analyze statistical information concerning the prevalence, incidence, rates, extent, distribution, and attributes of crime, and juvenile delinquency, at the Federal, State, *tribal*, and local levels;

(6) analyze the correlates of crime, civil disputes and juvenile delinquency, by the use of statistical information, about criminal and civil justice systems at the Federal, State, *tribal*, and local levels, and about the extent, distribution and attributes

of crime, and juvenile delinquency, in the Nation and at the Federal, State, *tribal*, and local levels;

(7) compile, collate, analyze, publish, and disseminate uniform national statistics concerning all aspects of criminal justice and related aspects of civil justice, crime, including crimes against the elderly, juvenile delinquency, criminal offenders, juvenile delinquents, and civil disputes in the various States *and in Indian country*;

\* \* \* \* \*

(9) maintain liaison with the judicial branches of the [Federal and State Governments] *Federal Government and State and tribal governments* in matters relating to justice statistics, and cooperate with the judicial branch in assuring as much uniformity as feasible in statistical systems of the executive and judicial branches;

(10) provide information to the President, the Congress, the judiciary, State, *tribal*, and local governments, and the general public on justice statistics;

(11) establish or assist in the establishment of a system to provide State, *tribal*, and local governments with access to Federal informational resources useful in the planning, implementation, and evaluation of programs under this Act;

\* \* \* \* \*

(13) provide for the development of justice information systems programs and assistance to the States, *Indian tribes*, and units of local government relating to collection, analysis, or dissemination of justice statistics;

\* \* \* \* \*

(17) provide for the collection, analysis, dissemination and publication of statistics on the condition and progress of drug control activities at the Federal, [State and local] *State, tribal, and local* levels with particular attention to programs and intervention efforts demonstrated to be of value in the overall national anti-drug strategy and to provide for the establishment of a national clearinghouse for the gathering of data generated by Federal, [State, and local] *State, tribal, and local* criminal justice agencies on their drug enforcement activities;

\* \* \* \* \*

(19) provide for improvements in the accuracy, quality, timeliness, immediate accessibility, and integration of State *and tribal* criminal history and related records, support the development and enhancement of national systems of criminal history and related records including the National Instant Criminal Background Check System, the National Incident-Based Reporting System, and the records of the National Crime Information Center, facilitate State *and tribal* participation in national records and information systems, and support statistical research for critical analysis of the improvement and utilization of criminal history records;

(20) maintain liaison with State, *tribal*, and local governments and governments of other nations concerning justice statistics;

\* \* \* \* \*

(22) ensure conformance with security and privacy requirement of section 3789g of this title and identify, analyze, and participate in the development and implementation of privacy, security and information policies which impact on Federal, *tribal*, and State criminal justice operations and related statistical activities; and

\* \* \* \* \*

(d) JUSTICE STATISTICAL COLLECTION, ANALYSIS, AND DISSEMINATION.—

**【To insure】** (1) *IN GENERAL.*—*To ensure that all justice statistical collection, analysis, and dissemination is carried out in a coordinated manner, the Director is authorized to—*

**【(1)】** (A) utilize, with their consent, the services, equipment, records, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement therefor, and to enter into agreements with such agencies and instrumentalities for purposes of data collection and analysis;

**【(2)】** (B) confer and cooperate with State, municipal, and other local agencies;

**【(3)】** (C) request such information, data, and reports from any Federal agency as may be required to carry out the purposes of this chapter;

**【(4)】** (D) seek the cooperation of the judicial branch of the Federal Government in gathering data from criminal justice records;

**【(5)】** (E) encourage replication, coordination and sharing among justice agencies regarding information systems, information policy, and data; and

**【(6)】** (F) confer and cooperate with Federal statistical agencies as needed to carry out the purposes of this subchapter, including by entering into cooperative data sharing agreements in conformity with all laws and regulations applicable to the disclosure and use of data.

(2) *CONSULTATION WITH INDIAN TRIBES.*—*The Director, acting jointly with the Assistant Secretary for Indian Affairs (acting through the Director of the Office of Justice Services) and the Director of the Federal Bureau of Investigation, shall work with Indian tribes and tribal law enforcement agencies to establish and implement such tribal data collection systems as the Director determines to be necessary to achieve the purposes of this section.*

(e) FURNISHING OF INFORMATION, DATA, OR REPORTS BY FEDERAL AGENCIES.—Federal agencies requested to furnish information, data, or reports pursuant to **【subsection (d)(3)】** *subsection (d)(1)(C)* of this section shall provide such information to the Bureau as is required to carry out the purposes of this section.

(f) CONSULTATION WITH REPRESENTATIVES OF STATE, *TRIBAL*, AND LOCAL GOVERNMENT AND JUDICIARY.—In recommending standards

for gathering justice statistics under this section, the Director shall consult with representatives of State, *tribal*, and local government, including, where appropriate, representatives of the judiciary.

(g) *REPORT TO CONGRESS ON CRIMES IN INDIAN COUNTRY.*—*Not later than 1 year after the date of enactment of this subsection, and annually thereafter, the Director shall submit to Congress a report describing the data collected and analyzed under this section relating to crimes in Indian country.*

\* \* \* \* \*

42 U.S.C. § 3796h. Regional information sharing systems grants

(a) *AUTHORITY OF DIRECTOR.*—The Director of the Bureau of Justice Assistance is authorized to make grants and enter into contracts with State, *tribal*, and local criminal justice agencies and nonprofit organizations for the purposes of identifying, targeting, and removing criminal conspiracies and activities and terrorist conspiracies and activities spanning jurisdictional boundaries.

\* \* \* \* \*

42 U.S.C. § 3796dd. Authority to make public safety and community policing grants

\* \* \* \* \*

(b) *USES OF GRANT AMOUNTS.*—The purposes for which grants made under subsection (a) of this section may be made are—

(1) *to* rehire law enforcement officers who have been laid off as a result of **[(State and)]** *State, tribal, or* local budget reductions for deployment in community-oriented policing;

(2) *to* hire and train new, additional career law enforcement officers for deployment in community-oriented policing across the Nation;

(3) *to* procure equipment, technology, or support systems, or pay overtime, to increase the number of officers deployed in community-oriented policing;

(4) *to* award grants to pay for officers hired to perform intelligence, anti-terror, or homeland security duties;

**[(6)](5)** *to* increase the number of law enforcement officers involved in activities that are focused on interaction with members of the community on proactive crime control and prevention by redeploying officers to such activities;

**[(7)](6)** *to* provide specialized training to law enforcement officers to enhance their conflict resolution, mediation, problem solving, service, and other skills needed to work in partnership with members of the community;

**[(8)](7)** *to* increase police participation in multidisciplinary early intervention teams;

**[(9)](8)** *to* develop new technologies, including interoperable communications technologies, modernized criminal record technology, and forensic technology, to assist State, *tribal*, and local law enforcement agencies in reorienting the emphasis of their activities from reacting to crime to preventing crime and to train law enforcement officers to use such technologies;

**[(10)](9)** *to* develop and implement innovative programs to permit members of the community to assist State, *tribal*, and local law enforcement agencies in the prevention of crime in the community, such as a citizens' police academy, including

programs designed to increase the level of access to the criminal justice system enjoyed by victims, witnesses, and ordinary citizens by establishing decentralized satellite offices (including video facilities) of principal criminal courts buildings;

[(11)](10) to establish innovative programs to reduce, and keep to a minimum, the amount of time that law enforcement officers must be away from the community while awaiting court appearances;

[(12)](11) to establish and implement innovative programs to increase and enhance proactive crime control and prevention programs involving law enforcement officers and young persons in the community;

[(13)](12) to establish school-based partnerships between local law enforcement agencies and local school systems by using school resource officers who operate in and around elementary and secondary schools to combat school-related crime and disorder problems, gangs, and drug activities;

[(14)](13) to develop and establish new administrative and managerial systems to facilitate the adoption of community-oriented policing as an organization-wide philosophy;

[(15)](14) to assist [a State in] *a State or Indian tribe* in enforcing a law throughout [the State which] *the State or tribal community* that requires that a convicted sex offender register his or her address with a [State or] *State, tribal, or local law enforcement agency* and be subject to criminal prosecution for failure to comply;

[(16)](15) to establish, implement, and coordinate crime prevention and control programs (involving law enforcement officers working with community members) with other Federal programs that serve the community and community members to better address the comprehensive needs of the community and its members; [and]

[(17)](16) to support the purchase by a law enforcement agency of no more than 1 service weapon per officer, upon hiring for deployment in community-oriented policing or, if necessary, upon existing officers' initial redeployment to community-oriented policing[.]; and

(17) to permit tribal governments receiving direct law enforcement services from the Bureau of Indian Affairs to access the program under this section for use in accordance with paragraphs (1) through (16).

\* \* \* \* \*

(i) TERMINATION OF GRANTS FOR HIRING OFFICERS.—[The authority] *Except as provided in subsection (j), the authority* under subsection (a) of this section to make grants for the hiring and rehiring of additional career law enforcement officers shall lapse at the conclusion of 6 years from September 13, 1994. Prior to the expiration of this grant authority, the Attorney General shall submit a report to Congress concerning the experience with and effects of such grants. The report may include any recommendations the Attorney General may have for amendments to this subchapter and related provisions of law in light of the termination of the authority to make grants for the hiring and rehiring of additional career law enforcement officers.

(j) GRANTS TO INDIAN TRIBES.—

(1) *IN GENERAL.*—Notwithstanding subsection (i) and section 1703, and in acknowledgment of the Federal nexus and distinct Federal responsibility to address and prevent crime in Indian country, the Attorney General shall provide grants under this section to Indian tribal governments, for fiscal year 2010 and any fiscal year thereafter, for such period as the Attorney General determines to be appropriate to assist the Indian tribal governments in carrying out the purposes described in subsection (b).

(2) *PRIORITY OF FUNDING.*—In providing grants to Indian tribal governments under this subsection, the Attorney General shall take into consideration reservation crime rates and tribal law enforcement staffing needs of each Indian tribal government.

(3) *FEDERAL SHARE.*—Because of the Federal nature and responsibility for providing public safety on Indian land, the Federal share of the cost of any activity carried out using a grant under this subsection—

(A) shall be 100 percent; and

(B) may be used to cover indirect costs.

(4) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated such sums as are necessary to carry out this subsection for each of fiscal years 2010 through 2014.

(k) *REPORT.*—Not later than 180 days after the date of enactment of this subsection, the Attorney General shall submit to Congress a report describing the extent and effectiveness of the Community Oriented Policing (COPS) initiative as applied in Indian country, including particular references to—

(1) the problem of intermittent funding;

(2) the integration of COPS personnel with existing law enforcement authorities; and

(3) an explanation of how the practice of community policing and the broken windows theory can most effectively be applied in remote tribal locations.

\* \* \* \* \*

#### 42 U.S.C. 5783.—Grants for delinquency prevention programs

(a) *PURPOSES.*—The Administrator may make grants to a State, to be transmitted through the State advisory group to units of local government that meet the requirements of subsection (b), or to Indian tribes under subsection (d) of this section, for delinquency prevention programs and activities for juveniles who have had contact with the juvenile justice system or who are likely to have contact with the juvenile justice system, including the provision to juveniles and their families of—

\* \* \* \* \*

(d) *GRANTS FOR TRIBAL DELINQUENCY PREVENTION AND RESPONSE PROGRAMS.*—

(1) *IN GENERAL.*—The Administrator shall make grants under this section, on a competitive basis, to eligible Indian tribes or consortia of Indian tribes, as described in paragraph (2)—

(A) to support and enhance—

(i) tribal juvenile delinquency prevention services; and



- (ii) *the ability of Indian tribes to respond to, and care for, juvenile offenders; and*
- (B) *to encourage accountability of Indian tribal governments with respect to preventing juvenile delinquency and responding to, and caring for, juvenile offenders.*
- (2) *ELIGIBLE INDIAN TRIBES.—To be eligible to receive a grant under this subsection, an Indian tribe or consortium of Indian tribes shall submit to the Administrator an application in such form and containing such information as the Administrator may require.*
- (3) *PRIORITY OF FUNDING.—In providing grants under this subsection, the Administrator shall take into consideration, with respect to the reservation communities to be served—*
  - (A) *juvenile crime rates;*
  - (B) *dropout rates; and*
  - (C) *percentage of at-risk youth.*

\* \* \* \* \*

42 U.S.C. §5616.—Coordinating Council on Juvenile Justice and Delinquency Prevention

(a) ESTABLISHMENT; MEMBERSHIP.—

- (2)(A) *【Nine】Ten members shall be appointed, without regard to political affiliation, to the Council in accordance with this paragraph from among individuals who are practitioners in the field of juvenile justice and who are not officers or employees of the United States.*
- (B)(i) *Three members shall be appointed by the Speaker of the House of Representatives, after consultation with the minority leader of the House of Representatives.*

\* \* \* \* \*

*(iv) One member shall be appointed by the Chairman of the Committee on Indian Affairs of the Senate, in consultation with the Vice Chairman of that Committee.*

\* \* \* \* \*

**§ 5784. Authorization of appropriations**

There are authorized to be appropriated to carry out this subchapter such sums as may be necessary for **【fiscal years 2004, 2005, 2006, 2007, and 2008】** *each of fiscal years 2010 through 2014.*

\* \* \* \* \*

42 U.S.C. 13709. Payments for incarceration on tribal lands

- 【(a) RESERVATION OF FUNDS.—Notwithstanding any other provision of this part other than section 13708(a)(2) of this title, from amounts appropriated to carry out sections 13703 and 13704 of this title, the Attorney General shall reserve, to carry out this section—**
  - 【(1) 0.3 percent in each of fiscal years 1996 and 1997; and**
  - 【(2) 0.2 percent in each of fiscal years 1998, 1999, and 2000.】**
- (a) RESERVATION OF FUNDS.—Notwithstanding any other provision of this part, of amounts made available to the Attorney General to carry out programs relating to offender incarceration, the Attor-*

ney General shall reserve \$35,000,000 for each of fiscal years 2010 through 2014 to carry out this section.

[(b) GRANTS TO INDIAN TRIBES.—From the amounts reserved under subsection (a) of this section, the Attorney General may make grants to Indian tribes for the purposes of constructing jails on tribal lands for the incarceration of offenders subject to tribal jurisdiction.]

(b) GRANTS TO INDIAN TRIBES.—

(1) IN GENERAL.—From the amounts reserved under subsection (a), the Attorney General shall provide grants—

(A) to Indian tribes for purposes of—

(i) construction and maintenance of jails on Indian land for the incarceration of offenders subject to tribal jurisdiction;

(ii) entering into contracts with private entities to increase the efficiency of the construction of tribal jails; and

(iii) developing and implementing alternatives to incarceration in tribal jails;

(B) to Indian tribes for the construction of tribal justice centers that combine tribal police, courts, and corrections services to address violations of tribal civil and criminal laws;

(C) to consortia of Indian tribes for purposes of constructing and operating regional detention centers on Indian land for long-term incarceration of offenders subject to tribal jurisdiction, as the applicable consortium determines to be appropriate.

(2) PRIORITY OF FUNDING.—in providing grants under this subsection, the Attorney General shall take into consideration applicable—

(A) reservation crime rates;

(B) annual tribal court convictions; and

(C) bed space needs.

(3) FEDERAL SHARE.—Because of the Federal nature and responsibility for providing public safety on Indian land, the Federal share of the cost of any activity carried out using a grant under this subsection shall be 100 percent.

(c) APPLICATIONS.—To be eligible to receive a grant under this section, an Indian tribe, or consortium of Indian tribes as applicable, shall submit to the Attorney General an application in such form and containing such information as the Attorney General may by regulation require.

(d) LONG-TERM PLAN.—Not later than 1 year after the date of enactment of this subsection, the Attorney General, in coordination with the Bureau of Indian Affairs and in consultation with tribal leaders, tribal law enforcement officers, and tribal corrections officials, shall submit to Congress a long-term plan to address incarceration in Indian country, including a description of—

(1) proposed activities for construction of detention facilities (including regional facilities) on Indian land;

(2) proposed activities for construction of additional Federal detention facilities on Indian land;

(3) proposed activities for contracting with State and local detention centers, with tribal government approval;

*(4) proposed alternatives to incarceration, developed in cooperation with tribal court systems; and*

*(5) such other alternatives as the Attorney General, in coordination with the Bureau of Indian Affairs and in consultation with Indian tribes, determines to be necessary.*

