



*Inter-Tribal Workgroup Participants:*  
**The Navajo Nation**  
**Hopi Tribe**  
**Ft. McDowell Yavapai Nation**  
**Salt River Pima Maricopa Indian Community**  
**Bureau of Indian Affairs, Office of Justice Services**

---

**STATEMENT OF**

**DORMA L. SAHNEYAH**  
**HOPI TRIBAL CHIEF PROSECUTOR**  
**REPRESENTING**  
**AN INTERTRIBAL WORKGROUP**

**BEFORE THE**  
**UNITED STATES SENATE**  
**COMMITTEE ON INDIAN AFFAIRS**

**CONCERNING**  
**THE TRIBAL LAW AND ORDER ACT**

**JULY 24, 2008**

Thank you Chairman Dorgan and members of the committee for taking the time to seriously consider the needs of tribal justice systems in Indian Country.

My name is Dorma Sahneyah. I am an enrolled member of the Hopi Tribe. I have a law degree from Arizona State University School of Law and have served as Hopi Chief Prosecutor for the past 12 years.

I represent a workgroup consisting of tribal government leaders, chief justices and judges, lawyers, and behavioral health experts from the Hopi Tribe, Navajo Nation, Salt River

Pima-Maricopa Indian Community, Ft. McDowell Yavapai Nation, and the BIA Tribal Courts Program. Navajo Nation Chief Justice Herb Yazzie, Hopi Chairman Benjamin Nuvamsa and Salt River President Diane Enos are the workgroup leaders.

The workgroup submitted two memoranda to the Committee on April 21 and July 10. The first addresses what Indian justice is, and what it needs. The second addresses interagency provisions in the Indian Alcohol and Substance Abuse Prevention and Treatment Act. Both memoranda will be included as addenda to my written statement.

The core responsibilities of Indian justice are broader and more community-oriented than American justice. In addition to determining guilt and punishment, tribal courts have the responsibility for the overall well-being of the entire community. As a result, Indian justice demands that offenders take personal responsibility. Indian justice is not soft on crime and does not exclude detention and penalty fines. The responsibility of bringing restoration to our communities is a vital duty.

In all tribes, restoration generally requires that the offender be given real opportunity to make right the wrong and to become a productive member of the community. Community participation should be a given. Salt River takes community inclusion seriously so as to have located their detention center in the heart of their community, both for community access and to maintain the sense of community membership in inmates.

It is ironic that restoration under the American justice system is becoming increasingly important as an alternative to incarceration while tribes, eager for legitimacy, have for years been taught to unlearn these core duties of Indian justice or address them outside of the tribal court system.

Tribal courts typically are underfunded. Funding that is allocated for restoration programs is often given in piecemeal fashion through limited grants. Problem-solving courts which should be the pillar of Indian justice systems are considered alternative programming. Rehabilitative sentencing tools have been in short supply. We need treatment resources and facilities for alcohol and substance abuse, behavioral health counseling, meaningful

interagency collaboration, and the ability to control an offender's time in detention and rehabilitation facilities with the goal of full acceptance of personal responsibility for criminal behavior.

Our court systems are the principal players in the process of achieving restoration. Yet, our judges are constrained by limits on sentencing authority and fear of overstepping roles defined for them according to modern court systems. These constraints stem largely from more than a century of being told what is right and what will best work in Indian Country by others, who live lives far removed from Indian reservations and culture.

Restoration responsibilities cannot be incorporated into core tribal court functions without adequate resources in personnel, facilities, and funding.

We recommend that federal interagency coordination and collaboration in Indian alcohol and substance abuse presentation and treatment be given full focus and encouragement. The approach so far has been to compartmentalize responsibilities and services, discourage resource and information sharing, yet require that services be somehow jointly applied. The Hopi Healing to Wellness Court lacks federal agency collaboration partly for this reason. We recommend first that a consistent framework be established for interagency coordination and collaboration, that justice and health consolidate their playing field in Indian Country, and that programs be fully funded. I understand that some recommendations of the workgroup have already been incorporated into the bill and that funding remains an issue.

I would like to emphasize that our courts must be legitimate to *our* people. For many years, tribal court practitioners have strived to make tribal courts legitimate in the eyes of non-Natives. Seemingly, no matter how dedicated tribal courts are to their function, they are doomed to being perceived as substandard even when compared to local justice courts in some states like New York where part-time plumbers and retirees who lack any understanding of law have authority to sentence wrongdoers up to 2 years.

Our judges receive compulsory on-going trainings. Training is provided by tribal, state and federal programs and the National Judicial College at the University of Nevada, which is affiliated with the American Bar Association. All Hopi justices must be law school graduates. All Navajo Nation judges must be members of the Navajo Nation Bar. In our tribal courts, witnesses are sworn, records of court proceedings are maintained and accessible to the public, written, reasoned judgments must be produced for appeal purposes, and avenues exist for appeal in our appellate courts. Individuals in our respective courts are afforded all the basic rights guaranteed under the Indian Civil Rights Act.

We give great weight to due process of law. Additionally, our courts strive to meet greater and more encompassing rights based on our own common values of fundamental fairness.

I expect that persons with little or no knowledge of how tribal courts operate would be surprised at how similar tribal court procedures are to those of state and federal courts.

We acknowledge that much work lies ahead, and we stand ready to continue to work closely with the Committee and staff.

On behalf of the workgroup, thank you for the opportunity to testify today on these critically important issues.

**Addenda:**

1. "Accountability and Returning the Offender to the Community: Core Responsibilities of Indian Justice," April 21 Memorandum to the Senate Committee on Indian Affairs on the Proposed Indian Country Crime Bill, submitted by the Navajo Nation, The Hopi Tribe, and Fort McDowell Yavapai Nation.
2. "Workgroup Memorandum on the June 12 Discussion Draft of Indian Law and Order Bill, with Special Focus on the Indian Alcohol and Substance Abuse Prevention and Treatment Act (IASAPTA), Interagency Coordination Provisions," dated July 10, 2008, submitted by the Navajo Nation, the Hopi Tribe, Salt River Pima Maricopa Indian Community, and the BIA Office of Justice Services.



# **Accountability and Returning the Offender to the Community: Core Responsibilities of Indian Justice**

**April 21, 2008**

## **Memorandum to the Senate Committee on Indian Affairs on the proposed Indian Country Crime Bill**

*Submitted by an Inter-Tribal Workgroup comprised of the following Tribes:*

**The Navajo Nation**

**The Hopi Tribe**

**Fort McDowell Yavapai Nation**

RESOLUTION OF THE  
INTERGOVERNMENTAL RELATIONS COMMITTEE

21<sup>st</sup> NAVAJO NATION COUNCIL - Second Year, 2008

AN ACTION

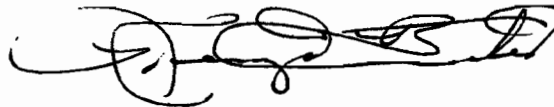
RELATING TO JUDICIARY, PUBLIC SAFETY, AND INTERGOVERNMENTAL RELATIONS;  
APPROVING THE SUBMISSION OF A MEMORANDUM TO THE SENATE COMMITTEE ON  
INDIAN AFFAIRS ON THE PROPOSED INDIAN COUNTRY CRIME BILL FROM AN  
INTERTRIBAL WORKGROUP COMPRISED OF THE NAVAJO NATION, THE HOPI TRIBE  
AND THE FORT MCDOWELL YAVAPAI NATION

BE IT ENACTED:

1. The Navajo Nation hereby approves the submission of a Memorandum to the Senate Committee on Indian Affairs on the Proposed Indian Country Crime Bill entitled, "Accountability and Returning the Offender to the Community; Core Responsibilities of Indian Justice", from an intertribal workgroup comprised of the Navajo Nation, the Hopi Tribe and the Fort McDowell Yavapai Nation, as set forth in the attached Exhibit A.
2. The Navajo Nation hereby authorizes the President, the Speaker and the Chief Justice, or their respective designees, to submit the Memorandum attached as Exhibit A and advocate on behalf of the Navajo Nation consistent with the Memorandum approved hereby.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Intergovernmental Relations Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 7 in favor and 0 opposed, this 19<sup>th</sup> day of May, 2008.



LoRenzo Bates, Chairperson Pro Tem  
Intergovernmental Relations Committee

Motion: Ervin M. Keeswood, Sr.  
Second: Kee Allen Begay

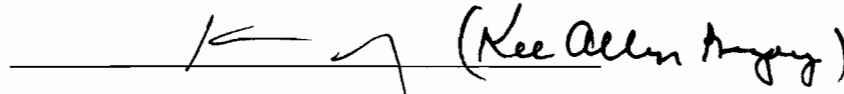
THENCE

PROPOSED STANDING COMMITTEE RESOLUTION  
21<sup>st</sup> NAVAJO NATION COUNCIL -- Second Year, 2008

PUBLIC SAFETY  
COMMITTEE

INTRODUCED BY

THENCE

  
(Sponsor)

INTERGOVERNMENTAL  
RELATIONS COMMITTEE

TRACKING NO. 0225-08

AN ACTION

RELATING TO JUDICIARY, PUBLIC SAFETY, AND INTERGOVERNMENTAL  
RELATIONS; APPROVING THE SUBMISSION OF A MEMORANDUM TO THE  
SENATE COMMITTEE ON INDIAN AFFAIRS ON THE PROPOSED INDIAN  
COUNTRY CRIME BILL FROM AN INTERTRIBAL WORKGROUP COMPRISED  
OF THE NAVAJO NATION, THE HOPI TRIBE AND THE FORT MCDOWELL  
YAVAPAI NATION

BE IT ENACTED:

1. The Navajo Nation hereby approves the submission of a Memorandum to the Senate Committee on Indian Affairs on the Proposed Indian Country Crime Bill entitled, "Accountability and Returning the Offender to the Community: Core Responsibilities of Indian Justice," from an intertribal workgroup comprised of the Navajo Nation, the Hopi Tribe and the Fort McDowell Yavapai Nation, as set forth in the attached Exhibit A.

2. The Navajo Nation hereby authorizes the President, the Speaker, and the Chief Justice, or their respective designees, to submit the Memorandum attached as Exhibit A and advocate on behalf of the Navajo Nation consistent with the Memorandum approved hereby.

JUDICIARY COMMITTEE REPORT

21<sup>th</sup> NAVAJO NATION COUNCIL – SECOND YEAR 2008

INTRODUCED BY  
*Kee Allen Begay, Jr., Council Delegate*

LEGISLATION NO. 0225-08

AN ACT

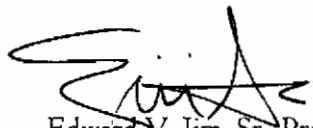
RELATING TO JUDICIARY; PUBLIC SAFETY, AND INTERGOVERNMENTAL  
RELATIONS; APPROVING THE SUBMISSION OF A MEMORANDUM TO THE  
SENATE COMMITTEE ON INDIAN AFFAIRS ON THE PROPOSED INDIAN  
COUNTRY CRIME BILL FROM AN INTERTRIBAL WORKGROUP COMPRISED OF  
THE NAVAJO NATION, THE HOPI TRIBE AND THE FORT MCDOWELL YAVAPAI  
NATION

The Judiciary Committee has had it under consideration and reports the same with the recommendation that it DO PASS with ONE amendment, and refers to the same to the Public Safety Committee of the Navajo Nation Council.

1. Line 11, strike the word "~~APPROVING~~" and insert the word "RECOGNIZING"; Line 19 Strike the word "~~approves~~" and insert the word "recognizes".

CERTIFICATION

I hereby certify the foregoing legislation was duly considered by the Judiciary Committee of the Navajo Nation Council at a duly called **Special Meeting** at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of **04** in favor and **00** opposed, this **16<sup>th</sup>** day of **April 2008**.



Edward Y. Jim, Sr., Presiding Chairperson  
Judiciary Committee  
Navajo Nation Council

Motion: Leonard Tsosie  
Second: Lena Manheimer



# THE HOPI TRIBE



**Benjamin H. Nuvamsa**  
Chairman

**vacant**

Vice-Chairman

April 21, 2008

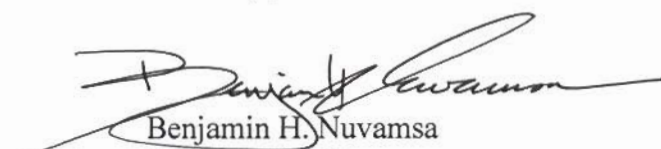
Committee on Indian Affairs  
United States Senate  
838 Hart Office Building  
Washington, DC 20510

Committee members:

On behalf of The Hopi Tribe, I endorse and support the attached *Memorandum to the Senate Committee on Indian Affairs on the proposed Indian Country Crime Bill*.

I want to emphasize our investment in the work efforts of our tribal representatives in this workgroup. Our hope is that the federal government will implement the recommendations for the good of Northern Arizona tribes and all tribes.

Sincerely,



Benjamin H. Nuvamsa  
Chairman/CEO  
Hopi Tribe

cc: President, Navajo Nation  
President, Fort McDowell Yavapai Nation

## Introduction

This Memorandum is submitted by an inter-tribal workgroup formed following a listening session held by the Senate Committee on Indian Affairs on January 14, 2008 in Phoenix, Arizona. Leaders and staff from the Navajo Nation, Hopi Tribe, and Ft. McDowell Yavapai Nation are the core workgroup. The purpose of the workgroup is to address the following:

- a. Assist the Senate Committee by defining the unique sense of Indian Justice that requires offender accountability and facilitation of return to the community through a holistic approach;
- b. Review the Concept Paper on the Indian Crime Bill in order to make recommendations on restorative justice concerns;
- c. Review the Indian Alcohol and Substance Abuse Prevention and Treatment Act and make recommendations on needed amendments upon reauthorization.

## Workgroup Sessions Summary

There have been several workgroup discussion sessions attended by the leadership and staff of all branches of government of the core workgroup tribes, including the judiciary and healthcare. The workgroup focused on problems previously brought up in testimony or comments before the Senate Committee, and reached consensus on effective solutions, based on the Indian sense of justice, that are not presently included in the Indian Country Crime Bill Concept Paper.

As a result of cross-branch and cross-agency participation, the workgroup took a more systemic view point than the previous focus on more officers and more detention facilities, which is the acknowledged need of the law enforcement component.

The workgroup very quickly reached consensus that there are unique components of a fully functioning and effective Indian justice system as contrasted with the American justice system. The workgroup agreed that the term "restorative justice" in the justice context aptly describes the basis and objectives of justice in Indian societies.

"Restorative justice" as used here is distinct from the term as commonly understood and applied. Whereas the term in the American justice system has become greatly simplified and come to mean non-convictions, no jail and no fines, restorative justice in traditional Indian justice is used in the literal sense, to "restore" in conformity with justice principles. Wrongdoers, those who are harmed, and their affected communities are engaged in search of solutions that promote repair and rebuilding. Convictions, detention, and penalties in support of personal responsibility and community safety are not excluded.

Indian justice responsibilities include accountability and return of offenders to the community. These are in addition to community safety responsibilities already addressed by the Committee in its Concept Paper. These three are core elements of all traditional justice systems notwithstanding a tribe's diverse specific customs. All agencies and community members necessary to fulfill these responsibilities are part of the Indian justice system. The workgroup

recommended that the term as used in the Indian justice context be clarified to the Senate Committee.

The workgroup unanimously agreed on what tools are urgently needed in order to make the Indian justice system more effective as a whole. Integrated and coordinated strategic approaches across justice and treatment systems and multi-purpose detention-treatment facilities under joint justice and healthcare leadership may be a solution. Judges and probation and parole services should be consulted and included in comprehensive partnerships with law enforcement and healthcare. As the solutions include public safety, accountability and healthcare components, they must be addressed in both the Indian Country Crime Bill and the reauthorized Indian Alcohol and Substance Abuse Prevention and Treatment Act.

### **Indian Country Crime Bill Concept Paper Recommendation**

The workgroup strongly recommends that the following section be included in the Concept Paper and relevant Congressional reports:

#### **ISSUE # 6: LACK OF TOOLS FOR RESTORATIVE JUSTICE SENTENCING**

Indian justice is unique in that restorative justice is not simply an option; it is a responsibility of the Indian justice system. "Justice system" includes law enforcement, judiciary, corrections, probation/parole, and healthcare departments whose services are necessary for comprehensive solutions.

Restorative justice" as used here is distinct from the term as commonly understood and applied. Whereas the term in the American justice system has become greatly simplified and come to mean non-convictions, no jail and no fines, restorative justice in traditional Indian justice is used in the literal sense, to "restore" in conformity with justice principles. Wrongdoers, those who are harmed, and their affected communities are engaged in search of solutions that promote repair and rebuilding. Convictions, detention, and penalties in support of personal responsibility and community safety are not excluded.

Indian justice responsibilities include accountability and return of offenders to the community. These are in addition to community safety responsibilities already focused on by the Committee in its Concept Paper. These three are core elements of all traditional justice systems notwithstanding a tribe's diverse specific customs. All agencies and community members necessary to fulfill these responsibilities are part of the Indian justice system.

In Navajo, there is a term, ná bináhaazláo which means providing parties with a sense of completeness or comprehensiveness. It also means fairness and doing whatever is necessary in coming to a comprehensive solution. The tribal courts are charged with ná bináhaazláo through restorative justice. In Hopi, the offender's accountability – QaHopit qa'antipu'at – and bringing the offender back into the community – QaHopit ahoy kiimmi pavnaya -- are deep-rooted justice principles.

This means there is a circle of responsibilities, beginning with law enforcement and prosecution, the judiciary being responsible for accountability and bringing the offender back into the community through sentencing, and probation and parole services ensuring that the judiciary's

conditions are fulfilled. These components integrate and coordinate with mental health, social service, behavioral health professionals and traditional counselors where necessary; given the very high rate of alcohol and substance abuse disorders implicated in Indian Country crime, integration is needed in almost all instances.

Past federal initiatives in controlling and combating alcohol and substance abuse related crime and violence have attempted to employ a comprehensive approach that has been limited in its reach. Partnerships between law enforcement and treatment agencies have been encouraged for interdiction and prevention, but not for restoration. Federally-funded drug courts that attempt restoration are generally available only for non-violent crimes and clean-record offenders. Grants for such courts are typically of very short duration. Tribal judiciaries are seldom included in multi-agency and multi-year strategic planning efforts to control and prevent alcohol and substance abuse-related crime and violence.

In the Indian justice context, there is a high level of accountability required by the community of an offender. This is coupled with a great burden on the Indian justice system to rehabilitate and bring the offender back into that community according to traditional principles.

The Indian view of restorative justice, a comprehensive inclusive approach, is becoming recognized in the American justice system and in justice systems around the world as a workable, effective method to reduce prison populations and challenge recidivism. However, in many states, the offer of diversion as an incentive in restorative justice programs has made the term confusing. In the Indian justice context, restorative justice is not necessarily equated with diversion or non-convictions. In this context, restorative justice requires full accountability, community participation, and the necessary resources to bring an offender back. Indian justice throws no one away.

Under the present scheme of justice in Indian Country, accountability and rehabilitation are split between the justice system and healthcare without overlap of primary responsibilities. While partnerships are encouraged between agencies, e.g., IHS and the BIA, primary responsibility for treatment lies with healthcare, while justice pursues accountability. This split does not work in Indian Country where, according to the Arizona Attorney General, 99% of all violent crimes in Indian Country in the Southwest is attributable to alcohol or substance abuse. 40% of all violent crime which occurs on Indian reservations happens in the northern half of Arizona. The violent-crime rate on the Navajo Nation is six times the national average of 25 violent crimes per 1,000 U.S. residents in 2001, according to DOJ statistics, and in some towns, like Tuba City, Kayenta and Chinle, the per capita violent-crime rate is much higher than that.<sup>1</sup>

There is a continuum between healthcare and justice remedies. Originally, American law enforcement departments had broader responsibilities than do modern law enforcement agencies, including some healthcare functions.<sup>2</sup> Tribal police today are perceived by communities also as having some community-based responsibilities beyond their policing function. While partnerships or coordination is needed between tribal justice and healthcare

---

<sup>1</sup> Mark Shaffer, *Indian Country Today, Special Report: Violent crime increasing on Arizona reservations*, May 30, 2003.

<sup>2</sup> Edward P. Richards, *Emerging Infectious Diseases, Collaboration between Public Health and Law Enforcement: the Constitutional Challenge*, Vol. 8, No. 10, October 2002.

programs, it has not been clear that Indian justice systems bear any responsibility. This lack of clarity has led to a fragmented and ineffective approach in the dispensation of Indian justice.

Ultimately, the tribal judiciary that performs sentencing oversees the healing and return phases which complete the Indian justice circle. The tribal courts have jurisdiction over the offender until all supervision conditions are met. Tribal judges are deeply invested in their communities and are engaged in meetings and conferences on a range of community matters. Tribal judges are not external adjudicators, separated from communities by a robe and bench. Tribal judiciaries should be included in policy making and strategic planning for healing and return. SAMHSA has advocated for strengthened partnerships with Indian Country law enforcement, including police and correctional organizations as well as DOJ.<sup>3</sup> Input from tribal judiciaries, including inclusion of tribal judiciaries in partnership, should also be sought.

There is an inescapable link between addiction, mental illness and crime in Indian Country.<sup>4</sup> Tribal judges are fully cognizant of this connection but lack the sentencing tools to fully address rehabilitation as a reliable option. Sentencing offenders to treatment is often a futile exercise. IHS is so short-staffed in psychiatrists that Hopi and Navajo adults and children with mental health issues, referred to IHS from tribal courts, receive no substantial treatment. The lack of treatment facilities on or near the reservations causes long delays when offenders are sentenced to residential treatment. When available, the beds are often located in major cities like Albuquerque and Phoenix. When children are taken there for treatment, they do not have the benefit of cultural connections and are removed from local supervision. Sex offenders receive no specialized treatment, often not even the benefit of general counseling.

It is essential that Indian justice systems have the tools to accomplish the holistic requirements of Indian justice. As a whole, the Indian justice system needs adequate law enforcement and healthcare personnel, adequate corrections and treatment facilities, adequate presence in the community, adequate community participation, involvement of all components of the Indian justice system in policy making and strategic planning, and clarification of the system's responsibility to complete the circle of Indian justice.

In addition, the one-year imprisonment limit on tribal court convictions under the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1302(7) may be taken as also limiting tribal judges' control over cumulative sentencing to accommodate long-term residential treatment that may exceed one year. This needs clarification.

The following is a summary of possible legislative solutions to address the lack of tools needed in restorative justice sentencing.

### **Recommendations**

- **Establish that accountability and bringing offenders back into the community are core Indian justice components.** Ensure that these components are included in any strategy to combat Indian Country crime, and include the requirement that grant-funded

<sup>3</sup> Testimony of H. Westley Clark, Dir., SAMHSA, on *Creating Healthier Tribal Communities*, to the Senate Committee on Indian Affairs, August 15, 2007.

<sup>4</sup> Id.

strategies have a holistic and synergizing, as opposed to a fragmented approach, that is necessary to complete the circle of Indian justice. Provide for training and education that support the holistic responsibilities of Indian justice.

- **Require that tribal judiciaries and healthcare departments be included in consultations with tribal governments in determining policy, guidelines and regulations for combating Indian Country crime.** Ensure that the timing, participation, and goals of these consultations are substantially detailed and defined in order to maximize tribal input.
- **Establish a permanent funding stream for restorative justice education, training and implementation.**
- **Encourage inter-agency integration with a holistic approach to Indian justice system responsibilities.** Innovative and integrated multi-agency programs addressing core Indian justice responsibilities without undue restrictions on the type of offender population to be served should be authorized and funded. Funding should be flexible and of a duration longer than one year. The Crime Bill should emphasize the comprehensive approach.
- **Permit DOJ and DOI to enter arrangements for sharing facilities and services with IHS;**
- **Authorize use of DOI/DOJ funds for the leasing, purchase, construction, expansion or modernization of multi-purpose detention-treatment facilities in Indian Country.** Services at these facilities would include counseling for those in detention, and culturally appropriate treatment modalities. This would redress the severe shortage of both detention and residential treatment beds for adults and juveniles near Indian communities. Presently, DOI and DOJ are authorized to fund detention facilities. They should also be enabled to fund a treatment facility on the same site.

Healthcare funding for treatment facilities in Indian Country remain scarce. They come under “specialized facilities” and must stand in line behind national healthcare facility needs in the health care facility priority system. Under the proposed Indian Health Care Improvement Act (S.1200), Indian Country healthcare facilities would have priority in the ranking system.<sup>5</sup> However, specialized facilities must still stand in line.

In 1986, Congress found that less than 1% of the Indian Health Service budget was spent on alcohol and substance abuse treatment facilities.<sup>6</sup> The proposed IHCA permits outside funding for IHS facilities, including specialized facilities in Indian Country.<sup>7</sup> Funding through the DOJ for multi-purpose detention-treatment facilities would emphasize that treatment of offenders in Indian Country is a justice responsibility.

---

<sup>5</sup> S.1200 IHCA, Section 301.

<sup>6</sup> Findings, Indian Alcohol and Substance Abuse Prevention and Treatment Act, 25 U.S.C. §2401(9).

<sup>7</sup> S.1200 IHCA, Sections 304(a), 310, 311(a) and 316 regarding the acquisition, planning, design, construction, lease, expansion, renovation, or modernization of treatment facilities in Indian Country.

IHCIA does not authorize multi-purpose detention-treatment facilities.

- **Establish a Joint Venture Multi-Purpose Detention-Treatment Facility Demonstration Project in Northern Arizona.** The demonstration project would expedite construction of a much-needed regional facility in northern Arizona using DOJ and/or DOI detention-treatment facilities funding. The facility would be maintained under proposed IHCIA joint venture provisions at S.1200, Section 311.

The IHCIA proposed joint venture provision permits tribes to expend tribal, private, or other available funds for acquisition or construction of a health facility for a minimum of 10 years under a no-cost lease in exchange for IHS providing equipment, supplies, and staffing.

- **Clarify the ICRA one-year limit on imprisonment.** The one-year limit should not prevent tribal courts from imposing cumulative sentences to long-term residential treatment in excess of one year for a single offense until the court determines that the full needs of an offender suffering from mental health or addiction disorders are adequately being addressed.
- **Reauthorize and amend the Indian Alcohol & Substance Abuse Act (25 U.S.C. §§ 2401-2471), as follows:**
  - Inter-departmental MoAs under Section 2411 presently permitted between BIA and IHS should also include SAMHSA and DOJ, and partnerships include tribal judiciaries, tribal behavioral health, and probation and parole services;
  - The scope of MoAs should be expanded according to recommendations of this workgroup to be submitted shortly;
  - The core elements of Indian justice, including accountability and return of offenders to communities, should be included;
  - Flexibility should be permitted in IASA programs, including extending one-year grants to flexible five-year cycles;
  - Reciprocal language permitting IHS to enter arrangements for sharing facilities and services with DOJ and BIA. Note that Section 406 of proposed IHCIA permits IHS to enter arrangements for sharing facilities and services between the Services, tribes, Department of Veterans Affairs, and the Department of Defense.

**Detailed recommendations for the Indian Alcohol and Substance Abuse Act** will be submitted to the Committee shortly.

---

## Attachments

Attachment 1 is suggested legislative language on restorative justice and multi-purpose detention-treatment facility construction for inclusion in the Indian Country Crime Bill.

## Workgroup Participants

### Navajo Nation

Herb Yazzie, Chief Justice

Ben Shelley, Vice President

Patrick Sandoval, Chief of Staff to President Joe Shirley

Cheron Watchman, Legislative Services Director, Speaker's Office, Navajo Nation Council

Delores Greyeyes, Director, Department of Corrections

Deswood Tome, Gov't & Legislative Communications Director, Navajo Nation Washington Office

Randall Simmons, Gov't & Legislative Affairs Associate, Navajo Nation Washington Office

Allen Sloan, Window Rock District Judge

Albert Long, Senior Program Project Specialist, Navajo Behavioral Health

Rita Cantsee, Eastern Agency Manager, Navajo Behavioral health

Selena Applewhite, Office of President and Vice-President

Sherrick Roanhorse, Staff Assistant to Vice-President Shelley

Josephine Foo, Associate Attorney, Office of the Chief Justice

Martha Shelley

### Hopi Tribe

Benjamin Nuvamsa, Hopi Tribal Chairman

Delford Leslie, Acting Chief Judge

Dorma Sahneyah, Chief Prosecutor

Dr. Robert Robin, Director, Hopi Behavioral Health Services

Milton Poola, Staff Assistant to Chairman Benjamin Nuvamsa

Emma L. Anderson, Hopi Tribal Council Rep. and Member, Law Enforcement Team

Wilbur Maho, Hopi Judicial Administrator

### Ft. McDowell Yavapai Nation

Diandra Benally, Special Counsel

## Workgroup Contact Information

Direct correspondence to:

### ***Inter-Tribal Workgroup on the Indian Law and Order Bill***

c/o Josephine Foo, Navajo Nation Judicial Branch, P. O. Box 520, Window Rock, AZ 86515

Tel: (928) 871-7669 Fax (928) 871-6761

Email: [josephinefoo@navajo.org](mailto:josephinefoo@navajo.org)



**ATTACHMENT 1**

**PRELIMINARY DRAFT**  
**language for inclusion in the Indian Country Crime Bill**

**TITLE \_\_\_\_--RESTORATIVE JUSTICE DEVELOPMENT**

**SEC. \_\_\_\_ . PURPOSE.**

It is the purpose of this Title to acknowledge the responsibility of the United States to encourage and fund restorative justice solutions through the Department of the Interior and the Department of Justice for tribes that have declared the implementation of those solutions as a core responsibility of their justice systems.

**SEC. \_\_\_\_ . DEFINITIONS.**

For purposes of this Title—

- (a) The term “detention facility” means a facility mandated to hold individuals convicted of misdemeanors by a tribal court. The facility may detain both adult and juvenile offenders provided there is sight and sound separation between adult and juvenile populations.
- (b) The term “long-term treatment facility” means a residential treatment facility providing non-hospital care in a program lasting between three to twelve months and is focused on the “resocialization” of the individual. The programs offered by these facilities may include alternative and traditional treatment methods.
- (c) The term “multi-purpose detention-treatment facility” means a detention facility and long-term treatment facility at a single site.
- (d) The term “Northern Arizona” means Apache, Coconino, Mohave, Navajo and Yavapai counties in the State of Arizona.
- (e) The term “restorative justice” as used here is distinct from the term as commonly understood and applied. As used here, the term means restorative justice in the context of Indian justice broadly including full accountability of the offender and meaningful efforts to bring the offender back into the community as part of a comprehensive and coordinated approach to administering justice. Whereas the term in the American justice system has become greatly simplified and come to mean non-convictions, no jail and no fines, restorative justice in traditional Indian justice is used in the literal sense, to “restore” in conformity with justice principles. Wrongdoers, those who are harmed, and their affected communities are engaged in search of solutions that promote repair and rebuilding. Convictions, detention, and penalties are not excluded.

## SEC. \_\_\_\_ . ACKNOWLEDGEMENTS.

Congress acknowledges:

- (1) Intrinsic in the inherent sovereignty of Indian tribes is a tribe's power to create and administer a justice system.
- (2) American Indian culture and traditions have survived an unusual amount of oppressive federal and state policies intended to assimilate Indian people, including the administration of justice in Indian Country.
- (3) American Indian culture and traditions are inclusive of Indian principles of justice and make up the unique cultural identities of Indian tribes that should be preserved, developed, and transmitted to future generations.
- (4) American Indian laws and principles of justice are fundamental to the spiritual health and well-being of tribal communities in many aspects of Indian life.
- (5) The Indian concept of restorative justice in the justice context requires meaningful efforts to hold an offender accountable and return the individual to the community; the concept is widely applied in Indian tribes notwithstanding culture and traditions that may vary from tribe to tribe.
- (6) Accountability in the context of Indian justice does not simply mean a finding or admission of guilt, but refers to a sense of personal responsibility for an offense and its consequences on others.
- (7) Meaningful efforts to return an offender to a community is an intrinsic characteristic of Indian justice, without which Indian justice is not complete.
- (8) Given the inescapable linkage between addiction, mental illness and crime and the high rate of addiction and alcohol abuse on Indian reservations, meaningful efforts for the return of offenders to their communities are vital to the survival of Indian communities.
- (9) Indian laws and principles of justice universally call for accountability and return of the offender to be included in any strategy to combat Indian Country crime.
- (10) Congress has the responsibility to be sufficiently educated as to the traditional Indian sense of justice before fashioning solutions to combat Indian Country crime.
- (11) The healthcare concerns of mental illness, alcoholism and addiction are so inextricably linked to Indian Country crime as to be joint federal and tribal justice and healthcare responsibilities.

(12) Regional multi-purpose detention-treatment facilities with the capacity to hold both adult and juvenile offenders near their culture and communities are the most comprehensive solution to further public safety, accountability, and return of offenders to their communities in the best interest of Indian tribes.

## **SEC. \_\_\_\_ . DECLARATION OF POLICY.**

It is the policy of the United States to encourage and invest in the application of Indian justice principles in order to ensure the well-being, safety and survival of Indian communities.

## **SEC. \_\_\_\_ . FINDINGS.**

Congress makes the following findings:

- (1) Given the inextricable linkage of mental health and addiction disorders to Indian Country crime, multi-purpose detention-treatment facilities, culturally sensitive detention personnel and professional healthcare personnel are the most important resources needed by tribal courts in restorative justice sentencing.
- (2) There is a scarcity of both detention facilities and long-term treatment facilities in Indian Country, and healthcare professionals willing to live and work on geographically remote reservations.
- (3) In Northern Arizona, an area inhabited primarily by the Navajo Nation and Hopi and Hualapai tribes, offenders suffering serious mental or addiction disorders have few sentencing options: they go untreated, or suffer lengthy wait periods before they are sent hundreds of miles out of the region to facilities in Phoenix and Albuquerque, NM.
- (4) For maximum benefit to Native populations, long-term treatment resources should incorporate cultural values, utilize traditional healthcare practitioners, and be located at the same site or adjacent to detention facilities near tribal communities in order to maintain cultural and community connections.
- (5) Under present healthcare funding schemes, treatment facilities in Indian Country are considered “specialized health care facilities” that compete for limited federal funding under a “healthcare facility priority system” in which the need for specialized facilities is ranked for funding purposes against hospitals, clinics, staff quarters, and other facilities.
- (6) The high rate of alcohol and substance abuse disorders among offenders in Indian Country requires direct investment by the Department of the Interior and the Department of Justice in the acquisition, planning, design, construction, lease, expansion, renovation, or modernization of treatment facilities in Indian Country.

**SEC. \_\_\_\_ . CONSULTATIONS WITH TRIBES.**

(a) **IN GENERAL**—All actions under this Act shall be developed and carried out with active and meaningful consultation on an ongoing basis with Indian Tribes and Tribal Organizations to implement this Act and the national policy of Indian self-determination.

(b) **INDIAN JUSTICE COMPONENTS**—Tribal law enforcement, judiciaries, and the relevant healthcare service providers shall be included in the above consultations.

**SEC. \_\_\_\_ . TRADITIONAL JUSTICE PRACTICES.**

(a) **PROMOTION**—The Secretary of the Interior shall ensure that programs established pursuant to this Act involve the use and promotion of the traditional practices of the Indian Tribes to be served.

(b) **EDUCATION AND TRAINING**—The Secretary shall develop and implement or assist Indian Tribes and Tribal Organizations to develop and implement, a program of education and training which shall be designed to provide education about traditional responsibilities in law enforcement, justice and behavioral health issues, including traditional health care practices, to political leaders, Tribal judges, law enforcement personnel, members of tribal health and education boards, health care providers and other critical members of each tribal community. Such program may also include community-based training to develop local capacity and tribal community training on community responsibilities in restorative justice solutions in the Indian justice system.

(c) **GRANTS FOR RESTORATIVE JUSTICE PROGRAMS**—The Secretary may make grants to individual Tribes and to Tribes organized as multi-tribe consortiums for the design, planning, and implementation of innovative multi-agency and multi-departmental programs that comprehensively address restorative justice as defined under this Title.

**SEC. \_\_\_\_ . GRANTS FOR MULTI-PURPOSE DETENTION-TREATMENT FACILITIES.**

(a) **GRANTS**—The Secretary of the Interior and the Attorney General may make grants to individual Tribes and to Tribes organized as multi-tribe consortiums for the lease, purchase, renovation, construction, expansion, or modernization of multi-purpose detention-treatment facilities.

(b) **RULES AND REGULATIONS**—The Secretary and Attorney General shall formulate rules and regulations for administration of the grants no later than 90 days after enactment of this Act, and in consultation with the impacted Tribes or multi-tribe consortiums.

(c) **OPERATIONS AND MAINTENANCE**—Operations and maintenance of these facilities shall be an obligation of departments and services of the federal government under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450 et seq.), including where relevant, the Bureau of Indian Affairs Office of Facilities Management.

- (d) **PROFESSIONAL TREATMENT PERSONNEL**—Tribes or tribal consortiums who are recipients of a grant under this section may staff the treatment portion of the facility using federal and non-federal sources of funding.
- (e) **COUNSELING AND CULTURAL EDUCATION**—Tribes or tribal consortiums who are recipients of a grant under this section shall implement a program of counseling and cultural education for inmates and residents of the facility geared toward reentry and resocialization, funding for which may be from both federal and non-federal sources.
- (f) **FACILITIES SHARING**—The Department of Justice and the Department of the Interior may enter into facilities sharing arrangements with other federal agencies, tribes, and non-profits under this section.
- (g) **MEMORANDUM OF AGREEMENT**—The Secretary and/or Attorney General may enter into a Memorandum of Agreement with other federal agencies, tribes, or tribal consortiums for the operations and maintenance of these facilities.
- (h) **ELIGIBILITY**—To be eligible to receive a grant under this Title, a Tribe or Tribes organized as multi-tribe consortiums shall submit an application to the Secretary of the Interior or the Attorney General which includes—
- (1) assurances that the service area for which funds are requested under this Title lacks adequate detention bed space that comply with national standards.
  - (2) assurances that the service area for which funds are requested under this Title lacks a needed long-term treatment facility for the rehabilitation of offenders with mental health and/or addiction disorders.
  - (3) assurances that the long-term treatment time served is appropriately related to the determination that the offender suffers from a mental health, alcohol or substance abuse disorder and for a period of time deemed necessary for rehabilitation;
  - (4) assurances that the Tribe or Tribes have implemented policies that provide for the recognition of the rights and needs of crime victims, particularly in regards to violent offenders sentenced to long-term treatment;
  - (5) assurances that funds received under this section will be used to construct, develop, expand, modify, operate, or improve multi-purpose detention-treatment facilities to ensure that bed space is available for detention of offenders and the rehabilitation of offenders and other individuals suffering from mental health, alcohol and/or substance abuse disorders;
  - (6) assurances that culturally appropriate education and counseling will be available to inmates and residents of the facility;
  - (7) assurances that the Tribe or Tribes have a comprehensive rehabilitation and reentry plan which represents an integrated approach to the management and operation of detention and long-term treatment facilities and programs, including a Memorandum of Understanding or Agreement between the Tribe or

Tribes with a treatment provider that will be administering the long-term treatment facility; such plan to contain provisions for prioritizing sentenced offenders, job skills programs, traditional educational programs, a pre-release assessment to provide risk reduction management, post-release assistance, and an assessment of recidivism rates;

(8) assurances that the Tribe or Tribes have involved States, counties and non-profits, when appropriate, in the construction, development, expansion, modification, operation or improvement of long-term treatment facilities designed to ensure the treatment and rehabilitation of violent offenders, and that the Tribe or Tribes will share funds received under this section with States and counties, taking into account the burden placed on States and counties when they are required to treat sentenced prisoners because of lack of available space in Tribal treatment facilities;

(9) assurances that funds received under this section will be used to supplement, not supplant, other Federal, State, Tribal, and other funds;

(10) assurances that the Tribe or Tribes have implemented, or will implement within 18 months after the date of the enactment of this Act, policies to determine the veteran status of offender patients and to ensure that veterans receive the veterans benefits to which they are entitled; and

(11) if applicable, documentation of the multi-tribe consortium that specifies the construction, development, expansion, modification, operation, or improvement of long-term treatment facilities.

## **SEC. \_\_\_\_. NORTHERN ARIZONA JOINT VENTURE DEMONSTRATION PROJECT.**

(a) **IN GENERAL**—The Secretary and Attorney General, through grant or contract with Tribes organized as a multi-tribe consortium, shall fund the construction of 1 regional multi-purpose detention-treatment facility in Northern Arizona, where no regional detention facility or long-term treatment facility presently exists.

(b) **IHS JOINT VENTURE**—The treatment facility portion of the demonstration project shall be a joint venture demonstration project pursuant to Section 311 of the proposed Indian Health Care Improvement Act under which the Department of Justice and Department of the Interior will fund the acquisition or construction of a health facility for a minimum of 10 years, under a no-cost lease, in exchange for the Indian Health Service to provide the equipment, supplies, and staffing for the operation and maintenance of such a facility.

(c) **OPERATIONS AND MAINTENANCE, DETENTION**—Operations and maintenance of the detention portion of this facility shall be an obligation of the federal government under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450 et seq.), including the Bureau of Indian Affairs Office of Facilities Management.

(d) COUNSELING AND EDUCATION—Implementation of counseling and cultural education programs are required pursuant to Section \_\_\_\_ of this Title.

(e) RULES AND REGULATIONS—The Secretary and Attorney General shall formulate rules and regulations for the joint venture demonstration project no later than 90 days after enactment of this Act, and in consultation with the impacted multi-tribe consortium.

(f) REPORTING REQUIREMENT— Not later than 90 days after the date on which the demonstration project terminates, the Secretary shall submit to Congress a report on the demonstration project.

**SEC. \_\_\_\_ . EFFECTIVE DATE.**

This title shall take effect beginning on the date of enactment of the Act.

**SEC. \_\_\_\_ . TECHNICAL ASSISTANCE AND TRAINING.**

The Attorney General in collaboration with the Secretary of the Interior may request that the Secretary of Health and Human Services and the Director of the Substance Abuse and Mental Health Services Administration provide technical assistance and training to a Tribe or Tribes that receive a grant under this Title to achieve the purposes of this Title.

**SEC. \_\_\_\_ . EVALUATION.**

The Secretary of the Interior and Attorney General may request the Administrator of the Substance Abuse and Mental Health Services Administration to assist with an evaluation of programs established with funds under this Title.

**SEC. \_\_\_\_ . AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2018 to carry out this title.

**SEC. \_\_\_\_ . AVAILABILITY OF FUNDS.**

The funds appropriated pursuant to this Title shall remain available until expended.

**SEC. \_\_\_\_ . RESULTS OF DEMONSTRATION PROJECT.**

The Secretary shall provide for the dissemination to Indian Tribes and Tribal Organizations of the findings and results of the demonstration project conducted under this Title.

**SEC. \_\_\_\_ . CLARIFICATION OF INDIAN CIVIL RIGHTS ACT.**

The Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1302(7) is hereby clarified as to exclude single or cumulative sentences to long-term treatment in excess of one year for purposes of restorative justice as defined under this Title.





*Inter-Tribal Workgroup Participants:*

**The Navajo Nation  
The Hopi Tribe  
Salt River Pima-Maricopa Indian Community  
& The Bureau of Indian Affairs, Office of Justice Services**

**July 10, 2008**

**Workgroup Memorandum on the June 12 Discussion Draft of  
Indian Law and Order Bill, with Special Focus on the Indian  
Alcohol and Substance Abuse Prevention and Treatment Act  
(IASAPTA), Interagency Coordination Provisions**

*Submitted to the Senate Committee on Indian Affairs:*

The Honorable Byron Dorgan, Chairman  
The Honorable Lisa Murkowski, Vice-Chairman  
The Honorable Daniel Inouye  
The Honorable John McCain  
The Honorable Kent Conrad  
The Honorable Tom Coburn  
The Honorable Daniel Akaka  
The Honorable John Barrasso

The Honorable Tim Johnson  
The Honorable Pete Domenici  
The Honorable Maria Cantwell  
The Honorable Gordon Smith  
The Honorable Claire McCaskill  
The Honorable Richard Burr  
The Honorable John Tester

---

Cc: The Honorable John Kyl  
730 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Jeff Bingaman  
703 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Pete Domenici  
328 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Wayne Allard  
521 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Ken Salazar  
702 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Robert F. Bennett  
431 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Orrin G. Hatch  
104 Hart Senate Office Building  
Washington, D.C. 20510

**PUBLIC SAFETY COMMITTEE REPORT**

**21<sup>ST</sup> NAVAJO NATION COUNCIL – Second Year, 2008**

Mr. Speaker:

**The Public Safety Committee**, to whom has been assigned,

**Navajo Legislation No. 0384-08**

**RELATING TO JUDIARY, PUBLIC SAFETY AND INTERGOVERNMENTAL  
RELATIONS; APPROVING THE INTER-TRIBAL WORKGROUP  
MEMORANDUM TO THE SENATE COMMITTEE ON INDIAN AFFAIRS ON  
THE DRAFT INDIAN LAW AND ORDER BILL**

Has had it under consideration and reports the same with the recommendation that it **DO  
PASS**.

And thence referred to the **INTERGOVERNMENTAL RELATIONS COMMITTEE**.

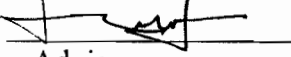
Respectfully Submitted,



Rex Lee Jim, Chairperson  
PUBLIC SAFETY COMMITTEE

**PSC SUMMARY:**

Date: July 14, 2008

Adopted:   
Advisor

**Main Motion:** Mr. Kee Yazzie Mann Second: Mr. Benjamin Curley Vote: 3-0

PROPOSED STANDING COMMITTEE RESOLUTION  
21st NAVAJO NATION COUNCIL – Second Year, 2008

INTRODUCED BY

THENCE  
PUBLIC SAFETY  
COMMITTEE

  
(Prime Sponsor)

THENCE  
INTERGOVERNMENTAL  
RELATIONS COMMITTEE

TRACKING NO. 03841-08  
AN ACTION

RELATING TO JUDICIARY, PUBLIC SAFETY AND INTERGOVERNMENTAL  
RELATIONS; APPROVING THE INTER-TRIBAL WORKGROUP MEMORANDUM  
TO THE SENATE COMMITTEE ON INDIAN AFFAIRS ON THE DRAFT INDIAN  
LAW AND ORDER BILL

**BE IT ENACTED:**

1. The Navajo Nation hereby approves the Inter-Tribal Workgroup Memorandum to the Senate Committee on Indian Affairs on the Draft Indian Law and Order Bill, attached hereto as Exhibit A.

2. The Navajo Nation authorizes the Navajo Nation President, the Speaker of the Navajo Nation Council, the Judiciary Committee, the Public Safety Committee and their designees to advocate for the positions in Inter-Tribal Workgroup Memorandum to the Senate Committee on Indian Affairs on the Draft Indian Law and Order Bill, as amended, until such time as the Inter-Tribal Workgroup Memorandum may be further amended by resolution.

JUDICIARY COMMITTEE REPORT

OF THE 21st NAVAJO NATION COUNCIL - Second Year 2008  
INTRODUCED BY

*Hon. Kee Allen Begay Jr.*

**LEGISLATION NO: 0384-08**

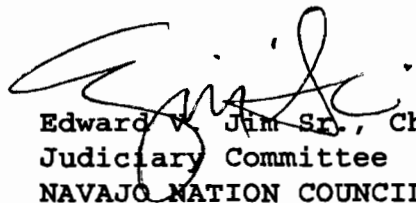
An Action

Relating to Judiciary, Public Safety and Intergovernmental Relations; Approving the Inter-Tribal Workgroup Memorandum to the Senate Committee on Indian Affairs on the Draft Indian Law and Order Bill

Mr. Speaker;

The Judiciary Committee to whom it has been assigned has had it under consideration and reports the same with the recommendation that it DO PASS, with no amendments.

The LEGISLATION NO. 0384-08 was duly considered by the Judiciary Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 6 in favor, 0 opposed and 0 abstained, this 03rd day of July, 2008.



Edward V. Jim Sr., Chairperson  
Judiciary Committee  
NAVAJO NATION COUNCIL

MOTION: Lena Manheimer  
SECOND: Harold Wauneka



**Benjamin H. Nuvamsa**  
CHAIRMAN

VICE-CHAIRMAN

July 9, 2008

Committee on Indian Affairs  
United States Senate  
838 Hart Office Building  
Washington, DC 20510

Committee Members:

On behalf of the Hopi Tribe, I endorse and support the attached Memorandum to the Senate Committee on Indian Affairs on the proposed Indian Country Crime Bill.

I want to emphasize our investment in the work efforts of our tribal representatives in this workgroup. Our hope is that the federal government will implement the recommendations for the good of Northern Arizona tribes and all tribes.

Sincerely,

Benjamin H. Nuvamsa  
Chairman/CEO  
THE HOPI TRIBE

cc: President, Navajo Nation  
President, Salt River Pima-Maricopa Indian Community

## Contents

1. Workgroup Sessions Summary
2. Consensus on the Discussion Draft
3. Interagency Coordination Provisions in the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (IASAPTA)
4. Covered Agencies under IASAPTA in the Discussion Draft
5. Workgroup Findings
6. Recommendations
7. Workgroup Participants
8. Workgroup Contact Information
9. Attachment

Dear Senator Dorgan and Members of the Committee:

This intertribal workgroup was formed following a listening session on the proposed Indian Country Crime Bill held by the Senate Committee on Indian Affairs on January 14, 2008 in Phoenix, Arizona. The task was to develop recommendations on sentencing tools needed by tribal courts to be included in the proposed Indian Country Crime Bill. On April 21, 2008, the workgroup submitted to the Senate Committee a memorandum entitled *Accountability and Returning the Offender to the Community: Core Responsibilities of Indian Justice* which detailed the sentencing tools needed, in addition to law enforcement and detention resources, to fully address Indian Country crime.

At the request of Committee staff, the workgroup worked next on interagency coordination provisions in the Indian Alcohol and Substance Abuse Prevention and Treatment Act (IASAPTA), reauthorized in the June 12, 2008 Crime Bill Discussion Draft. IASAPTA's interagency coordination provisions involving justice and health departments of the federal government are contained in 25 U.S.C. §§ 2411 – 2416.

This memorandum contains the workgroup's findings and recommendations on IASAPTA's interagency provisions. Also included is the workgroup's consensus position on the Discussion Draft.

The workgroup is uniquely positioned to address the interagency provisions from the perspective of both rural and metropolitan southwest tribes. The workgroup includes governmental, judicial, justice and health leaders of participant tribes who are committed to maximizing alcohol and substance abuse prevention and treatment through justice and public health interagency coordination. Participants are the Navajo Nation, the Hopi Tribe, Salt River Pima Maricopa County Indian Community and the BIA Office of Justice Services. It is important to note that the participant tribes are PL93-638 contract or self-governance tribes that have empowered our tribal governments to better serve our tribal and community members.<sup>1</sup>

---

<sup>1</sup> The workgroup participant tribes reserve the right to file additional comments to the proposed bill to provide a more detailed analysis of issues that may be specific to self-governance tribes or to the tribes themselves.

### **Workgroup Sessions Summary**

On April 22, 2008 the BIA and Navajo Nation Behavioral Health provided a history of Southwest region attempts at implementing the interagency coordination provisions. On April 29, the workgroup convened and visited the Salt River Pima Maricopa Indian Community program-driven detention facility. Finally, on May 16 and July 3 and via electronic communication, the workgroup discussed extensively the interagency provisions and wording of the memorandum and reached a consensus position on the June 12 Discussion Draft of the Indian Law and Order Bill.

### **Consensus on the Discussion Draft**

The workgroup supports the general thrust of the Discussion Draft which strives to address pressing law enforcement and detention concerns in Indian Country while fully comprehending that these must be complemented by rehabilitative sentencing tools that preserve our tribal communities.

Given the inescapable link between crime and drug/alcohol addiction in Indian Country, rehabilitative and alternative punishment sentencing tools are important and urgently needed.

We strongly support enhancement of tribal court sentencing authority from 1 year to 3 years, and the increase in fines up to \$15,000. Furthermore, while we recognize that tribal courts possess the inherent authority to impose alternative and rehabilitative sentencing, we nevertheless support, as part of the expanded time and fines scheme, the inclusion of language in Section 304 that specifically authorizes tribal courts to sentence certain offenders to a rehabilitation center or other alternative forms of punishment. The inclusion of such alternative sentencing language in the Discussion Draft would expand the flexibility of tribal justice sentencing to meet the unique problems of different tribal nations. We believe under the current sentencing scheme, there is insufficient time to achieve meaningful offender rehabilitation, particularly when offenders have complex, underlying issues. Previously, alternative sentencing has been addressed as supplemental to core tribal court functions. Section 304 and related provisions in the bill reorient the emphasis and will lead to greater integration and development of critical and innovative sentencing tools.

We recommend also that certain provisions be revised to better support coordinated efforts to fight Indian Country crime and drug/alcohol addiction. These recommendations will be discussed later in this Memorandum.

### **Interagency Coordination Provisions in the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (IASAPTA)**

The interagency provisions of IASAPTA are at 25 U.S.C. §§ 2411-1416. (See summary at Attachment "A.") Section 2411 calls for the covered agencies, namely, the Indian Health Service (HIS) and Bureau of Indian Affairs (BIA) to develop and enter into a Memorandum of Agreement (MoA). The Secretary of Health and Human Services and Secretary of the Interior share

implementation responsibility. Section 2412 calls for a Tribal Action Plan (TAP) to be developed and established by tribes or, by default, coordination agreements entered into by the covered agencies on the tribe's behalf.

Under IASAPTA, the following are established or made available to support development and implementation of the MoA and TAP:

- information is provided to tribes and agencies on systems-wide resources and programs via a review report;
- a quarterly newsletter on exemplary programs is distributed by the Secretary of the Interior
- facilities for interagency program use may be leased or converted from existing buildings;
- an Office of Alcohol and Substance Abuse is established to coordinate and review BIA programs and serve as a tribal point of contact;
- technical support is provided for development of the Tribal Action Plan and for community and youth program development and implementation; and
- funding for technical assistance and development is provided.

### **Covered Agencies under IASAPTA in the Discussion Draft**

The Discussion Draft expands the covered agencies to include the Bureau of Justice Assistance (BJA), and the Substance Abuse and Mental Health Administration (SAMHSA) and extends shared responsibility to the Attorney General. Otherwise, no substantive changes have been made to the interagency provisions.

### **Workgroup Findings**

IASAPTA failed to institutionalize interagency coordination.

Early attempts at implementing an interagency MoA foundered. On March 26, 1987, an MoA was signed by DHHS and DOI. The MoA established that IHS and BIA "shall outline both long and short-term goals; ... shall coordinate existing programs; ... (and) shall bear equal responsibility for implementation of IASAPTA in cooperation with Indian tribes ... and the coordination of resources made available under the MoA through implementation of Tribal Action Plans." The MoA was reviewed in 1988. There were no further MoAs, and none of the MoA provisions were implemented.

In the Southwest region, Navajo Nation attempts at implementing a TAP also foundered. Early on, the Navajo Nation passed a resolution authorizing the development of a TAP. Development was attempted without information, support, review, or follow-up by the covered agencies. The attempted TAP development was unaided by important and necessary information that would have resulted from a systems-wide program and facilities review, had it been completed, and without support or covered agency follow-up. The newsletter concept likewise was not helpful due to lack of useful information, and technical assistance for TAP development remained an unfunded mandate. A Tribal Coordinating Committee comprised of tribal and agency



representatives never convened for reasons that cannot be fully identified. In 2004, the Office of Alcohol and Substance Abuse disappeared without explanation. The regional BIA office recently informed the workgroup that it has continued to draft interagency agreements without IHS participation. These drafts are stored in the BIA office.

We agree generally that Interagency coordination has great advantages. This is especially evident in ASA prevention and treatment where information and resource sharing is critical to effectively and efficiently address both public health and public safety needs in Indian Country. There is great need for a “big picture” strategic approach to issues that cannot be captured by stand-alone agency objectives—in sharing facilities, funding, personnel, and knowledge resources; in maximizing cost-effectiveness of service delivery; and in assisting prioritization and policy-making. However, before coordination can effectively happen, there must be a consistent framework.

The workgroup finds:

- (a) IASAPTA failed to provide a consistent framework for joint decision-making, shared responsibility, and assessments.
- (b) The strategic burden was placed at the local level, perhaps due to an assumption that this approach was necessary for tribal and local control,<sup>2</sup> while information development and sharing was centralized in individuals who lacked practical knowledge of what information was needed and how it would, or could, be used.
- (c) Prior to IASAPTA, ad hoc field coordination efforts between agencies and tribes were tied to grant funding cycles, and when the project cycle ended, established relationships typically also disintegrated. In requiring bi-annual Tribal Action Plans, IASAPTA failed to recognize the importance of grant cycles.
- (d) While the alcohol and substance abuse (ASA) problem was clearly identified, no interagency mission and goals were articulated.
- (e) Other than stating the ASA problem, IASAPTA did not identify outcomes clearly aligned with the purposes of the covered agencies or linked to the agencies’ management and services. Defining shared outcomes is a basic step in pursuing interdepartmental or interagency collaborations. Agencies need to be clear about the outcome—what they are trying to maximize—before deciding what they will do, through interagency arrangements, to achieve the desired outcome. Instead, IASAPTA placed an unreasonable burden on service-unit and area offices to come up with ad hoc outcomes.
- (f) Funding was insufficient, and limited funding that was available was grossly mismanaged by the agencies.<sup>3</sup>

---

<sup>2</sup> in accordance, respectively, with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, et seq.) and Section 1130 of the Education Amendments of 1978 (25 U.S.C. 2010).

<sup>3</sup> BIA and IHS Inspector General Reports on Indian Alcohol and Drug Abuse Programs Hearing Before the Senate Select Committee on Indian Affairs, 102d Cong., 2d Sess. 73 at 13 (July 30, 1992)(statement of

- (g) IASAPTA failed to adequately define the collaborative playing field. It failed to provide guidelines for the sharing of justice and health information, which is a threshold requirement for the development of programs and program review, for developing policies and strategies, and for service design, delivery, evaluation and adjustment. Information sharing invariably requires a deep financial investment as well as the sharing of expertise and information. Legislative provisions necessary for effective interagency collaboration were not established for mutual sharing of information between health and justice departments and tribes.
- (h) IASAPTA failed to provide for joint resources or funding for collaborative personnel, work and facilities. Aside from simply stating that departmental heads would share responsibility for developing and implementing the MoA, there was no provision for shared or joint responsibilities for policy development, strategic planning and program/service design, delivery, evaluation and adjustment. We believe that sharing responsibility involves much more than simply sharing work or outcomes. It also includes the combined sharing of mandated authority, accountability and management.
- (i) The covered agencies were at different readiness levels and neither had the requisite capability to take the lead. Although, ideally the proposed Office of Alcohol and Substance Abuse would ensure that internal BIA programs are coordinated, this first step has not yet been established to support coordination between external programs. Meanwhile, IHS lacks the mission or funding to extend its Resource and Patient Management System (RPMS) information sharing capability to PL93-638 contract tribes that manage their own facilities. Ironically, IHS, readily accessible to tribes, has no incentive to perform or manage beyond current operation levels in its 50 facilities. RPMS is vital in coordinating treatment services, particularly with the promise of telemedicine, and it has been described as indispensable to tribal involvement in ASA management.<sup>4</sup>

## Recommendations

### 1. Develop a consistent framework for IASAPTA interagency coordination.

A framework should:

- describe clearly the outcomes desired under IASAPTA;
- prioritize strategic outcome(s) that are well aligned with the purposes of the covered agencies;

---

George Grob, Assistant Inspector General for Analysis and Inspections, Department of Health and Human Services) at 12 (Sen. Daschle said that "In this day and age, how any agency can lose \$70 million-plus is beyond me ... to have that money go unaccounted for is just a phenomenal indictment about the way we run the system).

<sup>4</sup> The primary clinical component of RPMS, Patient Care Component (PCC), was launched in 1984. In the mid-1990s the Mental Health/Social Services (MH/SS) software application was developed. Behavioral Health System (BHS) was released in 2003 and an enhanced graphical user interface version, BH GUI in Patient Chart, was deployed in 2004.

- provide guidelines for resource and information sharing;
- provide technical assistance to the covered agencies to establish effective and permanent interagency coordination;
- identify players who can make critical contributions to the outcome;
- assess what outcomes are best pursued by interagency collaboration;
- determine whether collaboration is feasible, cost-effective, and within agency capability.

Such a framework could be developed by a consultant or by a permanent planning and assessment body. Shared outcomes, information, resources, work, responsibilities should be fully addressed.

## **2. Establish a planning and assessment body for interagency coordination.**

A planning and assessments body is necessary to perform regular and ongoing systemic assessments across multi-levels of departments and programs. The object is to maximize effective collaborations between agencies toward clearly defined shared outcomes.

We recommend that this body be independent of existing departments. In the alternative, limit its function to planning and assessment of interagency coordination of Indian Country justice and addiction programs and locate it within the Indian Health Service, which has addiction treatment knowledge, established management infrastructure, and physical presence in Indian communities.

The body should be mandated to solicit information, comment, input and participation from tribes.

## **3. Authorize and fund interim local, tribal and service-unit level collaborative efforts.**

As a framework is being developed, ad hoc tribal and service-unit level collaborations should be encouraged and funded. Tribal and interagency agreements that may be developed and entered into at the service-unit level should be authorized and supported. Funding to implement programs pursuant to such agreements should be simplified—direct funding or simplified grant processes. Independent funding through the agencies would remove the grant cycle burden from such field collaborations.

The tribal and interagency agreements should be permitted to include community health resources (CHR), alternative juvenile detention initiatives, design of local community college training programs for traditional healing alternatives or alternative certifications; social services; schools; local, tribal and state collaborative partnerships; consolidation of tribal problem solving courts; and, required resources for alternative and rehabilitative sentencing; etc.

## **4. Simplify and consolidate program grants; authorize post-grant interagency sustainability funding.**

The grant application processes are presently highly compartmentalized in terms of available program funding and reporting requirements. Tribal and interagency

collaborations are invariably dependent on grant processes. As presently structured, funding ends with the grant period. Tribes are expected to self-sustain, and agencies lack authorization to make post-grant contributions.

Compartmentalized grants place a great burden on justice and addiction programs. It maintains separation of programs and limits program life. Therefore, program effectiveness is limited while costs and management complexity are high. For example, the Hopi Healing-to-Wellness courts are reaching the end of a grant period and funds are lacking to sustain coordination and counseling personnel. At the same time, the Wellness courts are separate from the mainstream court and also separate from other problem-solving court programs that receive separate, finite grants.

Consolidation of grants should be permitted, the application and reporting processes simplified, grant terms lengthened, and funding for post-grant sustainability provided to sustain the interagency relationship.

**5. Fund tribal RPMS information sharing and access.**

There is an urgent need for tribes to access the IHS RPMS electronic information system for purposes of telemedicine, behavioral health management, and interagency program planning. Extension of RPMS access to tribes has been stymied due to lack of funding and lack of electronic infrastructure in some tribes. Information sharing is a threshold requirement for coordinated services. Funding should be allocated for this purpose.

**6. Allocate at least \$150 million for tribal justice systems and tribal jails facilities.**

Discussion Draft Sections 402 and 404 authorize funding at \$50 million and \$35 million respectively for construction and renovation of tribal justice systems facilities and tribal jails. The allocations for tribal court facilities and jails are insufficient as provided for under Sections 402 and 404. There is ample evidence in the Congressional record of the need being multiple times these amounts.

It is a given that the physical infrastructure of courts, detention, and rehabilitation facilities combined must be adequate to support collaborative tribal and agency planning. Tribes such as the Navajo Nation have asked experts to assist in developing Master Plans to address their facilities need by devising cost-saving and efficient multi-purpose justice complexes. Multi-use complexes are established priorities for the Navajo Nation. The consultant's projected cost for a regional 388-bed corrections-rehabilitation center is \$41,544,210. The total Master Plan facilities need of the Navajo Nation alone totals \$372 million.

We strongly recommend that the allocation for tribal justice systems and jail facilities throughout Indian Country be raised to at least \$150 million combined pending publication and Congressional review of the BIA jails report, recently received by the Senate Committee on June 19.

**7. Expand definition of “Tribal Justice Official” in the Indian Law Enforcement Reform Act.**

In the Discussion Draft amendments to the Indian Law Enforcement Reform Act at Section 3, the Bureau of Indian Affairs Division of Law Enforcement would have additional responsibilities that include the development of methods and expertise to resolve conflicts and solve crimes, reduction of recidivism rates and adverse social effects, development of preventive programs and regulatory policies and other actions that affect public safety and justice in Indian Country. The Division must consult with “tribal justice officials” in performing the above additional functions, and declination reports are also to be submitted to “tribal justice officials.”

The Discussion Draft proposes that “Tribal Justice Official” be narrowly defined as tribal law enforcement, investigative, and prosecutorial personnel. This definition excludes judges, probation/parole officers, and corrections officers who oversee the rehabilitative portion of tribal justice from being consulted in policy-making decisions regarding the very programs they oversee.

We strongly recommend that the definition of “tribal justice official” be corrected to include judges, corrections and probation officers. However, it should be clarified that the tribal officials who would receive declination reports are limited to prosecutorial and investigative personnel.

**8. Require that federal employees respond to tribal subpoenas.**

It is imperative that this legislation include a provision mandating that BIA, IHS, and other federal agency employees timely respond to tribal subpoenas to testify in tribal court. At present, agencies may ignore such subpoenas, citing lack of tribal jurisdiction over federal officials. Otherwise, they may take extensive time in reviewing the subpoena to determine whether or not to permit a federal employee to testify in tribal court. Tribal court judges who attempt to deal with non-appearing federal employees have been threatened by federal field solicitors with arrest by U.S. Marshalls and prosecution by the U.S. Attorney.

This lack of cooperation by federal employees in cases before tribal courts is a great hindrance to successful prosecution. When evidence gathered in an Indian country crime is deemed insufficient for federal felony prosecution or the case is otherwise declined, the case file is rarely made available to the tribal prosecutor within tribal statutes of limitations. Without the testimony or evidence collected by federal agencies, tribal prosecution is hindered. Language is needed that would require federal agents who are indispensable witnesses to appear in tribal court when served a tribal subpoena. Victims and tribal communities have a right to tribal justice, regardless of the fact that the investigation was conducted by federal investigators.

**9. Add interagency coordination duties to the Office of Tribal Justice.**

The Discussion Draft Section 106(c) places additional duties on the Office of Tribal Justice (DOJ) for inter-program coordination only within BIA to ensure meaningful consultation with tribal leaders. This, again, ignores interagency coordination support needs across all covered agencies under IASAPTA.

It should be a priority to ensure that actual assistance, capacity building and funding are delivered to Indian tribes and communities on combined public safety and addiction issues in an integrated fashion. We further recommend that this Office, serve as an inter-departmental program coordinator on justice and addiction services as contemplated under IASAPTA. It would be a shame if the expansion of the Office of Tribal Justice meant only the expansion of federal bureaucracy.

#### **10. Fund IASAPTA programs.**

An obvious reason for IASAPTA's failure was the lack of adequate funding. Congress did not appropriate the full \$130 million that had been authorized to carry out the policy, while \$70 million designated for IASAPTA programs could not be adequately accounted for.<sup>5</sup> Upon reauthorization, IASAPTA programs, as well as TAP and MoA development, must be fully funded with strict accounting required.

#### **11. Strengthen tribal input and participation.**

Tribal input and participation under IASAPTA's interagency provisions should be strengthened. In particular, PL93-638 contract or self-governance tribes who have empowered their tribal governments to better serve tribal and community members would have tremendous input on how interagency coordination would best benefit Indian communities.

Under Discussion Draft Section 305(g)(3), the new Indian Law and Order Commission may solicit information from tribal and state agencies in order to conduct a comprehensive study of the Criminal Justice System Relating to Indian Country.

We recommend that the Commission's solicitation of information from tribal agencies should be clarified to include tribal governments, and that the solicitation be made mandatory when the Commission examines crime, jail systems, reducing crime, and rehabilitation of offenders.

#### **12. Authorize federal parole officers to be physically situated in and share information and services with tribal probation and parole service offices.**

Discussion Draft Section 203 requires the appointment of residents of Indian Country as Assistant Parole and Probation Officers.

We recommend that the physical field office of these Officers be permitted to be located in offices of local tribal probation services so that federal parolees, and tribal parolees and probationers, are given similar reentry and restoration opportunities. The sharing of information should be mandated. The sharing of services should be permitted.

---

<sup>5</sup> See note 3, above.

**13. Permit tribes to set local program evaluation standards.**

In keeping with the established policy supporting tribal and local control, tribes should be permitted to establish local program evaluation standards to measure program effectiveness and tribal and agency coordination efforts.

**14. Expand crime data collection to include health-related statistics.**

Discussion Draft Sections 501 and 502 pertaining to tracking crime data and funding crime data collection should be expanded to also require information sharing between health and justice agencies, as alcohol and substance abuse issues generally are the primary focus of rehabilitative sentencing.

**15. Term "Tribal Citizen" should not be used.**

Use of the term "Tribal Citizen" in the Discussion Draft should be dropped in favor of more traditional terms. Federal statutes and case law use the terms "Indians," "Non-Indians," "nonmembers" and "members" to describe persons who may or may not be subject to tribal jurisdiction. Use of the term "tribal citizen" in a piece of legislation may create unnecessary confusion. One possible interpretation of such language may be that Congress intended to limit jurisdiction to the "citizens" of a particular tribe, and therefore jurisdiction over non-member Indians would again be the subject of debate.

**16. "Statutes of limitations" should be clarified as "tribal statutes of limitations."**

When the term "statute of limitation" is used throughout the Discussion Draft, e.g. at Section 102(a)(2)(A), it appears that tribal statutes of limitation are intended. The meaning of the term should be made clear. The bill rightly creates a duty on Federal officials to be aware of tribal statutes of limitations. Currently, declinations are often received beyond the tribal statute of limitations, while many tribes have only a one (1) or two (2) year statute of limitations.

**17. Establish violations of tribal protection orders involving violence as a federal felony.**

Discussion Draft Section 601 states that a provision is under consideration to establish a Federal felony for violation of tribal protection orders.

We strongly support inclusion of such a provision. Chronic domestic violence offenses wreak havoc on the quality of life for families and communities. Obtaining felony convictions for violations of tribal protection orders that involve violence would be recommended.

IASAPTA is an important legislation that recognizes the great need for programs and services in Indian Country. However, it lacks sufficient foundational processes for successful interagency collaboration on a systemic scale.

We hope the recommendations in this memorandum will assist the Senate Committee on Indian Affairs to address and correct IASAPTA's flaws and make interagency coordination with tribes effective and workable.

Thank you for the opportunity to submit this memorandum on IASAPTA's interagency coordination provisions and other provisions in the draft bill related to public safety and public health.

### **Workgroup Participants**

#### Navajo Nation

Herb Yazzie, Chief Justice

Ben Shelley, Vice President

Delores Greyeyes, Director, Department of Corrections

Albert Long, Senior Program Project Specialist, Navajo Behavioral Health Services

Rita Cantsee, Program Specialist, Navajo Behavioral Health Services

Allen Sloan, Window Rock District Judge

Deswood Tome, Gov't & Legislative Communications Director, Navajo Nation Washington Office

Randall Simmons, Gov't & Legislative Affairs Associate, Navajo Nation Washington Office

Cheron Watchman, Legislative Assistant, Office of the Speaker

Patrick Sandoval, Chief of Staff to President Joe Shirley

Sherrick Roanhorse, Staff Assistant to Vice-President Shelley

Josephine Foo, Associate Attorney, Office of the Chief Justice

#### Hopi Tribe

Benjamin Nuvamsa, Hopi Tribal Chairman

Milton Poola, Staff Assistant to Chairman Benjamin Nuvamsa

Dorma Sahneyah, Chief Prosecutor

Dr. Robert Robin, Director, Hopi Behavioral Health Services

Anita Didrickson, Clinical Psychologist, Hopi Behavioral Health Services

Delfred Leslie, Acting Chief Judge

Emma L. Anderson, Hopi Tribal Council Rep. and Member, Law Enforcement Team

Wilbur Maho, Hopi Judicial Administrator



Bureau of Indian Affairs

Joseph Little, Associate Director, Office of Justice Services

Salt River Pima Maricopa County Indian Community

Diane G. Enos, President

Vivian Saunders, Director of Congressional and Legislative Affairs

Sheri Freemont, Prosecutor

Craig Thomas, Director of Corrections

Charleen Greer, Office of General Counsel

**Workgroup Contact Information**

Direct correspondence to:

***Inter-Tribal Workgroup on the Indian Law and Order Bill***

c/o Josephine Foo, Navajo Nation Judicial Branch, P. O. Box 520, Window Rock, AZ 86515

Tel: (928) 871-7669 Fax (928) 871-6761

Email: [josephinefoo@navajo.org](mailto:josephinefoo@navajo.org)

**Detailed Summary of Interagency Coordination Provisions in IASAPTA**  
**(25 U.S.C. && 2411-2416) As Amended in the June 12 Draft Bill**

**Sec. 2411 Memorandum of Agreement.** In IASAPTA, the named agencies are directed to develop and enter into a Memorandum of Agreement:

- (a) within 120 days of enactment; and which shall:
- (b) define and determine the scope of alcohol and substance abuse (ASA) in Indian tribes;
- (c) identify program and other federal, state and local resources and programs;
- (d) develop and establish minimum standards for program responsibilities;
- (e) coordinate ASA programs;
- (f) delineate central, area, agency, and service unit level responsibilities;
- (g) direct full agencies cooperation with tribal requests in Tribal Action Plans;
- (h) annually review the Memorandum of Agreement;
- (i) require consultation with interested Indian tribes, individuals, organizations, and ASA treatment professionals;
- (j) requires publication of the MoA.

**Sec. 2414(a) Review of Programs.** In development of the MoA, the following shall be reviewed and considered by (the named departmental heads):

- (a) programs established under federal law providing health services to Indian tribes, including those relating to MH and ASA prevention and treatment;
- (b) tribal, state, local and private health resources and programs;
- (c) where treatment facilities are or should be located;
- (d) effectiveness of such programs in operation on Oct 27, 1986; and
- (e) provide results of the review to Indian tribes as soon as possible for their consideration and use in developing and modifying a Tribal Action Plan.

**Sec. 2413(a) Responsibility for Implementation** is equally shared between (the named departmental heads).

**Sec. 2413(b) Responsibility for Coordination of BIA programs** is in the "Office of Alcohol and Substance Abuse" established in the Office of the Assistant Secretary of the Interior for Indian Affairs. The Office also reviews performance and serves as a tribal point of contact. At minimum, staff includes a director and an Indian Youth Programs Officer.

**Sec. 2416 Newsletter.** The Secretary of Interior shall publish an ASA newsletter to report on Indian ASA projects and programs, as follows:

- (a) published each quarter;
- (b) include reviews of and information on exemplary programs by the Secretary of the Interior;
- (c) be circulated free of charge to schools, tribal offices, BIA offices, IHS offices and programs, and other entities providing ASA services and resources to Indian people;
- (d) \$500,000 is authorized to carry out this section.

**Sec. 2415 Provision of facilities.** (The named departmental heads) shall make available for community use as permitted by law and as provided in a Tribal Action Plan, local

federal facilities, property and equipment. Costs for use may be borne by (the named departmental heads), tribal, state, local or private funds. (The named departmental heads) are not required to expend additional funds to meet these costs. (The named departmental heads) are authorized to enter into long-term leases if no federal facility is available and cost of construction is in excess of lease.

**Sec. 2412 Tribal Action Plan.** In IASAPTA Section 2412, Tribal Action Plans (“Plan”):

- (a) are authorized at tribes’ discretion by resolution to coordinate available resources and programs, which shall serve as the basis of implementation of IASAPTA and the Memorandum of Agreement in Sec. 2411. if no resolution is adopted within 90 days after publication of the MoA, the named agencies shall enter into an agreement to identify and coordinate the available programs and resources for that tribe, after which the tribe may adopt a resolution;
- (b) are established at the option of tribes to coordinate available resources and programs to combat ASA;
- (c) developed with the assistance of BIA, IHS, BJA and SAMHSA;
- (d) springboard an implementation agreement of the Plan between BIA, IHS, BJA and SAMHSA with the tribe;
- (e) shall provide for a Tribal Coordinating Committee comprising representatives of the tribe, BIA, IHS, BJA and SAMHSA which is responsible for implementation and on-going review of the Plan, for scheduling training in ASA prevention, and incorporating minimum standards for programs and services; and
- (f) may provide for assessment of the scope of the ASA problem; identification and coordination of resources and programs; establishment and prioritization of goals and efforts needed to meet the goals; identification of community and family roles in efforts under the Plan; establishment of procedures to revise and amend the Plan; and evaluation of the Plan; and
- (g) updated every 2 years; and
- (h) Grants are provided as follows:
  - i. \$2,000,0000 per year administered by the Secretary of the Interior for technical assistance;
  - ii. \$500,000 per year to develop and implement tribal programs for youth employment, recreation and cultural activities; and community awareness, training and education programs.