

Mr. Chairman, Mr. Vice-Chairman Inouye, and members of the Committee, my name is Tracy Henke and I serve as the Deputy Associate Attorney General for the Department of Justice. Thank you for the opportunity to discuss the Department's limited role with tribal detention facilities.

Today, thirty-three states contain approximately 300 Indian land areas or reservations. Jurisdiction over crimes in Indian country depends on several factors, including the identity of the victim and the offender, the severity of the crime, and where the crime was committed.

There are two groups of Indian offenders who may be in federal custody. First, there are prisoners who have committed an offense under federal law. Often, these offenses fall under 18 U.S.C. § 1152 and § 1153. Section 1153, known as the Major Crimes Act, gives the federal government jurisdiction to prosecute certain enumerated serious offenses, such as murder, manslaughter, rape, aggravated assault, and child sexual abuse, when they are committed by Indians in Indian country (Tribes also have concurrent jurisdiction to prosecute Major Crimes, although tribes are limited by statute to imposing one-year prison sentences and \$5,000 fines). Section 1152, known as the Indian Country Crimes Act, gives the federal government exclusive jurisdiction to prosecute all crimes committed by non-Indians against Indian victims. Section 1152 also grants the Federal Government jurisdiction to prosecute minor crimes by Indians against non-Indians, although that jurisdiction is shared with tribes. Offenders in this category are under the jurisdiction of the Bureau of Prisons (BOP), and not in Indian tribal facilities.

The second group are prisoners who have committed offenses under tribal law. Indian prisoners in this group are under the jurisdiction of the tribe whose law has been violated. As part of their inherent sovereignty, Indian tribes have jurisdiction to prosecute all crimes committed under tribal law by Indians in Indian country. These prisoners are generally in facilities operated by the Bureau of Indian Affairs (BIA) or the tribal government. Currently, of the 74 facilities in Indian country, 39 are owned by the BIA. Of the thirty-nine BIA facilities, 19 are operated by BIA and the operations of the remaining 20 are contracted out. The remaining 35 facilities are owned and operated by tribal governments under PL 93-638 contracts.

The Department of Justice's involvement with Indian country detention facilities is generally limited to our Correctional Facilities on Tribal Lands Program. This program, authorized by Section 20109, Subtitle A of Title II of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. Section 13701 et seq.) provides funds to American Indian and Alaska Native tribes to construct correctional facilities on tribal lands for the incarceration of offenders subject to tribal jurisdiction. Corrections facility is defined as a residential facility that houses adult or juvenile offenders accused or adjudicated of a crime.

Specifically, the Department of Justice has administered tribal correctional facility grants totaling \$19,453,000 in FY 2001; \$35,191,000 in FY 2002; \$4,967,000 in FY 2003; and \$1,895,000 in FY 2004. It is important to understand that these grants are statutorily limited to "brick and mortar" construction costs only. Grantees are responsible for fully supporting, operating, and maintaining these correctional facilities.

Since the inception and funding of the program, the Department of Justice has provided funding to 23 tribes for jail construction. Of these 23 facilities, 8 facilities are exclusively juvenile, 12 are combined adult/juvenile, and 3 are exclusively adult. All 23 tribes are actively implementing design or construction initiatives. Some have added beds to existing facilities, but most involve new construction. Proposed facilities range in size from 8 to 68 beds.

In addition to the Correctional Facilities on Tribal Lands Program, the Department's Bureau of Justice Statistics (BJS) compiles statistics relating to detention facilities in Indian country. In November 2003, the BJS published "Jails in Indian Country, 2002," the most recent survey of adult and juvenile detention centers in Indian country. Data for the BJS bulletin was obtained by mailed questionnaires accompanied by follow-up phone calls and facsimiles. In total, 68 of the facilities in Indian country responded. For the Committee's review, copies of the BJS bulletin, "Jails in Indian Country, 2002," as well as the BJS questionnaire sent to the detention facilities have been provided. It is important to note that while the BJS bulletin contains statistical information about Indian detention facilities, it does not gather information regarding conditions in the jails.

As the Administration, through BIA, works to improve Indian detention facilities, the Department of Justice will continue to assist as we are able. Most recently, an experienced administrator from the Department's Bureau of Prisons was detailed to the BIA to assist in the development of strategies to improve the delivery of detention services in Indian country. The Department of Justice looks forward to his opportunity to work with the Department of Interior to address this issue.

Mr. Chairman, Attorney General Ashcroft has pledged to honor our Federal trust responsibility and to work with sovereign Indian Nations on a government-to-government basis. The Attorney General and the entire Justice Department will honor this commitment and continue to assist tribal justice systems in their effort to promote safe communities. We also recognize that the most effective solutions to the problems facing tribes comes from the tribes themselves, and that our role is to help them develop and implement their own law enforcement, detention, and criminal justice strategies.

I welcome the opportunity to answer any questions you or members of the committee may have.