

**DISCUSSION DRAFT LEGISLATION TO ADDRESS
LAW AND ORDER IN INDIAN COUNTRY**

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

JUNE 19, 2008

Printed for the use of the Committee on Indian Affairs



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**DISCUSSION DRAFT LEGISLATION TO
ADDRESS LAW AND ORDER IN INDIAN
COUNTRY**

Thursday, June 19, 2008

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m. in room 562, Dirksen Senate Office Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. BYRON L. DORGAN,
U.S. SENATOR FROM NORTH DAKOTA**

The CHAIRMAN. Today the Committee is going to be holding a hearing to examine a draft bill to address law and order in Indian Country. Let me emphasize again this is draft legislation. I have put out draft legislation with co-sponsors, because I think it is important for us to be able to review something, evaluate and then respond to something that has some certainty to it with respect to the provisions we have written.

I understand there is controversy with many portions of legislation dealing with law enforcement on Indian reservations. We are willing to consider adjustments and changes.

But I do want to say this: I don't think it is an appropriate response for the Congress to do nothing about a very serious problem. As you know, this Committee this year has passed out an Indian Health Care Improvement Act. That has now passed the full Senate. We have passed out a piece of legislation dealing with Indian housing, reauthorization of the Indian housing laws. That has now not only passed out of this Committee but through the full Senate as well.

Another area where I believe there is a crisis is in the area of law enforcement. Four prior Committee hearings that we have held have established longstanding and life-threatening public safety crises that exist on some Indian reservations. Just a few of the findings include sexual and domestic violence have reached epidemic proportions; victims have to wait in many cases hours and weeks for a response to law enforcement calls, because tribal police are understaffed; the tribal jails system is a disaster; tribal courts are, in some cases, forced to set offenders who are clearly guilty free. The lack of consequences has created some notion of lawlessness in many communities.

There is enough blame to go around, but the United States Government, in my judgment, must take credit for much of this problem. Federal laws and court decisions established a system of justice that forces tribes to rely on the United States to investigate and prosecute violent reservation crimes.

We took a two step approach. First, the U.S. limited what tribes can do to fight crime in their own communities. So tribal police have limited access to information and limited arrest powers. Tribal courts can sentence offenders to no more than one year in jail. So today we have tribal courts who sentence rapists and child molesters to one year in jail. That is not justice.

Second, the United States said, we will do the job. More than 100 years ago, Congress established felony jurisdiction in the Department of Justice for crimes on reservations. With this authority, however, comes legal and binding obligations, in my judgment, to provide for public safety on reservation lands. Regrettably, I don't believe our Federal Government has met that obligation.

The United States has conflicting law enforcement priorities to fight terrorism, protect the homeland and secure the border. Fighting crime in Indian Country does not top the priority list or even show up on the priority list in most cases.

A November 2007 investigation of crime on Indian reservations was published in the Denver Post. It quoted a U.S. attorney who said the following: "I know that the performance of my office will be compared to other U.S. attorneys around the Country. My gun cases have to compete with other U.S. attorneys. My white collar crime cases have to compete. One criterion that is never on that list is Indian Country cases." That is from a U.S. attorney.

Now, there is some excellent work being done by some at the Justice Department. I don't want to take away from that work. I am not suggesting there isn't anybody out there who cares. I also understand that the Department of Justice has strong feelings about some of the provisions in the draft legislation that we are holding a hearing on today.

But I am not confident that our legal obligations to tribal communities are being met. In fact, I am confident of exactly the opposite conclusion: we are not meeting our obligations. This draft bill would ensure that Indian Country gets moved up on the priority list for this Country. When a community relies completely on a Federal agency to investigate and prosecute violent crimes and felonies, that reliance cannot go unheeded.

For the past year, this Committee has worked on this issue and in November, I released a concept paper. I asked staff, both Republican and Democratic staff on our Committee, to work together, to consult with tribes and other interested parties. One example of that was Senator Kyl and I held a hearing in Arizona. The staff director on the minority side and the majority side joined me. That was simply an example of the kinds of hearings and listening sessions we have held around the Country, bipartisan, cooperative, trying to figure out how can we work together to solve this problem.

The draft bill, which is a product of these consultations and is a bipartisan bill, contains these initial steps. It would put tools to fight crime in the hands of tribal justice officials, tools they don't

now have. It would enhance coordination and consultation between Federal and tribal justice officials. And it would provide greater cooperation as well at the local level, between tribes and local communities, which I think is essential.

The bottom line is, we have to act to change this system to make it work for the citizens of Indian Country instead of providing opportunities for criminals and drug cartels to find ways of avoiding prosecution.

So I look forward to the testimony today that we will have from a number of witnesses about the draft legislation. I appreciate the bipartisan support from my colleagues, who have co-sponsored this legislation. And again, while we are waiting for the Vice Chair, I want to recognize others for any opening comments.

**STATEMENT OF HON. JOHN BARRASSO,
U.S. SENATOR FROM WYOMING**

Senator BARRASSO. Thank you very much, Mr. Chairman. I appreciate what you are doing with this hearing today. I think it is very timely that we discuss law enforcement in this Committee.

In Wyoming, we are dealing with a recent tragedy on the Wind River Reservation, three young teenage girls were found dead on Wednesday, June 4th, just earlier this month. Their deaths shine light on the troubled situation for Indian youth in Wyoming. This is a tragedy for the Northern Arapaho Tribe, the Wind River community, and for the entire State of Wyoming. It brings into focus the desperate need to fight the root causes of law-breaking on Indian reservations. Crime is a cycle that can only be broken with consistent effort among our young people on the reservation.

Mr. Chairman, Federal law enforcement is not meeting the need on the Wind River Reservation currently. This reservation covers 2.2 million acres. Well, that is larger than either the entire State of Delaware or of Rhode Island. Yet BIA law enforcement struggles to keep more than two or three officers on patrol at any given time. So if you can imagine the State of Rhode Island or the State of Delaware with only two officers on patrol at any given time, absolutely insufficient.

I commend the hard work that the officers who are on patrol are doing. But the desperately need more help. There is a problem with recruitment, a problem with retention. In addition, we need better community outreach and youth programs. The officers on the reservation have to tangle with drugs, with illegal weapons and gangs on the reservation every day.

I would just like to reflect, Mr. Chairman, I have practiced medicine for 25 years as an orthopedic surgeon in central Wyoming. Early in the practice, I was called to take care of a young man from the reservation who was sent to the hospital in Casper. I was taking care of him for a broken bone, but it was a result of trauma by some other young men from the reservation on him.

The thing I will never forget is the smell in the room, because one of those criminals taking advantage of this young man chose to, with a cigarette, burn his initials into the abdomen of the other man. It kind of made a number of dots connecting together to make up the letters of his initials, of the criminal, of the person who was doing this. It was his initials, not the ones of the injured man.

It is a smell that will stay with me forever, the smell of burned flesh, one person doing this to another, which really to me highlighted and has continued to highlight the major issues that you are trying to deal with her. I commend you for your efforts and I want to help in every way that I can and work with you, Mr. Chairman. So thank you very much.

The CHAIRMAN. Senator Barrasso, thank you very much.
Let me call on Senator Tester.

**STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA**

Senator TESTER. Thank you, Mr. Chairman. I too want to echo the comments of Senator Barrasso in thanking you for bringing forward this draft legislation. I do think it is very timely. To be honest with you, it should probably have been addressed a while back. The Department of Justice, I don't think, has done what is necessary.

This isn't the time to point fingers, it is the time to talk about proper staffing, proper infrastructure, proper jurisdiction. And it is a time to work together with the Department of Justice. Hopefully they understand there is a problem here, and hopefully through bills like this one, if we can get it through the process, we can solve the problems that revolve around crime in Indian Country. Because quite honestly, at this point in time, it is a tragedy.

There's barely a week that goes by that there is not a problem. I think a lot of it has to do with staffing and consequences, once a person is picked up, how they are handled and the ability of the courts to handle people and have a place to put them once they are found guilty.

So thank you, Mr. Chairman. I appreciate it.

**STATEMENT OF HON. DANIEL K. AKAKA,
U.S. SENATOR FROM HAWAII**

The CHAIRMAN. Senator Akaka?

Senator AKAKA. Thank you very much, Mr. Chairman. I want to add my welcome to the tribal leaders as well as the national Indian Country leaders who are here in the room today, and to urge you, as the Chairman has, to continue to be part of the effort to help Indian Country.

One that is pending, and we urge you to also lobby on the other side of the Hill on the Indian Health bill. We really need to pass that. Now here, again, I want to commend the leadership of our Chairman Dorgan for what he has done in drafting this Indian Country bill on law and order, which is really needed. So the Committee intends to hear as much as we can from you and to finally make a decision.

Again, I want to urge this Committee and the leadership of our Chairman to move this as quickly as we can. Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Akaka, thank you very much.
Senator Cantwell?

**STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman, and thank you for having this hearing today on draft legislation on law enforcement in Indian Country, and also for scheduling an executive session on several pieces of legislation.

While we are still waiting for the Vice Chairman, if I could, I would like to address one of those pieces of legislation on the executive session, and that is Senate Bill 2494. I thank you for putting that consideration of the Spokane Tribe of Indians, the Spokane Reservation Grand Coulee Dam Equitable Compensation Act on the executive session schedule. For more than half a century, the Columbia Basin Project has had an extraordinary contribution to our Nation.

It really has helped pull the economy of Washington State and the Country out of our Great Depression. It provided electricity that provided aluminum for airplanes, for weapons of our national security. The project continues to provide enormous revenues for the United States. It was a key component of agriculture in our eastern Washington economy, and provides electricity to towns and cities all across the Northwest.

However, these benefits did come at a direct cost to tribal property that became inundated when the U.S. Government built the Grand Coulee Dam. Before dam construction, the free-flowing Columbia River supported very robust and plentiful salmon runs and provided virtually all the subsistence needs of the Spokane Tribe. After the construction, the Columbia and the Spokane River tributaries flooded the tribal communities, schools and roads. To this day, the effects of the flooding are still being felt by the Spokane Tribe.

This legislation we are considering today is similar to legislation we have approved from this Committee in the 108th and 109th Congress. Similar legislation has passed both the House and the Senate at various points in time. Some changes have been made to satisfy stakeholders who have expressed concerns. But the Spokane Tribe has spent the last year making sure that we could move forward on the settlement agreement. I want to thank the Chair and the Tribe for working so closely on this.

The United States does have a trust responsibility to maintain and protect the integrity of all tribal lands within its borders. When Federal actions physically and economically impact or harm tribes, our Nation has a legal and moral responsibility to address the compensation and damages. Unfortunately, despite these countless efforts, half a century has passed without giving the Spokane the real justice they deserve.

So I thank you for putting this legislation on executive session so we can move forward on this important piece of compensation. I thank the Chair.

The CHAIRMAN. Senator Cantwell, thank you very much.

I would say to Senator Thune and Senator Johnson, I am going to withhold further statements. We were making statements on the purpose of the hearing today, but I want to now turn to the business portion of the day and conduct the business portion, then we will return to the hearing.

[Whereupon, the Committee returned to the business meeting.]

The CHAIRMAN. Let me continue by calling on the other members of the Committee, let me clarify again to say that the Bureau of Indian Affairs report will be placed in the hearing record, not a part of the business meeting. It was my intention that it be part of the hearing record on law enforcement, and the entire report will be a part of that hearing record as of today.*

The CHAIRMAN. Let me call on the Vice Chair for an opening statement on the law enforcement portion of this hearing today. Then I am going to call on Senator Johnson, if he has an opening statement. I believe the first witness today will be Senator Thune.

If Senator Murkowski will withhold for just a moment, let me ask the panel to come forward and take seats while we are preparing to complete our opening statements. Chairman Ron His Horse Is Thunder, Standing Rock Sioux Tribe; Joe Garcia, President, National Congress of American Indians; the Honorable Gretchen Shappert, U.S. Attorney, Western District of North Carolina; Patrick Ragsdale, Director of the Office of Justice Services, U.S. Department of the Interior; Professor Kelly Stoner, Director of Native American Legal Resource Center and Clinical Programs, Oklahoma City University School of Law; and Walt Lamar, President and CEO of Lamar Associates, Washington, D.C.

Let me thank all of the witnesses. When we complete our statements, we will then proceed.

Senator Murkowski, thank you. I am sorry for the delay.

**STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA**

Senator MURKOWSKI. Thank you. Mr. Chairman, I truly appreciate your efforts on this very important issue, for holding the hearing this morning on the discussion draft bill, the Tribal Justice Improvements Act of 2008, and a discussion draft that outlines a variety of tools that we may improve Indian justice systems.

I want to welcome all of the witnesses here this morning. I thank you for the time that you are giving to the Committee, not only with your appearance this morning but your time in reviewing the draft. I know several of you have traveled distances to come here, and we appreciate that.

We have held five hearings during the 110th Congress here in this Committee to really shine the light on the issues that impact crime and punishment throughout Indian Country. We have attempted in Congress to address many of these issues before, as you all know. Back in 1990, Congress passed the Indian Law Enforcement Reform Act to significantly reform the Indian Justice system. This Act was intended to clarify law enforcement authority and responsibilities, declination, reporting requirements and to provide for a level of Federal accountability.

But I am disturbed, some 18 years later, that Indian tribal governments are still struggling to maintain law and order in their communities. They face spiraling violent crime rates with fewer resources, limited sentencing authority and insufficient detention facilities. In fact, from the information the Committee has received

*The information referred to is printed in the Appendix.

in connection with this initiative, it sounds like many of the law and order problems that were raised back in 1990 have progressively worsened on many of our reservations. The situation is made more difficult by the perception of gangs and other criminal elements that Indian reservations are places of lawlessness or safe havens from criminal justice.

So Mr. Chairman, I appreciate your efforts in addressing this matter and for working closely with the Indian tribal leaders in the reform initiative that is the focus of the hearing today. I also appreciate the opportunity to hear from all of the stakeholders in this matter throughout the legislative process.

I look forward to the testimony that we will receive here this morning and again appreciate all that you have done to assist the Committee. Thank you.

The CHAIRMAN. Senator Murkowski, thank you.

Senator Johnson, do you have an opening statement?

**STATEMENT OF HON. TIM JOHNSON,
U.S. SENATOR FROM SOUTH DAKOTA**

Senator JOHNSON. Thank you, Senator Dorgan, for holding this incredibly important hearing. I am glad to see so many South Dakota tribal leaders in the room.

I welcome John Thune to the hearing and would place my full statement in the record.

The CHAIRMAN. Without objection, so ordered.

[The prepared statement of Senator Johnson follows:]

PREPARED STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR FROM SOUTH DAKOTA

Thank you Senator Dorgan for holding this hearing and I am glad to see so many South Dakota tribal leaders in the room. Their presence here demonstrates the importance of this issue to the tribes in my state.

The law enforcement challenges facing Indian Country are overwhelming and much of them have to do with inadequate funding. However, there are also considerable challenges facing tribes due to jurisdictional and legal barriers. I think this legislation goes a long way to address those barriers and I intend to join the bill as an original cosponsor when it is introduced.

Additionally, in my role as an appropriator I will continue to push for additional resources for tribal law enforcement and crime prevention programs. When given the tools to do so, our tribal leaders are both resourceful and creative in protecting their own communities. Thank you.

The CHAIRMAN. Senator Burr, did you have an opening statement?

**STATEMENT OF HON. RICHARD BURR,
U.S. SENATOR FROM NORTH CAROLINA**

Senator BURR. Mr. Chairman, if I could, very briefly, I want to welcome our entire panel, but I want to specifically welcome the top Federal prosecutor in the western portion of my State, North Carolina, Gretchen Shappert. It is a pleasure to see you, Gretchen, more importantly to have you here to discuss your thoughts on this important issue and the legislation before us.

Just so my colleagues are aware, Mr. Chairman, Gretchen is an accomplished jurist in North Carolina. She has been a prosecutor for 20 years and has been a U.S. attorney for the Western District of North Carolina since the year 2004. She is also the Chair of the

Department of Justice's Native American Issues Subcommittee. She knows the issue very well and recognizes the challenges that face tribal communities in my State as well as communities across the entire Country.

To help my colleagues understand her dedication and work ethic, Gretchen has as a prosecutor, her staff would tell you that she often arrives at the U.S. Attorney's office in Charlotte, North Carolina at 3:00 a.m. to begin her work day. She also carries a full case load, which is rare for a top prosecutor in any given judicial district, and manages the entire office. We are certainly fortunate to have Gretchen and the other witnesses here today to educate this Committee on the issues and to help us understand the challenges that we are faced with as we attempt to resolve these issues.

Mr. Chairman, I thank you, and I welcome you, Gretchen.

The CHAIRMAN. Senator Burr, those of us in the north sometimes think of southerners as boasting from time to time, particularly with respect to Texans. But this 3:00 a.m. start time for work in North Carolina, that is pretty unusual.

[Laughter.]

The CHAIRMAN. I hope that is a full day.

Anyway, thank you for introducing the U.S. Attorney from your State. We deeply appreciate your doing that.

Let me begin this morning, Senator Thune is our first witness. I am going to ask him to proceed from his perch on the dais at this point.

I should mention, the co-sponsors of the draft bill that we have introduced are Senator Johnson, Senator Domenici, Senator Tester, Senator Thune, and I believe others are going to be joining us soon. So let me thank you, Senator Thune. I will introduce you and then we are going to introduce each of the witnesses for statements, following which we will ask questions.

Senator Thune, you may proceed.

**STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Thank you, Mr. Chairman and Senator Murkowski, for allowing me to testify on this important piece of legislation.

I also want to thank our witnesses for being here today, in particular, Chairman Ron His Horse Is Thunder represents the Standing Rock Sioux Tribe. He has provided extraordinary leadership when it comes to improving public safety on his reservation. So thank you for being here.

We also have another of our Chairs here today, Chairman Cournoyer of the Yankton Sioux Tribe. It is nice to have you in the audience as well. I appreciate very much the leadership that our tribal leaders are providing, particularly on this issue.

Unfortunately for Chairman Ron His Horse Is Thunder's Tribe, which is located in both North and South Dakota, he knows firsthand the struggles that are associated with the lack of public safety. I look forward to hearing his comments on the draft legislation that the Committee is discussing today.

I also want to thank Mr. Ragsdale for being here today and for all the work that you have done to support the Standing Rock Sioux Tribe with Operation Dakota Peacekeeper.

And thank you, Mr. Chairman, as well, for moving the legislation that was referred to earlier, for both Crow Creek and Lower Brule Sioux Tribes, and also Oglalla Sioux Tribe, the two compensation bills.

The bill that is being considered today seeks to bring law and order to Indian Country. As most of the individuals in this room already know, the absence of basic levels of public safety on many of our Nation's reservations has reached what I think could be considered a crisis point. Just a basic run-down of some of the national statistics bear that out.

Studies show that one in every three Native American women will be raped in their lifetime. The Department of Justice has found that American Indian women are two and a half times more likely to be raped or sexually assaulted than women throughout the rest of the Country. The statistics in my home State of South Dakota are also unfortunate. We have homicide rates within reservations that are almost ten times higher than those that are found in the rest of South Dakota. According to the BIA, the Standing Rock Sioux Tribe has a crime rate that is six times the national average, giving it the second highest crime rate of all reservations in the Nation.

Last summer, Mr. Chairman, I had the opportunity to hold a tribal roundtable with leaders from all nine of South Dakota's tribes. It was during that meeting it became clear that improving public safety is a top priority for all of them. Chairman His Horse Is Thunder was very, I believe at that particular meeting, direct in the things that needed to be done, one of which was to make sure we had more law enforcement presence out there and that there was more of an investment here by the Federal Government supporting the BIA and the tribes with their law enforcement efforts.

Since that time, I have been working with the members of this Committee, some of my other Senate colleagues, tribal leaders, Federal officials and other stakeholders, to try and find ways to improve public safety on all of our Nation's reservations. One recent example of that is the BIA's Operation Dakota Peacekeeper, which has resulted in a surge of 20 additional officers on the Standing Rock Sioux Reservation. These additional officers, along with local officials, are reducing the crime that unfortunately exists on some parts of the reservation.

Operation Dakota Peacekeeper proves that in order to fix the current crime crisis on our Nation's reservations, there needs to be more police to break the crime cycle. I look forward to continuing to work with this Committee, the Appropriations Committee and the rest of my Senate colleagues to be able to provide the needed officers on a more permanent basis.

In addition to more officers, there are other changes that need to be made. I feel that the draft bill that Senator Dorgan is proposing and which I support seeks to bring about some of these very needed, substantive changes.

I just want to briefly mention specifically, there are a number of provisions in this draft bill that I think are going to address the

crime problem, and I want to speak very briefly to three in particular. Section 103 clarifies and encourages the appointment of special assistant U.S. Attorneys to prosecute reservation crimes in Federal courts, with the hope that there will be an increase in prosecutions, especially targeting lesser offenses. While many areas of the Country have tribal liaisons, this section will hopefully formalize the program and allow for more consistency.

Title III of the bill seeks to empower tribal justice systems in a variety of ways. This includes providing greater flexibility in the training of law enforcement and corrections officers serving in Indian Country, and by increasing the maximum sentences that tribal courts can give if certain constitutional protections are met.

Title V seeks to improve both the tracking of crimes committed in Indian Country and also the reporting of those crimes. That is something that currently, in terms of data, is seriously lacking today.

So I am very interested, Mr. Chairman, in hearing the testimony of our witnesses today, learning what provisions in the bill they feel are useful, and what changes they think still need to be made. I have also solicited similar advice from our tribal leaders, tribal officials and other officials in my State of South Dakota. It is my hope when all this information has been compiled that this draft legislation can be introduced and a solution to the public safety crisis on our Nation's reservations can be found.

So again, Mr. Chairman, I want to thank you and I want to thank Senator Murkowski for allowing me to be here today. And I want to thank Chairman His Horse Is Thunder for his efforts and all of our other witnesses for the testimony that you are going to provide today.

Thank you.

The CHAIRMAN. Senator Thune, thank you very much.

I signed a letter with my colleague from North Dakota and the South Dakota delegation urging the Interior Department to implement the Safe Indian Community Initiative and try to respond to the spike in violence at the Standing Rock Reservation. You are quite correct about the serious difficulty that exists there.

I am going to ask each of the witnesses, we have a five-minute testimony period, and I know sometimes people think, well, I come to Washington and I only get five minutes. Mark Twain was once asked to give a speech, and he said, should it be a short speech or a long speech, because if it is a long speech, it will take no time to prepare, I will just start talking. If it is a short speech, it will take a substantial amount of time to prepare well.

So we are sorry for the time restrictions of five minutes, but in order for us to be able to have substantial time for questions, we want to get through the witnesses and hear your statements in full.

Let's start with Chairman Ron His Horse Is Thunder, from the Standing Rock Tribe. I am going to ask, if we can, to have the witnesses testify and then have Mr. Ragsdale testify last. I would normally invert that, and you have done that many times, Mr. Ragsdale, but I want to hear the other witnesses, then we will hear from you, then we will be able to respond to all of the issues that are raised.

Mr. Ragsdale, thank you for being here on behalf of the BIA. Chairman Ron His Horse Is Thunder, why don't you proceed?

**STATEMENT OF HON. RON HIS HORSE IS THUNDER,
CHAIRMAN, STANDING ROCK SIOUX TRIBE**

Mr. HIS HORSE IS THUNDER. Good morning, Chairman Dorgan. Thank you for the opportunity, honorable members of this Committee, I am honored to give some testimony on this draft bill.

Something has changed in Standing Rock. Not only do we have 20 more additional law enforcement officers, but something changed actually before they got here. Yes, Senator Thune, Standing Rock was number one, we had the highest crime rate of any reservation in the Country last year, in January.

I was told, though, that in January of this year, Standing Rock didn't hold that dubious distinction any longer, that we had dropped to number two in terms of the highest crime rate in Indian Country. The tribe, unfortunately, who now holds that distinction, did in January, is the Blackfeet Tribe in Montana. I say it is not because Standing Rock's crime rate had been reduced any, but rather, that Blackfeet Country's crime rate had spiked itself.

Standing Rock now, I am told, as of a month ago, had dropped from number two on the list to eight or nine on the list. Again, I feel sorry for the other tribes who now have surpassed us in terms of crime rate, because again, I live on a reservation where that crime rate was number one and not that our crime rate has been reduced all that much, if any, before this peacekeeping surge, but rather again, those tribes' crime rate has surged for them.

We do, however, have 20 additional law enforcement officers on our reservation right now. And it has made a world of difference on our reservation.

But I really want to comment on important changes that this bill makes, that it does do a number of things. It reauthorizes critical programs such as Indian Alcohol and Substance Abuse Act, the Tribal Jails Program, the Tribal Cops Program and the Tribal Youth Program. It does a number of other things which we agree with.

But today I don't want to focus on the things I agree with, because that is all in my written testimony, but rather on some of the things which we think are missing. I am not going to comment today on the jurisdiction over non-Indians within reservation in terms of an Oliphant fix, because I know that is also in our written testimony as well as the NCAI's written testimony, and I wholeheartedly agree with their written testimony. I want to focus, again, on the problems on Standing Rock, problems in terms of what is missing from the bill.

One problem with the bill is the attempt to tackle the lack of consistent police presence in South Dakota. Again, we experience this first-hand on Standing Rock. Until the BIA sent a law enforcement surge to our reservation two weeks ago, we only had two law enforcement officers per shift to patrol a reservation the size of the State of Connecticut, 2.3 million acres.

The bill would impose new consultation requirements and provide important flexibility in officer training. And the flexibility in officer training I think is going to make a huge difference in terms

of recruitment and getting law enforcement officers into the field faster. Right now, they all have to go to training in Artesia in New Mexico, and it takes quite a lengthy time to get everybody through that training facility. The flexibility in officer training is going to make a difference, we believe, and so we support that.

But it does little to address other problems and that is simply, how do you get more officers interested in going to Indian Country? A problem for us is that we believe officers don't want to come to Standing Rock, that we are one of those rural communities, and if you live in the Great Plains, you know what I mean. There is a problem with salaries, we think salaries ought to be made more attractive to recruit people. And one of the other problems that we have on our reservation is lack of housing. Law enforcement officers are not exempt from that problem. They have at times attempted to live in smaller communities, placing one officer way out in a distant community. When he was on patrol, his house got broken into.

So having more law enforcement officers living side by side in our communities will make a difference. We can't tell them where to live, but because we can't tell them where to live, some of them have chosen to live off the reservation, which doesn't make them part of the community. If you are going to have effective law enforcement, they need to be part of our community. People need to see them, they need to be thought of as friends. So housing becomes a critical portion we think needs to be addressed in terms of attracting law enforcement officers.

One of the other things we would like to see is the idea of creating a deputy program or apprenticeship program. One way to do this would be to allow tribes to designate officers, such as game wardens, who would receive additional training and be deputized as BIA police officers. Standing Rock offered to do this with our game and fish department, and most of our game and fish guys are ex-police officers, they have been through the training.

But the BIA turned us down. They said that there was a problem with liability concerns.

One of the other problems that we see or areas that are lacking in the bill is in terms of prosecution. We support many of the changes in the bill that are intended to close the gap in prosecution with requiring the filing of declination reports and referring cases to tribal prosecutors, providing for additional Assistant U.S. Attorneys in Indian Country and making it a Federal offense to violate tribal protection orders.

We ask, though, that you make it mandatory to provide tribal prosecutors with the full, the full case file in declined cases for both Indian and non-Indian offenders in Indian Country. If U.S. Attorneys decline to prosecute a case, we should be able to take it up, the tribal prosecutors should be able to take it up. But we need the full case file, not just a report saying, this case was declined. A full case report would help our prosecutors.

We also suggest that tribal prosecutors be designated to enforce Federal law, similar to the special law enforcement commissions granted to tribal police officers.

This brings me to a fundamental concern, and that is lack of funding. I see your red light on. Are my five minutes already gone?

The CHAIRMAN. Six and a half minutes, actually. But we are glad you are here. Why don't you summarize at some point, Chairman?

Mr. HIS HORSE IS THUNDER. There are basically four fundamental pillars of justice in the Indian community, and that is the need for more police officers, the court systems need to be shored up. If we are going to bring in more offenders into our court systems, we need more dollars for the court systems.

Detention facilities are an area of utmost concern. I am very glad that you made part of the public record the detention facilities report, because it will show that there is a horrendous job in terms of detention facilities that this Administration has created across Indian Country. So we thank you for making that part of the report.

The fourth pillar in justice in Indian Country is this: alternative treatments for juveniles. You just can't simply lock them up, otherwise they are going to become more hardened criminals. We need to work with IHS, BIA needs to work hand in hand with IHS in terms of treatment for juvenile offenders.

Senator, members of the Committee, thank you for this opportunity to testify before you.

[The prepared statement of Mr. His Horse Is Thunder follows:]

PREPARED STATEMENT OF HON. RON HIS HORSE IS THUNDER, CHAIRMAN, STANDING ROCK SIOUX TRIBE

My name is Ron His Horse Is Thunder. I am the Chairman of the Standing Rock Sioux Tribe. I am honored to report on the law enforcement needs of the Tribe and to provide the Committee with comments on the draft bill entitled "the Tribal Justice Improvement Act of 2008." I want to thank this Committee, particularly Senator Dorgan, for your tireless work to secure much-needed resources for Indian country, for recognizing the need to reform Indian country law enforcement, and for your vision and commitment in creating this draft bill.

The Standing Rock Sioux Tribe is situated in North and South Dakota. The Reservation comprises 2.3 million acres, of which 1.4 million acres is Tribally owned and allotted trust lands. About 10,000 Tribal members and non-members reside on the Reservation in eight communities and in smaller towns. The Tribe's primary industry is cattle ranching and farming. We operate the Standing Rock Farms, two Tribal casinos, and a sand and gravel operation which help us supplement services and programs for our nearly 14,000 enrolled members.

It is important to recognize that effective public safety requires improvement and investment in all four pillars of the justice system: police, courts, detention and alternative services. All four areas must be addressed at once in order for any single improvement to be effective. Today, I will discuss our law enforcement needs and how the draft bill might help. I address each area in turn, providing specific comments on the bill. I will focus on specific provisions as well as on what I believe is missing from the bill.

I. Police

We are a direct service tribe, meaning that law enforcement and detention services are provided directly by the BIA. Until very recently, we had ten BIA police officers. This is enough for only two officers per 24-hour shift to patrol a 2.3 million acre reservation encompassing four towns, eight separate communities, 2,500 miles of roads, and a population of 10,000 residents. A 1997 Justice Department study found that Indian country had 1.3 officers for every 1,000 inhabitants, versus 2.9 officers in non-Indian jurisdictions. With our ten officers, we are 25 percent below the average for Indian country and about 66 percent below the average number of officers per 1,000 inhabitants in non-Indian jurisdictions.

As a result of inadequate law enforcement, we have one of the highest reservation crime rates. A 2006 "Gap Analysis" commissioned by the BIA to identify and review current policing and detention capacity in Indian country found that BIA District 1, which encompasses an eight-state region including North and South Dakota, had 108 law enforcement officers (LEOs), but needs over four times that amount (483 LEOs). In 2007, the BIA estimated that we would need at least 28 officers at Stand-

ing Rock to meet minimally safe staffing requirements, yet by spring of this year we still had only ten officers, despite our repeated requests to the BIA for more officers and despite Congress' increased funding to the BIA in FY 2008 to provide more officers on high crime reservations.

Violent crime rates are increasing. In FY 2007, our violent crime rate was 1,138 per 100,000. We are a rural community, but our crime rate parallels that of a major city. Just last month, a young man, a tribal member and the son of the project manager for our juvenile services center, was murdered. Our community was devastated by this murder and, even worse, it furthered solidified the impression that the BIA would never step up to provide adequate law enforcement services. However, in the wake of this young man's murder, a "surge" of officers arrived at the reservation. For two weeks, we have had 20 additional BIA public safety officers providing 24-hour enforcement.

We can already see the results of increased enforcement. Our court dockets are full, and our jail so full that we now have arraignments seven days a week. We have also seen an increase in referrals to child protective services. While these statistics may not seem positive, they mean that some of the problems occurring are being addressed, perhaps for the first time in years. Increased police presence on our reservation has, at least in the past two weeks, made an enormous difference in our community's sense of safety. My concern and frustration is knowing that this surge is limited in duration.

When Congress took the Black Hills February 28, 1877, it promised to secure to us an orderly government. *Ex Parte Crow Dog*, 109 U.S. 556, 566, cites Article 8 of that Act as follows:

The provisions of the said treaty of 1868, except as herein modified, shall continue in full force, and, with the provisions of this agreement, shall apply to any country which may hereafter be occupied by the said Indians as a home; and congress shall, by appropriate legislation, secure to them an orderly government; they shall be subject to the laws of the United States, and each individual shall be protected in his rights of property, person, and life.

This provision remains good law and demonstrates the responsibility of the United States to make the increased number of law enforcement officers assigned to the Standing Rock Reservation permanent positions.

We support the draft law enforcement bill and we believe the provisions requiring increased consultation, data collection, and reporting are important. However, we are concerned that these provisions will make little practical difference when it comes to the lack of law enforcement officers in Indian country. The BIA and Congress know the statistics regarding the shortfalls in law enforcement and detention officers and the required officers and funding that must be provided to redress this public safety crisis, and yet we still do not have enough officers. We ask that you consider making additional changes to address some of the barriers to recruiting and retaining qualified police officers, such as:

- Raising officer salaries and creating recruitment incentives.
- Permitting tribes to use NAHASDA money to provide housing for tribal and BIA law enforcement officers.
- Permitting tribes to designate officers who would be eligible to receive additional training and be deputized as BIA police officers. Last year, the Standing Rock Sioux Tribe offered to designate Tribal Game Wardens as additional police officers in order to address the severe shortage of police officers, but the BIA declined our request, citing liability issues.
- Authorizing an apprenticeship program, in which officers in training could serve alongside full police officers before and during their training.

The draft bill would make important changes, however, to help ensure that existing officers are properly trained and held accountable. In particular, we support:

- Section 301, which would permit officers to be trained at alternate sites, including state police academies. With our small force, it has been very difficult to have officers leave the reservation for six months to train in Artesia. However, we ask that this provision be strengthened because we believe the BIA already has this authority but chooses to require training in Artesia. We suggest a provision requiring the BIA to authorize specific alternate local training options at the Tribe's request.
- Section 603, which would require BIA officers to undergo specialized training in domestic violence and sexual assault. This training is critical, and without it these crimes will continue to go uninvestigated and unprosecuted.

- Section 301(b), which would make Special Law Enforcement Commissions (SLECs) mandatory at a tribe's request.

We also ask Congress to recognize the significant law enforcement equipment needs in Indian country. We desperately need additional money to pay for new equipment, especially police vehicles. Outdated equipment poses a danger to officers and to the community. The bill should provide new resources for equipment upgrades.

II. Prosecution

Increased arrests are of little use in the long run if the crimes are never investigated or prosecuted. Between 2004 and 2007, United States attorneys declined to prosecute 62 percent of reservation criminal cases referred to their offices and there has been a 27 percent decrease in Indian country criminal investigations by the FBI from 2001–2006, during the period when violent crimes in reservation communities are increasing. Last July, National Public Radio reported on the rape of a young woman, a 20-year-old tribal member living on the Standing Rock reservation. Her alleged attackers were non-Indians. Her rape was never investigated by BIA police, the FBI, or the Justice Department. In fact, the IHS hospital did not even have a rape kit to preserve evidence correctly. She died a week after the incident, and her attackers were never investigated, let alone brought to justice.

We are especially supportive of the provisions of the draft bill which would increase federal accountability for prosecuting reservation crimes, including:

- Section 102, which would make declination reports mandatory anytime federal officials decline to investigate or prosecute a crime in Indian country and would require federal prosecutors to provide details of the case to tribal prosecutors so the tribe can pursue the case. We believe it should also be mandatory to provide tribal prosecutors the case files associated with any declined cases, for both Indian and non-Indian offenders.
- Section 103, which would authorize the U.S. Attorney to appoint special prosecutors in Indian country where the crime rate exceeds twice the national average and would require the appointment of Indian country liaisons.
- Section 601, which would make it a federal crime to violate a tribal protection order.

While these changes will help increase federal accountability for prosecution, Indian country law enforcement will always have to compete with other Department of Justice priorities such as border patrol and homeland security. The bill could better ensure consistent enforcement if tribal prosecutors were empowered to bring federal charges in federal courts. Such a program could be similar to the SLEC program for tribal police.

III. Tribal Court Powers and Resources

The Tribe strongly supports the provision that would permit tribal courts to impose longer sentences. At Standing Rock, we provide public defender services and strive to ensure that due process is provided in all stages of prosecution, and we believe expanded sentencing authority is long overdue. The Standing Rock Constitution was changed by referendum on June 11, 2008 to permit sentences of up to one year and/or fines of up to \$5,000 per violation.

Expanded sentencing authority for Indian offenders does not go far enough. A significant portion of crimes committed at Standing Rock and on other Reservations are committed by non-Indians. This is especially true for drug crimes and for violence against women and sexual assault. The bill proposes to require tribal courts to meet certain basic due process requirements in order to impose sentences of more than one year on Indian defendants; these same courts should be empowered to sentence non-Indian offenders as well. The Tribe strongly supported the jurisdictional pilot project outlined in your 2007 concept paper. This project would have permitted certain tribes, after adopting specific due process protections, to exercise criminal jurisdiction over non-Indians for domestic violence offenses where the offender was in a consensual (married or cohabiting) relationship with an Indian victim. This program would be an important first step toward expanded tribal criminal jurisdiction and it would also help stem the rampant violence against Indian women, which has been well-documented before this Committee. This is an emergency situation which requires a strong response. Standing Rock would be pleased to host such a pilot program. This provision should be restored to the bill.

Another way to address the problem of non-Indian crime while allaying some of the U.S. Supreme Court's concerns about membership and criminal jurisdiction would be to empower tribal courts to exercise delegated federal prosecutorial pow-

ers. Allowing tribal courts to enforce at least federal laws against non-Indian criminals would go far toward closing the significant gap in law enforcement. As it is, tribal courts are powerless to respond to criminal activity by non-Indians on reservations, yet the Federal Government consistently fails to perform its duty in this respect. Reservation "lawlessness" cannot be addressed without attention to the crimes of non-Indians.

We also support Title III and Title IV of the bill, which would strengthen tribal justice systems and provide increased access to federal crime databases. We remain concerned, however, that a lack of funding is the root of the difficulties faced by tribal courts. If the changes proposed in the draft bill are not supported by significantly increased appropriations for tribal courts, Congress will be setting tribal courts up to fail. We need additional personnel in the Tribal Courts to assure timely processing of cases to protect the rights of the victims and the accused in accordance with the Standing Rock Bill of Rights set forth in Article XI of the Tribal Constitution, which mirrors the Indian Civil Rights Act.

We also support the provision that would require the Bureau of Prisons to house these felony offenders at the tribe's option. Given the detention shortages in Indian country, this is essential to the success of any expanded sentencing authority.

IV. Detention

We support the provisions of the draft bill that would provide additional resources for detention construction. However, we are concerned that more needs to be done. The need for detention services in Indian country received significant Congressional attention in 1997 when President Clinton published his "Report of the Executive Committee for Indian Country Law Enforcement" and again in 2004 when the Inspector General under President Bush published "Neither Safe Nor Secure: An Assessment of Indian Detention Facilities." Each time Congress directed significant additional resources to detention but little improved, due to serious problems with the BIA's management of its detention program. One significant problem is that the BIA makes unilateral decisions regarding detention policies and how to allocate detention funding without consulting or notifying tribes. Section 101 of the draft bill should require that the Bureau consult with tribes on policies and standards, not just regulations.

The Department of Justice has provided several grants in the past decade for tribes to construct new detention facilities, some of which have never opened. Standing Rock has one of those facilities. We received a \$3.695 million grant to design and construct an 18-bed juvenile facility on the reservation. Unfortunately, construction has been stalled for several years because our architects have identified an additional \$1.2 million in unmet construction costs. Nearly one-half of our resident Tribal members are under the age of 25. There is no effective law enforcement for youth offenders at Standing Rock if they are released because there are no facilities to house them. We are working to create a place in the community where individual and family counseling can reverse destructive behavior. The bill should address how existing shortfalls will be handled so that in-progress facilities can be completed quickly.

Another major barrier is the Bureau's resistance to providing ongoing operations and maintenance funding for these facilities once they are completed. We understand that the Department of Justice is seeking assurances that newly-built facilities will have steady operational funding, but the BIA is unwilling to commit to funding in advance. We would like to see the bill address this by requiring the BIA and the DOJ to coordinate regarding operation of new facilities and requiring BIA to operate at least those facilities included in the joint planning process.

Finally, detention facilities sometimes remain unopened because the Bureau is unable to recruit and retain qualified staff. Any improvements in the bill related to police officer recruitment, training and retention should also apply to detention and corrections staff. Specifically detention staff should also have the option of training at alternative local sites.

V. Other Facility Construction

While manpower is one piece of the equation, adequate facilities are another important piece. This includes police stations, courtrooms, short and long-term detention facilities, and transitional and treatment facilities. While the draft bill does a great deal to increase the resources for construction of detention facilities, we would like to see this expanded to include other facilities. For example, we are in the process of conducting a staffing and space needs assessment to assist us in designing and building a modern Tribal Justice Center to house Tribal Courts, the BIA police department, and an adult detention center. Right now, there is simply no money within the BIA or the DOJ for this type of project. Similarly, the DOJ will not con-

struct and the BIA will not operate any alternative facilities, such as treatment centers or drug court programs. Yet these facilities are equally important to Indian country justice systems, especially if we are to avoid a cycle of locking up more and more of our own people.

VI. Tribal Eligibility for Justice Grant Programs

We encourage the Committee to consider adding a provision that would make tribes directly eligible for the full range of justice-related grants that are available to other governments. Section 302 would make this change for drug enforcement grants, and we encourage you to expand this section to include all other justice-related grants. In particular, tribes are not now directly eligible for Byrne Justice Assistance Grants, Byrne Formula Grants, Local Law Enforcement Block Grants, juvenile justice formula grants, and many other targeted grants offered by the Department of Justice. This should be corrected.

Thank you again for your work on this bill and for inviting me to testify today. The Standing Rock Sioux Tribe looks forward to working with Congress to improve and pass this legislation.

The CHAIRMAN. Mr. Chairman, thank you very much for being here. We appreciate your testimony.

Next we will hear from Mr. Joe Garcia, who is the head of the National Congress on American Indians and has done a lot of work and provided great leadership on these issues. Mr. Garcia, thank you for being here.

STATEMENT OF JOE A. GARCIA, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. GARCIA. Thank you.

Good morning, everyone. I bring greetings Pueblo Country out in New Mexico.

If I may, Senator, we lost a Cherokee Indian patrolman, highway patrolman just last night or yesterday. So I would like to ask people to say in their own prayers, in their own way, prayers for him and for his family out in Cherokee Eastern Band.

Honorable Chairman and members of the Committee, thank you for the opportunity to testify today. Almost one year ago, NCAI provided testimony that outlined solutions to the public safety crisis in Indian Country. We urged the Committee to write legislation, work with the tribes and then pass legislation in this session of Congress.

I want to express my deepest appreciation to Senator Dorgan, Vice Chair Murkowski and Senators Kyl, Johnson, Thune, Burr, Barrasso, Akaka, Cantwell, and Tester, for taking up this important task. The legislation reflects first-rate work and provides common sense solutions. Indian communities have lived with high crime rates for many years. But this reality has finally gained broader attention. There is a window of opportunity right now to make constructive change.

I feel a tremendous responsibility to make improvements when they are possible. However, this is the time when we must listen to tribal leaders and take advantage of the insights they can provide. The draft legislation was circulated only last week, so we will need a little bit more time for better response. In particular, we have found that the best information often comes from people who work in the criminal justice system.

I am pleased that with the direction of the draft bill, it tackles a wide range of issues that have been raised by tribal leaders, including requiring the Department of Justice to track its declina-

tions and creating an office of Indian Country crime within the criminal division. The Department of Justice has the sole authority for investigating and prosecuting violent crimes and other felonies committed on Indian reservations.

Despite these laws, the violent crime rate on Indian reservations is two and a half times the national average. Indian women are victims of rape and sexual assault at three times the national average. Tribes are faced with an epidemic of drug trafficking.

For many years, tribal leaders have raised the concern that the U.S. Attorneys do not consider Indian Country crimes a priority. The recent Denver Post series confirmed these concerns. Between 1997 and 2006, Federal prosecutors rejected nearly two-thirds of the reservation cases brought to them by FBI and Bureau of Indian Affairs investigators, more than twice the rejection rate for all other Federal crimes.

We have a revolving cast of characters at DOJ committed to defending the status quo. No one is accountable, and the crime statistics continue to mount. We strongly approve the proposed reforms. In particular the declination reports will provide an important tool for measuring responsiveness and a specialized prosecuting unit will focus expertise and accountability.

The bill is filled with important provisions. I would like to mention just a few that we particularly appreciate: providing for special law enforcement commissions, creating flexibility for training tribal police officers, creating incentives for law enforcement cooperation, ensuring access to national crime data bases, expanding tribal court sentencing authority and creating a juvenile justice program to develop alternatives for incarceration.

I would also like to mention three issues that are not in the legislation. First and foremost, at every meeting, the biggest message from tribal leaders is the need for more funding for law enforcement. The Bureau of Indian Affairs has documented a \$200 million unmet need. We need your help to reach out to the Appropriations and Budget Committees.

In addition, we would like to streamline the funding available through the many grant programs at the Department of Justice and the Department of Health and Human Services into a single funding vehicle. The ad hoc system doesn't make sense.

Secondly, we are concerned that the legislation does not include a provision for tribal jurisdiction over all domestic violence offenders. Domestic violence rates against Indian women are three times the national average. According to DOJ's statistics, the vast majority of the offenders are non-Indian. Domestic violence cases are best handled by local law enforcement. A cycle of domestic violence requires intervention at the earliest possible stage, long before it escalates to extremely violent assaults. In addition, most families will reunite, and there is a much greater emphasis on counseling, training and family services. The Federal justice system is not designed to handle domestic violence cases.

We acknowledge the efforts to seek alternatives. Section 601 of the bill is a proposal to create a Federal crime for violating a tribal civil protective order. We would ask the Committee to also consider the development of a pilot project for domestic violence that would create a basis for considering the issue in the future.

Third, we are concerned that the legislation in its current form does not address the unique law enforcement issues in Alaska Native communities. Our primary recommendations are that the Federal Government provide direct funding for rural law enforcement in Alaska, strengthen tribal courts and restore local control over alcohol and substance abuse policies.

In conclusion, I want to thank the Committee for all the work that you have done on this legislation. We are strongly in support of your efforts and look forward to working with you in the coming weeks to prepare the legislation for passage into law.

Thank you so much for the opportunity.

[The prepared statement of Mr. Garcia follows:]

PREPARED STATEMENT OF HON. JOE A. GARCIA, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Honorable Chairman and members of the Committee, thank you for the opportunity to testify today. Almost one year ago NCAI provided testimony that outlined the complex causes and potential solutions to the public safety crisis facing Indian communities. We urged the Committee to write legislation, work with the tribes to gain their insights and support, and then pass legislation in this session of Congress. We have the draft legislation in hand, and I want to express my deepest appreciation to Chairman Dorgan, Vice Chair Murkowski and Senators Kyl, Johnson, Thune and Tester for taking up this important task. The legislation reflects first-rate work and provides common-sense solutions for many problems with the justice system in Indian country.

Indian communities have lived with high crime rates for many years, but this reality has finally gained broader attention. Much of the momentum on this issue was sparked by the efforts of the Indian women leaders who have pushed the agenda on domestic violence and sexual assault. We have also been aided by countless visits by tribal leaders to Washington to raise this issue, federal crime reports that demonstrate the dramatically higher rates of violent crime on Indian reservations, the Amnesty International Report "Maze of Injustice," and many news articles that have highlighted the problems—most recently the national series in the Denver Post and South Dakota coverage in the Argus Leader. There is a window of opportunity right now to make constructive change. I feel a tremendous responsibility as NCAI President to push forward on the legislation to make improvements when they are possible.

However, this is the stage in the process where we must listen to tribal leaders and other interested parties and take advantage of the insights they can provide. The draft legislation was circulated only last week, so we will need time for response. In particular, we have found that the best information often comes from people who work in the criminal justice system—tribal police officers, tribal prosecutors, tribal judges and the like. I would encourage the Committee to make a special effort to reach out for their views on how the legislation can be strengthened.

I am very pleased with the direction of the draft bill. It tackles a wide range of issues that have been raised by tribal leaders, including:

- Requiring the Department of Justice to track its declinations to prosecute Indian cases;
- Creating an Office of Indian Country Crime within the Criminal Division at DOJ;
- Amending P.L. 280 to permit an Indian tribe to request federal assistance;
- Creating incentives for state-tribal cooperation;
- Providing for Special Law Enforcement Commissions;
- Creating flexibility for training Indian country police officers;
- Ensuring BIA and tribal police access to the national crime databases;
- Expanding tribal court sentencing authority; and
- Creating a Juvenile Justice program to develop alternatives to incarceration.

There are many excellent provisions in the legislation and NCAI has had a significant opportunity to provide input, so I would like to limit our initial comments to raising four issues that are not in the legislation, and then providing additional information on some of the provisions that NCAI has supported.

Appropriations and Streamlined Funding—First and foremost, at every meeting we have held on this topic the biggest message from tribal leaders is the need for more funding for law enforcement. The Bureau of Indian Affairs has documented a \$200 million unmet need to bring reservation policing up to the same levels found in other rural communities. According to BIA testimony, tribal detention facilities are grossly overcrowded, in deplorable condition, and staffed at only 50 percent.¹ We understand that we need to reach out to the Appropriations and Budget Committees to ensure that adequate funding is provided so that this legislation can be effective. In addition, we believe there is a need to streamline the funding available through the Department of Justice, Department of Interior, and Department of Health and Human Services. Tribal law enforcement funds are divided up between the DOI and DOJ. Within the DOJ these funds are further divided into dozens of competitive grants for specific purposes. Moreover funding for prevention, rehabilitation, and treatment programs, which are key components of any community's approach to reducing crime, are located at IHS, SAMHSA, and elsewhere within the DHHS.

This system requires a large grant writing capability and a good bit of creativity in order to access the funds. Millions could easily be spent providing the technical assistance tribes need just to navigate this overly complex system. Under this ad hoc system, tribal law enforcement will receive vehicles, but no maintenance. They will get a detention facility, but no staff. They will receive radios, but no central dispatch. The system doesn't make sense. We believe that tribal public safety funding should be streamlined into a single funding vehicle that would be negotiated on an annual basis and made more flexible to meet local needs.

Domestic Violence—Secondly, we are disappointed that the legislation does not include a provision for tribal jurisdiction over all domestic violence offenders. Domestic violence rates against Indian women are three times the national average and, according to DOJ statistics, the vast majority of the offenders are non-Indian. As we have worked on this legislation, we have attempted to put ideology to the side and focus on the necessary solutions to very real law and order problems. We are pleased that the legislation contemplates improvement of the federal law enforcement response, but very doubtful that federal prosecutors will aggressively pursue domestic violence cases. We know that there are very devoted individuals working for the FBI and United States Attorneys, but the federal justice system simply is not designed or equipped to handle domestic violence cases.

Domestic violence cases are best handled by local law enforcement. The cycle of domestic violence requires intervention at the earliest possible stage, long before it escalates to the very violent assaults that result in federal prosecution. In addition, domestic violence offenders require a different response than is found in the federal system. Most families will reunite and there is a much greater emphasis on counseling, training, and services related to substance abuse, parenting skills and job counseling. None of these services are available in the federal system, which is oriented to punishing very severe offenses. A modest adjustment of existing tribal authority limited only to those who consensually cohabit with a tribal member on tribal land is absolutely necessary to regulate domestic relations within the tribe.

What is most disappointing is that it appears such legislation cannot be introduced even for purposes of discussion. We understand that the issue is sensitive, but we also know that reasonable solutions can be reached if the issues are aired for public debate. We acknowledge the efforts to seek alternatives. Section 601 of the bill is a proposal to create a federal crime for violating a tribal civil protective order. We want to continue to discuss this option, but we are concerned that it relies on the willingness of the U.S. Attorneys to prosecute the cases. We would ask the Committee to consider the development of a small pilot project for tribal domestic violence jurisdiction that would create a firmer basis for considering the issue in the future.

Alaska Native Villages—Third, we are concerned that the legislation in its current form does not address the unique law enforcement issues in Alaska Native communities. Alaskan tribal lands are not considered "Indian country" after the Supreme Court's decision in *Alaska v. Native Village of Venetie*. Tribal communities in Alaska experience high rates of domestic violence and sexual assault and significant problems with substance abuse. Most of the native communities are only accessible by plane or boat, and are completely dependent on state law enforcement. The Village Public Safety Officer program has had its budget slashed by the state, and many tribal communities in Alaska are terribly underserved by state police and other services. We know that the Committee is aware of these problems and would urge

¹Testimony of Guillermo Rivera before the National Prison Rape Elimination Commission, March 26, 2007, available at http://www.nprec.us/proceedings_austintx.htm.

the Committee to reach out to Alaska tribal leaders to develop ways to improve law enforcement in Alaska. Our primary recommendations are that the Federal Government provide direct funding for rural law enforcement in Alaska, to strengthen tribal courts, and that tribal communities in Alaska be given greater control over alcohol and substance abuse policies.

Misdemeanors and Victimless Crimes Committed by Non-Indians—The general lack of tribal or federal jurisdiction for misdemeanors committed by non-Indians creates significant problems for law enforcement. Alcohol and drug related disturbances, traffic violations, domestic violence and gang activity commonly involve both Indians and non-Indians. The absence of tribal jurisdiction to deal effectively with non-Indians creates a perception that the likelihood of being caught and punished is low, and encourages a disregard for tribal law enforcement. This problem is compounded by the status of “victimless” crimes—those committed on the reservation by a non-Indian that do not actually involve harm or threat to the person or property of an Indian. Neither the tribe nor the Federal Government has jurisdiction over victimless crimes, only the state. As a result, most routine disorderly conduct, traffic violations and other moral offenses committed by non-Indians within Indian country receive little enforcement attention. These gaps in tribal and federal jurisdiction defeat community-based policing initiatives and create disorder and disregard for law enforcement in Indian country.²

One solution that has been suggested is to expand tribal and Bureau of Indian Affairs authority to cover a broader range of “non-major” crimes as well as misdemeanors and “victimless” crimes committed by non-Indians. This could be done in two ways. First, directly authorize tribes to prosecute misdemeanors. Second, the Bureau of Indian Affairs could be authorized to develop regulations governing misdemeanors and minor crimes committed by both Indians and non-Indians in a manner similar to the National Park Service. See 16 U.S.C. § 1c and also the current regulations governing Indian offenses at 25 C.F.R. Part 11. Legislation and regulations would need to be carefully crafted not to “federalize” misdemeanor crimes that are committed to tribal government enforcement. Public Law 638 contracting could play a role, as well as an option for express consent to tribal court jurisdiction in lieu of federal prosecution.

Title I—Federal Accountability and Coordination

Under the Major Crimes Act and other federal laws, the Department of Justice has the sole authority for investigation and prosecution of violent crimes and other felonies committed on Indian reservations. Despite these laws and the federal trust obligation to protect Indian communities, the violent crime rate on Indian reservations is two and a half times the national average, Indian women are victims of rape and sexual assault at three times the national average, and tribes are faced with an epidemic of drug trafficking. These crime rates have been doubling and tripling in Indian country while crime rates have been falling in similarly low-income communities throughout the United States. Something is seriously wrong with the federal law enforcement response.

For many years, tribal leaders have raised the concern that the U.S. Attorneys do not consider Indian country crimes a priority and decline to prosecute an extraordinary percentage of cases. The Denver Post series from November of 2007 confirmed these concerns.

- Between 1997 and 2006, federal prosecutors rejected nearly two-thirds of the reservation cases brought to them by FBI and Bureau of Indian Affairs investigators, more than twice the rejection rate for all federally prosecuted crime.
- Investigative resources are spread so thin that federal agents are forced to focus only on the highest-priority felonies while letting the investigation of some serious crime languish for years. Long delays in investigations without arrest leave child sexual assault victims vulnerable and suspects free to commit other crimes.
- Many low-priority felonies never make it to federal prosecutors in the first place. Of the nearly 5,900 aggravated assaults reported on reservations in Fiscal Year 2006, only 558 were referred to federal prosecutors, who declined to prosecute 320 of them. Of more than 1,000 arson complaints reported last year on Indian reservations, 24 were referred to U.S. Attorneys, who declined to prosecute 18 of them.
- Congress has increased the amount of money allocated to the Bureau of Indian Affairs for tribal police, but that increase has been largely spent on patrol offi-

²Testimony of John St. Claire, Chief Judge, Shoshone and Arapaho Tribal Court, Wind River Indian Reservation, Senate Committee on Indian Affairs, February 27, 2002.

cers. Federal investigators and prosecutors have also received sizable boosts in their budgets for work in Indian Country, but those increases have failed to produce a perceptible rise in the number of investigations or prosecutions from reservations. Federal prosecutors and investigators triage scarce resources to work on issues that are considered a higher priority.

- From top to bottom, the Department of Justice’s commitment to crime in Indian Country is questionable. Former United States Attorney for the Western District of Michigan Margaret Chiara was quoted saying, “I’ve had (assistant U.S. attorneys) look right at me and say, ‘I did not sign up for this’. . . . They want to do big drug cases, white-collar crime and conspiracy.” Comments from former United States Attorney for Arizona, Paul Charlton indicate that this attitude came from the top. Charlton has related a story where a high-level Department of Justice official asked him why he was prosecuting a double-murder in Indian Country in the first place.³

Some internal efforts have been made at the Department of Justice to improve the focus on Indian country crime, but these efforts have shown little in the way of results. Former Attorney General Janet Reno created the Office of Tribal Justice, but the status of this office has been diminished in recent years. Former Attorney General John Ashcroft supported the district priorities of the U.S. Attorneys, and under his leadership the Native American Issues Subcommittee of the Advisory Committee to the Attorney General worked to increase prosecutions and address problems with violent crime and drug trafficking in Indian country. However, six of the members of the Native American Issues Subcommittee were among those who were asked to resign in 2006, including both the former Chair and Vice-Chairs Thomas Heffelfinger and Margaret Chiara. Monica Goodling, former aide to Attorney General Gonzales, stated in her House Judiciary Committee testimony that Thomas Heffelfinger was replaced because he spent “too much time” on the Native American Issues Subcommittee. Now we have a new cast of characters at DOJ and they seem to be committed to the status quo. According to U.S. Attorney Diane Humetewa’s testimony, DOJ does a great job and there are no problems. No one is held accountable and the crime statistics continue to mount.

There is a serious concern that the Department of Justice central office places no priority on addressing crime in Indian country, and is subject to no oversight or accountability on its efforts or performance. Indian tribes do not wish to “federalize” more crimes and put more Indians in federal prison. However, serious felonies and dangerous criminals—whether Indian or non-Indian—are under the sole jurisdiction of the Department of Justice and this responsibility must be taken seriously. We strongly approve of the proposed reforms at the Department of Justice to ensure that Indian country crime is subject to consistent and focused attention. In particular:

- Section 102 would require the Department to maintain data on declinations of referred Indian country cases, and to report annually to Congress. Tribal leaders and Members of Congress have sought this data for decades, but have been rebuffed by a Department of Justice that hides behind broad claims of prosecutorial discretion and a steady unwillingness to release any internal data. This will provide an important tool for measuring responsiveness to referred cases.
- Section 104 would create an Office of Indian Country Crime within the Criminal Division of the Department of Justice. We have attached a copy of the organizational chart of the Criminal Division, which has a section and prosecutors assigned to every sort of federal crime, except for Indian country crime. We believe this is a reflection of the low priority that Indian Country crime receives within the DOJ. Specialized prosecutorial units are very effective in focusing expertise and a response on particular types of crime. We strongly support this aspect of the legislation.

Title II—State Accountability and Coordination

Although the federal system of justice in Indian country has serious difficulties, there is a worse system. Under Public Law 280, state law enforcement has displaced federal enforcement and assumed full or partial jurisdiction over crimes committed within Indian Country in certain states and on certain reservations. Many tribes strongly opposed P.L. 280 because of the law’s failure to recognize tribal sovereignty and the lack of consent of the affected tribes. States have focused on the failure of

³Mike Riley, “Principles and Politics Collide: Some U.S. Attorneys who emphasize fighting crime on Indian lands have seen themselves fall out of favor in D.C.,” DENVER POST, Nov. 14, 2007.

the Act to provide federal funding—an unfunded mandate on lands that are not taxable. Even though tribes retain concurrent jurisdiction, the Federal Government has viewed P.L. 280 as an excuse to cut off tribal financial and technical assistance for law enforcement. The law has contributed to mistrust and hostility between state and tribal officials on many reservations. A common tribal perception is that state law enforcement refuses or delays when the tribe asks for assistance, but vigorously asserts their authority when the tribe does not want them to intervene. Professor Carole Goldberg has made a compelling case that the law has worsened the problem of lawlessness on reservations:

Public Law 280 has itself become the source of lawlessness on reservation. Two different and distinct varieties of lawlessness are discernible. First, jurisdictional vacuums or gaps have been created, often precipitating the use of self-help remedies that border on or erupt into violence. Sometimes these gaps exist because no government has authority. Sometimes they arise because the government(s) that may have authority in theory have no institutional support or incentive for the exercise of that authority.*** Second, where state law enforcement does intervene, gross abuses of authority are not uncommon.⁴

Section 201 proposes a modest reform of P.L. 280. The statute distinguishes between the six “mandatory” P.L. 280 states, and the other states that elected to assert jurisdiction prior to 1968. In the mandatory states, the Federal Government has been divested of Indian country jurisdiction. For example, in Minnesota the U.S. Attorney has authority to prosecute major crimes only on the Red Lake Reservation, but could not prosecute a major crime on the other reservations within the state. This legislation would allow the tribe to request that the U.S. Attorney exercise concurrent jurisdiction over Indian country crimes and major crimes. We support this reform because it would increase tribal control and create another means to address unmet law enforcement needs. At the same time, we strongly advocate that Congress should amend P.L. 280 to allow tribes to retrocede without state consent.

Section 202 is also an extremely important part of this legislation. It is widely recognized that increased cooperation is vital to improving tribal, state and federal law enforcement responsiveness. There is already a significant amount of cooperation between tribes, states, and counties, and there are hundreds of cooperative law enforcement agreements. These agreements are grounded in the shared recognition that tribes, states and counties can enhance their law enforcement efforts working together. Recognition of these benefits is sufficiently widespread that a number of states such as Arizona, New Mexico, Nevada, North Carolina and Washington now provide for the deputization of tribal officers by statute. *See, e.g., Arizona Rev. Stat. Ann. § 13-3874* (“While engaged in the conduct of his employment any Indian police officer who . . . meets the qualifications and training standards adopted pursuant to section 41-1822 shall possess and exercise all law enforcement powers of peace officers in this state).

Although law enforcement cooperation is common, it is not found everywhere. There are still a number of places where cooperation is minimal, and the relationships are sometimes antagonistic. In our experience, these poorer relationships are driven by the long histories of disrespect and indifference that have existed for many decades in the rural areas around some Indian reservations, and by a lack of support for individuals who would choose to forge stronger law enforcement ties.

The benefits of cooperative agreements are sufficiently strong that the Federal Government should encourage and provide incentives for the development of law enforcement cooperation among states, counties and tribes. Section 202 is modeled after a successful Wisconsin program that provides specific funding for joint tribal-state law enforcement efforts. Wis. Stat. § 165.90 provides for state grant funds to joint county-tribal law enforcement plans. This program has been evaluated as very successful in improving reservation law enforcement in Wisconsin. *See, David L. Lovell, Senior Analyst, Wisconsin Legislative Staff, Wisconsin’s County-Tribal Law Enforcement Program, (June 27, 2000).*

NCAI would like to emphasize that cross-deputization agreements are not the only forms of cooperation and may not be appropriate in all locations. Another form is the mutual aid agreement, where the parties pledge to respond to requests for assistance in carrying out their respective law enforcement activities, but have this authority only on specific requests. In addition, there are also very important agreements that cover specific issues such as extradition, the execution of search and arrest warrants, and hot pursuit across jurisdictional boundaries.

⁴ Carole Goldberg-Ambrose, *Planting Tail Feathers: Tribal Survival and Public Law 280* (UCLA American Indian Law Studies Center, 1997), p. 12.

In this vein, NCAI also strongly supports Section 302, which would create more flexibility in training tribal police officers. Experience has shown that cooperation is enhanced when state and tribal police officers have similar training at the same facilities. In fact, many of the cooperative agreements require that tribal officers train at state police academies. The BIA's training requirements become a duplicative barrier to recruiting and retaining tribal police officers. Instead, BIA training should be designed to supplement locally available police training.

Title III—Empowering Tribal Justice Systems

Sections 301 and 302 are extremely important provisions to eliminate barriers to law enforcement in Indian country. Special law enforcement commissions have long been available to tribal police, but the BIA has withheld the training and granting of commissions for bureaucratic reasons. As noted above, Section 302 addresses a severe problem that tribes have faced in recruiting and training police officers. The BIA trains police on an irregular basis at only one facility in New Mexico. The long distances are a barrier to recruitment, and the training is often duplicative of the training that tribal officers must receive under state-tribal agreements. The BIA should offer the unique "Indian country" components of training as a supplement to locally available training that meets National Peace Officer Standards.

Section 304 is also critically important. Criminal information databases are a fundamental tool of law enforcement. Tribal police are regularly denied access to the NCIC, although the Violence Against Women Act of 2005 has specifically authorized tribal access. The inability to check for criminal history compromises the safety of tribal police officers, and the inability to check for outstanding warrants and to enter information about fugitives undermines the entire national law enforcement network.

Section 305 would extend tribal sentencing limitations under the Indian Civil Rights Act to provide for appropriate sentences for more serious offenders. In the original 1968 law, tribal sentencing authority was limited to 6 months or \$500. In 1986, the authority was expanded to 1 year or \$5000. A 2003 report of the Native American Advisory Group to the U.S. Sentencing Guidelines Commission points out the disparity between tribal sentencing authority and the sentences that are imposed by the Federal Government for crimes committed under the Major Crimes Act. Assaults comprise the greatest percentage of crimes prosecuted under the Major Crimes Act, and the average federal sentence for Indians prosecuted for assault is three years. Because U.S. Attorneys rarely prosecute any crime in Indian country that is not a very significant assault, there is a large gap between the maximum sentencing authority of tribes and the average sentence for the least serious crime that is prosecuted by the Federal Government.

The key to this provision is that it would permit tribes to house prisoners at the nearest appropriate federal facility. Most tribes do not have the resources or facilities for longer term incarcerations and need the Federal Government to house violent criminals. We strongly support this aspect of Section 304. Overall, we need to have further discussion with tribal leaders before we can completely endorse this provision.

Another aspect of the Indian Civil Rights Act deserves consideration. The Act requires Indian tribes to provide juries to anyone accused of an offense punishable by imprisonment. The federal Constitution only recognizes such a right for persons subject to a term of imprisonment for "serious offenses," which primarily refers to non-petty offenses, or those offenses which carry a prison term of greater than six months. The requirement of a jury trial for petty offenses is an unnecessary burden on tribal justice systems. In tribal courts with limited budgets, savvy defendants use this provision to gain dismissal of otherwise meritorious prosecutions.

Title IV—Resources for Tribal Justice Programs

NCAI has long advocated for increased funding for law enforcement in Indian country because of the public safety crisis. Basic law enforcement protection and services are severely inadequate for most of Indian country. For example, a recent Bureau of Indian Affairs analysis indicates that in BIA Law Enforcement, 1,153 officers are needed but it has only 358. The gap is 795 officers (69 percent unmet need). In Tribal Law Enforcement—3,256 officers are needed but tribes have only 2,197. The gap is 1,059 officers (33 percent unmet need). Total need is 1,854 law enforcement officers. To put this in perspective, these 2,555 Indian country law enforcement officers make up about 0.004 percent of the total of 675,734 state, city and county law enforcement officers in the United States, yet they patrol approximately 2 percent of the landmass of the United States and 1 percent of the population.

Increasing law enforcement funding is a top priority. We generally support the efforts to reauthorize the programs in this title, but will need time to review the de-

tails. As mentioned above, there is a need to streamline the funding available through the Department of Justice. DOJ law enforcement funds are divided up into many competitive grants for specific purposes. Department of Justice funding should be streamlined into a single funding vehicle that would be negotiated on an annual basis and made more flexible to meet local needs.

Section 407 is particularly important to support the development of the Juvenile Justice programs in Indian Country. There is a growing consensus among both tribal leaders and national justice system analysts that non-violent juvenile offenders should rarely be placed in detention. They need to stay in school and get more monitoring and mentorship. Our goal is not to put more Indians in jail and create more criminals, but to rehabilitate offenders so they can play a productive role in our communities. This will also be much more cost-effective, and the place to start is at the juvenile level. Upon our initial review, we may request that this program be expanded and created as a specific set-aside for tribal programs.

Title V—Indian Country Crime Data Collection and Information Sharing

Crime data is a fundamental tool of law enforcement, but for decades the Bureau of Indian Affairs and the Department of Justice have never been able to coordinate or accurately report on crime rates and prosecution rates in Indian country, making it extremely difficult to review their performance. In addition, it becomes very difficult to discern trends, set enforcement priorities, and formulate budget requests without crime data. This title would require all federal law enforcement officers responsible for investigating and enforcing crimes in Indian country to coordinate in the development of a uniform system of collecting and reporting data.

This provision should not allow any wiggle room. Congress should require that the Bureau of Indian Affairs and the Department of Justice devise a “Tribal Category” and coordinate to produce Indian country crime data and statistics comparable to data collected from state law enforcement by the Bureau of Justice Statistics. This effort should include state and county crime data from P.L. 280 and similar jurisdictions.

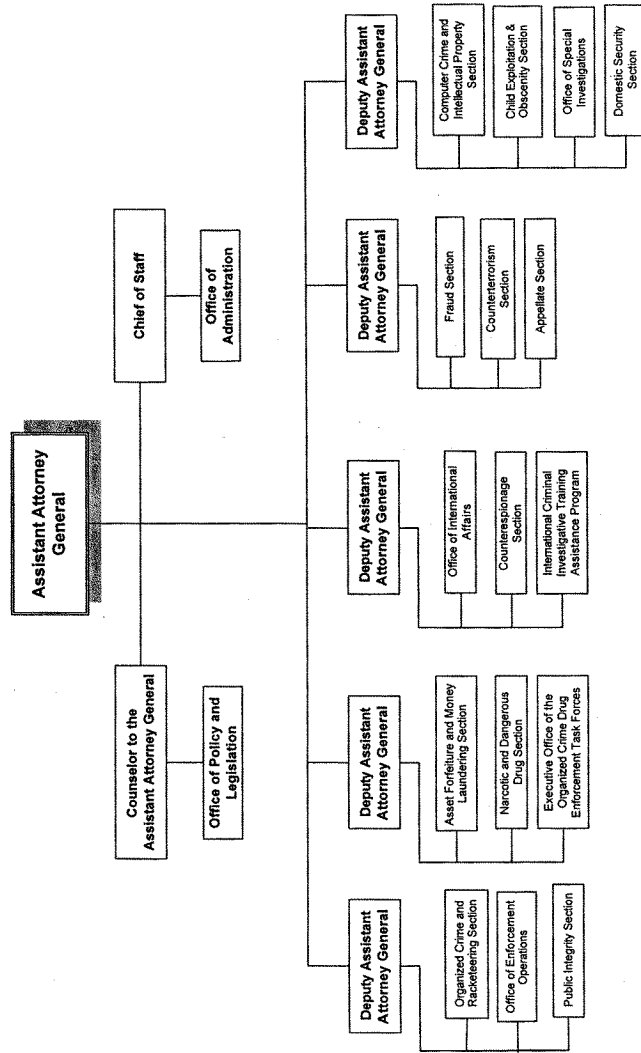
Title VI—Domestic Violence and Sexual Assault Enforcement and Prevention

NCAI will withhold comments on this section until we have a further opportunity to consult with tribal leaders and the Indian women’s organizations that provide advocacy and services to victims of domestic violence and sexual assault.

Conclusion

Law enforcement has been the leading concern of tribal leaders throughout the country for at least the last five years that priorities have been measured by the BIA Budget Advisory Committee, and probably for much longer. NCAI strongly encourages Congress to take action on all of the fronts that we have identified above. Taken together—an improvement in the federal response, an increase in state-tribal cooperation, enhancements to tribal authority, and maximizing law enforcement resources—we can dramatically change the environment for criminal activity on Indian reservations. Our goal is to send a new message that the law will be vigorously enforced, and thereby create a deterrent to crime on Indian lands. This effort will bring great benefits to Indian communities and our neighbors in public safety, but also in health, productivity, economic development, and the well-being of our people. We thank you in advance, and look forward to working with you to move forward on the legislation as quickly as possible.

CRIMINAL DIVISION



The CHAIRMAN. Mr. Garcia, thank you very much. Thank you for your leadership, and we appreciate your being here today.

Next we will hear from Gretchen Shappert, who is the U.S. Attorney and I believe appearing on behalf of the U.S. Justice Department.

STATEMENT OF HON. GRETCHEN C. F. SHAPPERT, U.S. ATTORNEY, WESTERN DISTRICT OF NORTH CAROLINA, U.S. DEPARTMENT OF JUSTICE

Ms. SHAPPERT. I am, thank you. I want to thank you, Mr. Chairman and Madam Vice Chair. I want to also thank the Committee

and Senator Burr for his kind remarks. I also wanted to thank President Garcia for acknowledging the death of a law enforcement officer from the Eastern Band of Cherokee Indians, who was gunned down in his service and duty. It reminds all of us of just how serious our obligations are to law enforcement.

So it is a privilege to be with you today.

I am the U.S. Attorney from the Western District of North Carolina. I am also Chair of the Native American Issues Subcommittee of the Department of Justice. I serve on the Attorney General's advisory Committee in that capacity.

I have worked hard in my own district and with colleagues across the Country to provide effective law enforcement in Indian Country. In my district, we have had the opportunity to work with the Eastern Band of Cherokee Indians, the largest federally-recognized tribe in the eastern half of the United States, with a membership of over 13,000. We have established a close working relationship in my office with the Eastern Band of Cherokee Indians, and together with the FBI, National Park Service, the Bureau of Indian Affairs and the Cherokee Indian Police Department, we have worked hard in Indian Country to combat particularly violent crime.

My experience as Chair of the Native American Issues Subcommittee has also helped me in my work in my district, and to work with my colleagues in our capacity as Federal law enforcement to develop policies in Indian Country.

In an effort to ensure more effective coordination and communication, especially in the upcoming transition period, the Department's tribal liaisons, U.S. Attorneys and representatives of the Department of Justice met earlier this month in Rapid City, South Dakota, with representatives of the nine tribes in South Dakota to discuss problems in Indian Country. As you are aware, the tribal liaisons, the Assistant U.S. Attorneys who work in Indian Country, have the key responsibility to identify and respond to the needs of the distinct tribes in their districts.

In our meeting, we had a chance to engage in a listening session and hear from representatives of the tribes in order to improve our meeting of our responsibilities in Indian Country.

While the Department does not comment on proposed legislation, I would, however, like to highlight a few areas of concern that we have with the proposed draft legislation. The Department is committed to improving Indian Country crime data. However, we oppose the concept of requiring the publication and disclosure of declination reports. While significant Indian Country cases are primarily handled in the Federal courts, caution should be used when comparing Indian Country statistics to other Federal statistics. As was emphasized by my colleague, United States Attorney Diane Humetewa, when she addressed this Committee, declination does not necessarily mean that a case will not be prosecuted. Declination may mean that the case is actually reassigned to another jurisdiction or another forum, that there will be additional work-up in that prosecution, or that perhaps a crime has not been committed.

By requiring United States Attorney offices and other investigative agencies to prepare a detailed written report that contains in-

formation about an investigation that was either declined or terminated, the legislation would create potentially discoverable material outlining weaknesses in a subsequent criminal case.

The Department also opposes the establishment of an office of Indian crime in the Criminal Division of the Department of Justice. While the Department recognizes and appreciates concerns about the prosecution of crimes in Indian Country, our concern is that the formation of another unit in the Criminal Division will remove critical resources from Indian Country and locate them in Washington, D.C., when in fact they are needed to prosecute crimes in Indian Country. We are concerned that that will create a significant gap in experience in our prosecution of crime in Indian Country.

We also are concerned about permitting tribal courts to direct offenders into the Bureau of Prisons for serving of their sentences, as opposed to in detention facilities run by the BIA.

For purposes of maintaining family ties and to effect an optimal re-entry back into the community after release, the Department of Justice believes that the incarceration of tribal court offenders is best handled by local jurisdictions and BIA. The Bureau of Prisons attempts to designate an inmate to the appropriate security level within 500 miles of their home. However, due to over-crowding and population pressures, many individuals are located in facilities far from where they live. This will reduce their ability to maintain close ties with their communities and will limit the number of visits by family and friends when they are housed in a Bureau of Prisons facility.

Mr. Chairman, Madam Vice Chairman and members of the Committee, while the Department does, as I indicated, not comment on legislation, I will be happy at the appropriate time to try to answer any of your questions. Thank you very much.

[The prepared statement of Ms. Shappert follows:]

PREPARED STATEMENT OF HON. GRETCHEN C. F. SHAPPERT, U.S. ATTORNEY,
WESTERN DISTRICT OF NORTH CAROLINA, U.S. DEPARTMENT OF JUSTICE

Mr. Chairman, Madame Vice-Chair and members of the Committee:

My name is Gretchen Shappert. I am the United States Attorney for the Western District of North Carolina, and the chair of the Native American Issues Subcommittee of the Attorney General Advisory Council. My fellow U.S. Attorneys and the Department of Justice ("the Department") as a whole share the Committee's goal of improving law enforcement in Indian Country. We appreciate your highlighting this important issue and I thank you for the opportunity to testify today. We look forward to working with the Committee to achieve this goal.

I have worked hard in my own district and with colleagues across the country to provide effective law enforcement in Indian Country. In my district, I have had the opportunity to work closely with the Eastern Band of Cherokees, an Indian tribe numbering over 13,000. We have established a close working relationship, and I am proud of what we have accomplished together. For example, my office has seen a number of criminal defendants sentenced in federal court for crimes committed in Indian Country, including several serious domestic violence cases. This was the result of the excellent work of federal law enforcement agencies, including the Federal Bureau of Investigation (FBI) and the National Park Service, and our partners in the Cherokee Indian Police Department. Because of this cooperation, we were able to investigate and to successfully prosecute these federal offenses which occurred in Indian Country.

That experience has benefited my service as Chair of the Native American Issues Subcommittee (NAIS), the oldest subcommittee of the Attorney General's Advisory Committee (AGAC). The NAIS consists of U.S. Attorneys from across the United States who have significant amounts of Indian Country in their districts. The purpose of this body is to develop policies for consideration and approval by the Attor-

ney General pertaining to the establishment and development of effective law enforcement in Indian Country.

In an effort to ensure more effective coordination and communication, especially in the upcoming transition period, the Department's tribal liaisons and NAIS met jointly in Rapid City, South Dakota earlier this month. As the Committee knows, tribal liaisons are the Assistant United States Attorneys ("AUSAs") who are responsible for coordinating Indian Country relations and prosecutions. The tribal liaisons work diligently to identify and respond to the needs of the distinct tribes within their districts. Our meeting included a visit to the Pine Ridge reservation where the NAIS, tribal liaisons, tribal leaders and law enforcement officers were able to discuss some of the important matters affecting that particular tribe, including the need for additional law enforcement resources and the importance of community involvement in solving the difficult social issues that often accompany criminal activity. I also have participated in numerous national and regional tribal conventions, training sessions, symposiums and events. At those meetings, I have regularly provided my direct phone number for those who need assistance with an issue affecting Indian Country.

In addition to my own work, let me describe the overall successes of my colleagues in the U.S. Attorney community and the Department generally. The Department's dedicated public servants are successfully prosecuting cases in Indian Country. Approximately 25 percent of all violent crimes investigated by U.S. Attorneys nationally occur in Indian Country. In addition, in Fiscal Year (FY) 2006 the Department's efforts in Indian Country have been above average across the board. For example, in FY 2006, the Department filed 606 cases against 688 defendants in Indian Country, which is nearly 5 percent higher than the average since 1994 of 580 cases against 643 defendants per year. In FY 2006, 82 cases went to trial, 13.8 percent more than the average of 72 cases each year since 1994. The conviction rate for Indian Country prosecutions in FY 2006 was 89.4 percent, slightly higher than the 86.2 percent average since 1994. Eighty percent of those guilty of violent crime in Indian Country were sentenced to prison in that year. The number of defendants convicted of violent crimes receiving sentences greater than 61 months has also increased from 31 percent on average to 36 percent in FY 2006.

The FBI also plays a significant role in Indian Country. Even with the heightened demands on the FBI from terrorism investigations, Indian Country law enforcement remains important to the FBI. The FBI has increased the number of agents working Indian Country cases by 7 percent since 2001.

Most recently, the FBI has initiated a Joint Indian Country Training Initiative with the BIA to sponsor and promote training activities pertaining to drug trafficking. In FY 2007, the FBI provided more than 30 training conferences for local, tribal, and federal investigators regarding gang assessment, crime scene processing, child abuse investigations, forensic interviewing of children, homicide investigations, interviewing and interrogation, officer safety and survival, crisis negotiation, and Indian gaming. Furthermore, the FBI's Office for Victim Assistance dedicates 31 Victim Specialists to Indian country, representing approximately one third of the entire FBI Victim Specialist workforce.

Also, the FBI recently deployed the Law Enforcement National Data Exchange initiative (N-DEx) system with participation from tribal governments. N-DEx is a criminal justice information sharing system that will provide nationwide connectivity to disparate local, state, tribal, and federal systems for the exchange of information. The N-DEx system will provide law enforcement agencies with a powerful new investigative tool to search, link, analyze and share criminal justice information such as, incident/case reports, incarceration data, and parole/probation data on a national basis to a degree never before possible. The vision of the Law Enforcement N-DEx is to share complete, accurate, timely and useful criminal justice information across jurisdictional boundaries and to provide new investigative tools that enhance the Nation's ability to fight crime and terrorism. The Oneida Nation police department is the first tribal law enforcement agency (LEA) to participate in the N-DEx project. Currently, the Oneida Nation police department contributes data by manually entering incident information in the N-DEx system. The N-DEx Program office is developing relationships with other tribal agencies to submit data to the N-DEx system. Toward that end, the office has met with various tribal LEAs, including Paiute, Mashantucket Pequot, Mohegan, Eastern Band of Cherokee, and Navajo Tribes. The N-DEx Program office is dedicated to creating a relationship with Tribal LEAs to assist in the defense against crime and terrorism.

My colleagues at the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) have also been committed to reducing violence in Indian Country. ATF has assisted Tribal Governments in combating firearms and gang violence through the Project Safe Neighborhoods (PSN) initiative. Through the creation of grassroots partner-

ships in those tribal communities where gun crime has been identified as a problem, ATF vigorously enforces existing firearms laws to prevent the violent criminal misuse of firearms. ATF has entered into Memorandums of Understanding (MOUs) with several tribes in order to increase cooperation with local tribal law enforcement and address the problem of gun violence in tribal areas. ATF also works closely with tribes in providing training and instruction on firearms and gang related issues. This training includes information on domestic violence and its impact on firearms possession.

Furthermore, the Drug Enforcement Administration (DEA) actively investigates significant Drug Trafficking Organizations (DTO) operating in, and within proximity to Indian Country. One of the investigative techniques DEA employs on reservations is wire intercepts. A dramatic example of the success resulting from this method occurred on the Wind River Reservation in Wyoming. The Wind River Reservation covers an area of over 3,500 square miles, only slightly smaller than the state of Connecticut. Wyoming law enforcement did not have the authority to conduct investigations on the reservation and Bureau of Indian Affairs investigators had no jurisdiction beyond the reservation's boundaries. DEA was able to bridge this gap working with both of these law enforcement organizations, using wire intercepts to investigate methamphetamine trafficking onto the reservation. The investigation uncovered an organization with international ties responsible for trafficking over 100 pounds of methamphetamine to Indians at Wind River. The case resulted in eight indictments and extended to multiple judicial districts. This investigation is just an example of the successful cooperation of tribal, state, and federal law enforcement to improve safety and security in Indian Country.

In addition, as part of the effort to strengthen the tribal response to crime in Indian Country, our Office of Justice Programs (OJP) spearheaded Interdepartmental Tribal Consultation, Training and Technical Assistance Sessions held in FY 2007 and FY 2008. OJP's next session will begin on August 18 in Billings, Montana. Another example is the work of OJP's National Institute of Justice, which, in response to Congressional direction, is developing a program of research on violence against American Indian and Alaska Native (AIAN) women.

Finally, the Deputy Attorney General recently established and convened the Advisory Council on Tribal Justice Issues within the Department to periodically review and discuss issues and major actions affecting the Department's work in Indian country. The goal of the Council is to coordinate the actions of the many components at the Department involved in the issues and activities impacting Indian country. The Council will provide a forum for these components to consider avenues and share ideas that would strengthen the Department's dialogue with tribal governments about law enforcement and policy issues affecting Indian country.

Now, let me turn to some areas of interest to the Committee. We join the Committee's efforts to strengthen the important relationship between the United States and those living in Indian Country. Federal law enforcement officers share a great responsibility with state and tribal law enforcement officers in responding to crimes in Indian Country. The Department shares the Committee's desire to increase law enforcement accountability in Indian Country through improved data collection and by leveraging tribal resources. The Department supports the effort to clarify the law with respect to tribal Special Assistant U.S. Attorneys. Additionally, we believe that it is important to ensure that there is a coordinated Department response to law enforcement needs in Indian Country. The Department is also committed to helping increase cooperation between tribal, state and local governments through our cross-deputization program and the re-authorization of various grant programs. Finally, we also share the Committee's desire to strengthen the tribal response to crime in Indian Country through training, additional resources and improved access to information.

While the Department does not comment on proposed legislation, I would, however, like to highlight a few general areas of concern for the Department.

Declination Reports

The Department is committed to improving Indian Country crime data; however, we oppose the concept of requiring the publication and disclosure of declination reports. While significant Indian Country cases are primarily handled in federal courts, caution should be used when comparing Indian Country statistics to other federal statistics. As was emphasized by my colleague, U.S. Attorney Diane Humetewa, previously before this Committee, declination rates do not show the full picture of the Department's actions in a given case. Indeed, "declination" does not necessarily mean that the case will not be prosecuted. "Declination" may mean that the case will be prosecuted in a different forum, that additional work-up is needed or that no crime was committed. By requiring U.S. Attorney's Offices and other in-

vestigative agencies to prepare a detailed written report that contains information about why an investigation was either declined or terminated, the legislation would create potentially discoverable material outlining weaknesses in any subsequent criminal case.

Furthermore, there is a significant difference in the type of cases that are often found in Indian Country. Indian Country cases often include reactive cases, such as assaults, robberies or homicides. In many instances, because of the unique nature of Indian Country, victims and witnesses may not be willing or able to come forth to testify against a defendant. Also, much time may pass before a victim comes forth, making the gathering of evidence more difficult than in a typical case. In contrast to those reactive cases, which often rely on the cooperation of lay witnesses, the typical federal case involves a proactive investigation by law enforcement personnel that may take months or years to complete and which will include wiretaps, document collection, and extensive grand jury proceedings. The typical federal case is therefore far less likely to be declined or fail to meet the very high burdens placed on the prosecution in a criminal case.

Establishment of an Office of Indian Crime in the Criminal Division at the Department of Justice

The Department strongly opposes the concept of establishing an Office of Indian Crime in the Criminal Division at the Department of Justice. While the Department understands and appreciates the concerns related to the prosecution of crimes in Indian Country, creating an office within the Criminal Division could have the practical effect of inhibiting the Department's efforts to combat violent crime. Foremost, creation of an Indian Crime office in the Criminal Division would take valued criminal justice experts away from the field. Currently, the Department's most experienced professionals on Indian issues serve in Indian Country, where their expertise has the greatest impact. Staffing an office centralized in Washington, D.C. would necessarily precipitate transferring many of these experts out of Indian Country, resulting in a significant gap of experience in the field.

Within the Criminal Division, specific criminal matters are handled by attorneys with experience in that subject matter. For example, gaming matters related to Indian Country are handled by our Organized Crime and Racketeering Section (OCRS), matters involving child pornography on Indian Country are handled by the Child Exploitation and Obscenity Section (CEOS), and matters involving violent crime on Indian Country are handled by the Gang Squad (GS). The proposed office would risk removing attorneys from their subject matter expertise and have the unintended effect of hampering the Criminal Division's efforts to support the prosecution of crimes in Indian Country.

The Office of Tribal Justice and Tribal Liaisons

The Office of Tribal Justice (OTJ) has been effectively serving Indian Country for many years. OTJ was established to provide a single point of contact within the Department of Justice for meeting the broad and complex Department responsibilities related to Indian tribes. The Office facilitates coordination between Departmental components working on Indian issues, and provides a permanent channel of communication for Indian tribal governments with the Department of Justice. The Department believes that the Attorney General is in the best position to evaluate and adjust the staffing and roles of those offices internally, as needed to maintain the appropriate allocation of resources, so the general proposal to elevate OTJ within the Department is unnecessary.

Along the same lines, the Department strongly opposes the codification of the tribal liaison's responsibilities. As noted above, the Department fully recognizes the importance of tribal liaisons and currently has 44 tribal liaisons in districts with some Indian Country within their jurisdiction. Tribal liaisons have been effectively serving U.S. Attorney's Offices since that program began in 1995. Each tribal liaison is an expert in Indian Country crimes, but each U.S. Attorney's Office handles varying types of crimes and in differing numbers. For example, in districts where white collar crimes such as embezzlement and fraud are more prevalent the tribal liaison may focus on the Indian gaming industry. Other districts have more cases and matters dealing with violent crime. This diversity would make the suggested codification of the duties of tribal liaisons difficult and it would greatly reduce the discretion of each U.S. Attorney's Office to ably serve the Indian community in their district. The Department believes that each individual district is in the best position to evaluate the nature and volume of crimes within the district and to appropriately allocate resources. It is essential that U.S. Attorneys maintain this discretion in tailoring the role and scope of the tribal liaison program in their districts.

Expanding Tribal Court Sentencing Authority and BIA Arrest Authority

The Department strongly opposes the concept of permitting tribal courts to direct offenders convicted by tribal courts to serve their sentences in federal prisons. The Bureau of Prisons (BOP) is responsible for the incarceration of inmates who have been sentenced to imprisonment for federal crimes. Based on continuing federal law enforcement efforts and limited resources for construction of new institutions, federal prisons continue to be very crowded. System-wide, BOP is operating at 37 percent above its capacity, and it does not expect crowding to decrease substantially in the next few years. Crowding is especially significant at high-security institutions (operating at 50 percent above capacity) and medium-security institutions (operating at 47 percent above capacity), where the majority of violent offenders are confined.

For purposes of maintaining family ties and to effect an optimal reentry back into the community after release, the Department believes that the incarceration of tribal court offenders is best handled by local jurisdictions and BIA. The BOP attempts to designate an inmate to the appropriate security level institution that is within 500 miles of his or her release residence. Nevertheless, due to the location of BOP institutions and population pressures, this is not always possible; and many inmates are much further than 500 miles from their homes and families. BOP policy requires that inmates remain at an institution for at least 18 months with clear conduct before consideration of a transfer closer to their release residence. In all likelihood, if transferred to BOP facilities, tribal court offenders with short sentences would remain at their designated BOP institution for their entire sentence. Visits by family and friends to these tribal offenders would be severely restricted due to the great distance between the BOP institution and their home, and these tribal offenders would not be afforded the opportunity to participate in tribal reentry programs currently operating near the reservation out of the tribal jails.

The proposals to expand tribal court sentencing authority to up to three years of imprisonment and to permit BIA law enforcement officers to make arrests for any misdemeanor crimes are significant changes in the current legal and law enforcement framework. While recognizing the purpose behind these proposals, as a former defense attorney, I am concerned about the impact of these provisions on defendants' constitutional rights and legal protections. It would be quite unusual, for example, for law enforcement officers to have blanket arrest authority for misdemeanors not committed in the officer's presence. The Department has had insufficient time to evaluate these proposals, but we will thoroughly and carefully examine them.

Conclusion

Mr. Chairman, Madame Vice Chair, this concludes my statement. While the Department does not comment on proposed legislation, I will be happy to attempt to answer any questions you may have.

The CHAIRMAN. Thank you very much, Ms. Shappert. We appreciate your being here.

Next we will hear from Kelly Stoner, and Ms. Stoner, thank you very much for being with us as well.

STATEMENT OF KELLY GAINES STONER, DIRECTOR, NATIVE AMERICAN LEGAL RESOURCE CENTER AND CLINICAL PROGRAMS, OKLAHOMA CITY UNIVERSITY SCHOOL OF LAW

Ms. STONER. Good morning, Mr. Chairman, Madam Vice Chair and members of the Committee. I am Kelly Stoner, and I would like to thank the Committee for inviting me to participate in today's hearing.

It is an honor to work with you all on this important issue. The Committee should be congratulated on their work regarding the proposed legislation and for taking the time and making the effort to seek meaningful input from tribal nations who, after all, have the ultimate interest in this issue.

As the Director of the Native American Legal Resource Center and Clinical Programs at Oklahoma City University School of Law, I have gained experience working with tribes in Oklahoma and

throughout the region on criminal and civil jurisdictional issues in Indian Country. Prior to joining the faculty at Oklahoma City University, I served as the tribal prosecutor for the Spirit Lake Nation in Fort Totten, North Dakota, for over eight years. In all, I have been practicing law in Indian Country for nearly 20 years. I teach classes and lecture nationally on these topics.

Successful implementation of this proposal will depend upon three key issues which directly are tied to a showing of respect for the sovereign rights of tribal governments. First, a government to government approach must be utilized when dealing with Indian nations. A government to government approach ensures the proper deference for both sovereigns and maintains a focus on the thread of commonality that is important to both sovereignties, here, victim safety and criminal accountability.

Second, continued consultation with tribal leaders, tribal officials and tribal communities is critical. Engaging in meaningful tribal consultation and obtaining tribal input during the process will facilitate the implementation of these proposed measures.

Third, and not least by any means is funding. Funding should be included in each section of the proposal. As this Committee is well aware, each tribe is unique with respect to custom and tradition, as well as tribal resources that are available.

The topic I would like to focus on today for my oral presentation is Federal accountability. As I stated earlier, I was a prosecutor at Spirit Lake for several years. I referred personally some severe child abuse and child sexual abuse to the United States Attorney. Many times I didn't know what happened to those referrals. Sometimes, a year or so later, I would get a denial letter. In that year's time, evidence grew cold, witnesses moved out of the jurisdiction and there was a high rate of turnover in tribal law enforcement. I prosecuted some of these cases in tribal court, but IGRA severely limited the sentencing power of the tribal court.

Federal investigators and prosecutors need to be held accountable through an annual reporting process as set forth in this proposal. If the Department of Justice feels that reporting is too cumbersome or violates certain confidentiality statutes, perhaps a government to government consultation with tribes in the way of a scorecard or, if you will, a report card, that allows tribes to give meaningful input with respect to the tribes' opinion as to the effectiveness of the United States Attorneys' efforts in their areas. In my opinion, in Indian Country, there is an extremely high Federal declination rate, with no explanation provided to tribes. I never received a file with any information when I received a declination letter. And there is no accountability.

In the case of Federal declinations involving a Native American victim and a non-Indian accused, no other population in the United States is told that no criminal justice consequences will be imposed on the non-Indian rapist, child molesters and murderers. These perpetrators continue to walk free in tribal communities. And these non-Indian perpetrators are free to re-offend and actually do re-offend, because they know that nothing will happen to them.

Tribes have the right to know why or how these declination decisions were made. I agree with the Chairman from Standing Rock,

the tribes have the right and should receive the entire file when a declination is made.

I just recently facilitated two national roundtables funded by the Office of Violence Against Women. The topic that was of focus was domestic violence in Indian Country. These roundtables came about because Native people have to find some way to hold non-Indian abusers accountable for their actions in Indian Country.

I would like to thank you for inviting me to testify, and I am happy to answer any questions the Committee might have.

[The prepared statement of Ms. Stoner follows:]

PREPARED STATEMENT OF KELLY GAINES STONER, DIRECTOR, NATIVE AMERICAN LEGAL RESOURCE CENTER AND CLINICAL PROGRAMS, OKLAHOMA CITY UNIVERSITY SCHOOL OF LAW

Introduction

Good morning, Mr. Chairman, Madam Vice Chair, and members of the Committee. I am Kelly Stoner, and I'd like to first thank the Committee for inviting me to provide testimony for today's hearing. It is an honor to work with all of you on this important issue. The Committee should be congratulated on its work for the proposed legislation and for taking the time and making the effort to seek meaningful input from tribal nations who have the ultimate interest in securing their nations. Conducting listening sessions with tribal leaders, tribal officials, and professionals who work in Indian Country takes a necessary first step towards meaningful change and adequate deterrence of crime in Indian Country, and I thank the Committee for its thoughtful work.

As the Director of the Native American Legal Resource Center and Clinical Programs at Oklahoma City University School of Law, I've gained experience working with tribes in Oklahoma and throughout the region on criminal and civil jurisdictional issues in Indian Country. Prior to joining the faculty at Oklahoma City University, I served as the tribal prosecutor for the Spirit Lake Dakotah Nation. I have been practicing law in Indian Country for nearly 20 years, and have unique academic, clinical and tribal government experience with crimes and Domestic Violence issues in Indian Country. Additionally, I am a national lecturer for both the Office on Violence Against Women of the United States Department of Justice and the American Bar Association's Commission on Domestic Violence, serving as a speaker for training sessions nationwide, and as a member of several national roundtables focused on addressing crime and Domestic Violence in Indian Country.

The Native American Legal Resource Center (NALRC) at the Oklahoma City University School of Law serves as the academic law and policy center for students interested in Indian law and policy. Additionally, the NALRC provides a variety of services to tribal governments across the nation, including tribal court planning and development assistance, self-governance assistance in developing tribal codes and constitutions, and domestic violence services for tribal courts, tribal justice systems and tribal judges, as well as individual Native American victims of domestic violence, including representation and victim advocacy services. Our projects are funded by public and private grants.

The Mission of the Native American Legal Resource Center is:

The Native American Legal Resource Center provides capacity building services to tribal communities and creates opportunities for students, faculty, staff and the broader University Community to utilize knowledge and resources to serve the needs of Indian Country in a culturally appropriate and efficient manner for a maximum positive impact.

Key Concepts for Success

Historically, tribes were sovereign nations exercising plenary powers over any individual who came within tribal boundaries. Today, tribes maintain their status as sovereign nations, although some formidable limitations have been placed upon the exercise of tribal sovereign powers by federal law. While comprehensive tribal sovereign powers to assert criminal and civil jurisdiction over all individuals located in Indian Country should once again be recognized by the states and the Federal Government, the current status of the law and the government-to-government relationships between the Federal Government, state governments and tribal governments frustrates meeting that ultimate goal.

The proposed legislation goes far to identify and address many of the overlapping issues in the relevant federal case law and federal statutes. By infusing the implementation process with the following principles, the Committee can increase the likelihood of the success of the operation of the proposed legislation.

First, a government-to-government approach should be included in the preamble of the proposed statute. As sovereign nations, tribal governments have the ultimate interest in executing sovereign responsibilities and ensuring the safety of anyone who comes within tribal boundaries. A government-to-government approach ensures the proper deference for both sovereigns and maintains focus on the thread of commonality each must address, which is the safety of victims and criminal accountability issues.

Second, continued consultation with tribal leaders, tribal officials and tribal communities is critical. Engaging in meaningful tribal consultation throughout the process will ensure the success of the operation of the proposed legislation. Gathering tribal input strengthens new programs, reduces unneeded bureaucratic barriers in the system, and facilitates transition of new ideas in the implementation of new initiatives.

Third, funding should be included in each section of the proposal. Because of critical under funding of tribal programs, additional federal mandates without funding to carry them out present insurmountable burdens on tribes that may suffer from chronically limited funding.

Federal Accountability and Coordination Issues

Holding federal investigators and federal prosecutors accountable in tribally referred cases is a key concern of tribes across the nation, as the lack of accountability of the current system frustrates maintaining law and order. For instance, when I was a tribal prosecutor for the Spirit Lake Dakota Nation in Fort Totten, North Dakota, I would make referrals to the federal prosecutor regarding child abuse and sexual assault cases. Many times, I would never know what happened to those referrals. I might prosecute the case in tribal court but the sentencing provisions set out in the Indian Civil Rights Act, and the lack of adequate tribal detention facilities made the convictions toothless. In some cases, I would receive a declination letter from the federal prosecutor a year or so after the referral, but in the span of that one year, evidence grew cold, key witnesses moved outside the tribal jurisdiction and could not be located. Adding to those challenges was the exasperatingly high rate of turn-over in tribal law enforcement. In my discussions with others at various trainings and conferences throughout the United States, I've found that my experience mirrors that of tribal prosecutors and law enforcement across the country. This is an area that needs Congress' attention for a solution.

Federal investigators and federal prosecutors need to be held accountable through an annual reporting process. Tribal leaders and the appropriate federal agencies should be given an update on the number of cases referred for investigation and prosecution, the number of declinations with details regarding the decision to decline to prosecute the case. Federal prosecutors should make the decision whether to prosecute quickly enough so that tribal prosecutors can continue with tribal court prosecution.

The proposal suggests that qualified tribal prosecutors be appointed to act as federal prosecutors for the purpose of prosecuting cases in Indian Country. The qualifications for a tribal prosecutor to engage in federal prosecution should equal but not exceed that of other federal prosecutors. This arrangement is currently in practice in some states with much success. For purposes of implementation of this legislation, tribal governments should be consulted, government-to-government, to have meaningful input on issues of hiring, salaries, office sharing and other common issues of both sovereigns sharing one position.

The proposed legislation requires each jurisdiction to appoint not less than one Assistant United States Attorney to serve as a tribal liaison between the federal prosecutor's office and the tribal governments in each district. Should there be resistance by tribes in working with the new appointee, thoughtful implementation and ensuring the liaison is educated with respect to the cultures, norms and practices of the tribal communities in the district will address those concerns. Tribal communities and tribal leaders should be consulted and kept informed as to the issues being addressed by the tribal liaison.

Tribal Access to National Criminal Information Databases

Tribes must be able to access and input data into the National Crime Information Center (NCIC) and other federal criminal information databases. The denial of access to these databases denies tribes access to critical criminal history on perpetrators. Precluding tribes from access to enter data into these databases sends a mes-

sage that tribes are somehow not responsible enough or capable of being properly trained to enter data into these systems. That message is incredulous and exacerbates the intention of the legislation to provide government-to-government forums for the comprehensive efforts of reducing crime in Indian Country. Further, all appropriate grants to provide funding to tribal governments for the building of infrastructure for implementation of these information systems should be authorized by the legislation.

Tribal Court Sentencing Authority

Tribes have struggled to keep tribal members and citizens safe in the wake of alarming crime statistics. This proposal addresses the issue of one federal limitation on tribal prosecution, the Indian Civil Rights Act.¹

The Indian Civil Rights Act limits the criminal sentencing power of a tribe to one-year imprisonment or a fine of up to \$5,000 or both. The proposed legislation increases those limitations to up to 3 years of imprisonment or a fine of up to \$15,000 or both. This increase in prosecutorial and sentencing authority is a positive step towards arresting crime in Indian Country, but the new requirement for tribal governments to provide criminal defense counsel places additional mandates on tribal systems that may not have the resources to comply. The legislation should address funding concerns in all new mandates for tribal governments.

Another approach might be to engage government-to-government with tribes, giving each individual tribe the option of either operating under the current limitations of ICRA or under the proposed and expanded levels of ICRA. If a tribe elected to utilize the expanded sentencing parameters of the ICRA, funding should be made available for those tribes to use in employing public defenders, or tribes should be given access to resources funded by the federal agency for meeting the requirement of providing defense counsel.

Indian Country Crime Data—Tracking of Crimes Committed in Indian Country—Tribal Data Collection Systems

Without accurate data regarding criminal activity in Indian Country, it is hard to know the depth and scope of the problem in Indian Country. Even with the sobering statistics gathered by the Bureau of Justice and the Amnesty International Report,² the severity of the issue may be grossly underestimated. Without accurate data, all involved sovereigns may be unable to directly address the particular issues faced within each tribe's borders. Furthermore, federal agencies must have access to accurate data in order to provide tribes with necessary services and personnel to meet the challenges. The successful implementation of comprehensive tribal data gathering will depend in large part on a government-to-government approach to the issue, continued consultation with tribal leaders, tribal officials and tribal communities and an adequate source of funding to carry out this task.

Domestic Violence and Sexual Assault Prosecution and Prevention

National studies have consistently demonstrated that Native Americans are victimized at a rate 2.5 times higher than any other group.³ A recent report established that at least 86 percent of the violators in sexual assault cases involving Native American women were non-Indian.⁴ Pursuant to United States Supreme Court case law, tribes have no criminal jurisdiction over non-Indians.⁵

The Committee is proposing to establish a Federal felony for violations of tribal protection orders that meet due process standards. Given historical events among tribes, states and the Federal Government, and the declination rates of many federal offenses committed in Indian Country, the key to the successful outcome of this section of the proposal is tribal communication and federal accountability.

The Violence Against Women Act sets forth that full faith and credit should be given to all protection orders that meet certain requirements. Those requirements are:

1. The order was issued by a court that had subject matter jurisdiction over the matter;
2. The issuing court had personal jurisdiction over the parties pursuant to the issuing court's jurisdiction; and

¹ 25 U.S.C. Section 1301.

² www.amnestyusa.org/women/maze/report.pdf last visited January 11, 2008.

³ www.ojp.osdoj.gov/bjs/intimate/ipv.htm last visited on January 11, 2008.

⁴ www.amnestyusa.org/women/maze/report.pdf last visited January 11, 2008.

⁵ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

3. The issuing court gave reasonable notice and an opportunity to be heard to the person against whom the order is sought.⁶

According to the Act, all orders, including tribal court orders that meet these criteria, are entitled to full faith and credit.

If the current proposal's intent is to make violation of a protective order a federal felony, but only in cases where the accused was provided defense counsel, the legislation should set forth clear language directing states that this measure in no way affects Section 106 of the Violence Against Women Act. Should tribes be concerned that the states may hesitate or refuse to give full faith and credit to tribal protection orders where defense counsel was not provided, then clarifying language will allay those concerns. The language should also set forth that tribes maintain tribal sovereign powers to prosecute Indian violators of tribal protection orders that occur in Indian Country. Additionally, funding should be tied to the proposed legislation to increase the effectiveness of this section.

Domestic Violence and Sexual Violent Offense Training

Oklahoma has a jurisdictional patchwork of tribal and non-tribal lands. It is not uncommon for a victim to call 911 for assistance only to be told that she lives on tribal land and must call the BIA. When the victim calls the BIA law enforcement, the victim is told that the act was committed on state land and she must call state law enforcement for assistance. Many Oklahoma tribes are moving towards cross-deputization agreements for tribal and local law enforcement to address these issues, but the complexities of the jurisdictional queries remain.

Alaska Natives are subject to confusing jurisdictional issues as well, and because of the remote nature of many Alaska Native villages, victims must wait many hours or even days before law enforcement arrives to conduct investigations. The result is a void that leaves many victims without protection.

Despite the fact that one out every three American Indian/Alaska Native women will be raped in her lifetime, many law enforcement officers working in Indian Country lack knowledge on properly gathering and preserving evidence in sexual assault cases, including both investigative techniques and directing the victim to medical or other facilities for proper sexual assault examination.

Law enforcement officers should be trained to work closely with tribal and/or local victim services agencies. Law enforcement officers should receive training to address complex jurisdictional issues, cultural norms and practices. Additionally, law enforcement officers must be trained to investigate offenses including sexual assault. Comprehensive training will increase conviction rates for domestic violence and sexual assault crime and may lead to prevention of those crimes. Funding for training law enforcement officers in Indian Country should be provided in the proposed statute.

Trainings need to be provided on a regional level to accommodate tribes with limited financial and human resources. Some tribes may need training and technical assistance tailored to their specific needs, so a technical assistance provider should be made readily available for tribes to contact for assistance. Trainings should be designed and delivered by individuals or agencies that have extensive experience working in Indian Country.

Thank you again for the opportunity to testify on this important issue. I am happy to answer any questions the Committee may have.

The CHAIRMAN. Ms. Stoner, thank you very much. I should have, as I did at the start of this hearing, indicated that you are the Director of the Native American Legal Resource Center and Clinical Programs at the Oklahoma City University School of Law. Thank you very much for being with us.

Mr. Walt Lamar is President and CEO of Lamar Associates in Washington, D.C., Mr. Lamar, you may proceed.

STATEMENT OF WALTER E. LAMAR, PRESIDENT/CEO, LAMAR ASSOCIATES

Mr. LAMAR. Mr. Chairman, Madam Vice Chair, Senator Thune, good morning.

⁶Violence Against Women Act, 18 U.S.C.A. § §2261–2266.

I very much appreciate the opportunity to offer my remarks regarding the draft Indian Law and Order Bill. By way of introduction, I am Walter Lamar, and enrolled member of the Blackfeet Nation of Montana and a descendant of the Wichita Tribe of Oklahoma. I am a former FBI special agent and the past deputy director of the Bureau of Indian Affairs Office of Law Enforcement Services.

At the risk of concentrating on the negative, I would like to set the context that puts us in this hearing today. It seems every two or three years there is a scathing report decrying the state of Indian Country public safety. Over and over, the symptoms of a broken system are reiterated; yet we remain where we were yesterday.

In a 1975 BIA law enforcement publication detailing history of Indian Country law enforcement can be found the following words: "Civilization has loosened, in some places broken the bonds which regulate and hold together Indian society and has failed to give people law and officers of justice in their place. Women are beaten and outraged, men are murdered in cold blood. The Indians are intimidated and preyed upon by the evil disposed; children are molested on their way to school, but there is no redress. It is a disgrace to our land. It should make every man who sits in the national halls of legislation blush. The effect of civil agents, teachers and missionaries are like the struggle of drowning men weighted with lead, as long as by the absence of law, Indian society is left without base." Bishop William Hobart Hare, quoted in an Indian Commission report dated 1877.

In the late 1930s, a BIA official reported to Congress that many characteristics of the Indian criminal justice system remained as they were at the turn of the century. Jails were so inadequate that judges rarely committed anyone.

Budget cuts for Indian Country law enforcement were so severe in the 1940s that by 1950, Senator J. Chandler Gurney, South Dakota, stated "They cannot have a dance at night because there is nobody to control the peace of the community." Indian Commissioner John R. Nicholls told the Senator that the situation in his State existed throughout Indian Country. "This is the lowest point in the history of law and order," Nicholls said.

Amazing how this all sounds so very familiar. Was it indeed the lowest point?

The Senate Committee on Indian Affairs is to be applauded for taking this affirmative step forward to ensure protection of Indian Country's citizens, visitors and residents. While this draft bill is a positive step, it is but a first step in addressing a very complex issue.

Section 2 of the draft bill entitled Findings; Purposes clearly encapsulates the devastating issues facing Indian Country that have been documented in report after report. A former tribal prosecutor and judge commented to me that this draft bill potentially represents a dream come true.

When dealing with a poorly-performing employee, a good manager will prepare a performance improvement report. I very much liken this draft bill to a performance improvement report for the Department of Justice and the Bureau of Indian Affairs, the Department of Interior. Public safety remains in a state of crisis. Most

of the tools outlined in the provisions of the draft bill are already in the hands of the Government agencies, so we must then ask, why are they not being used to their fullest potential? Is it for lack of will, understanding of the issues or simply a lack of concern? I know there exist examples for all three, but typically it boils down to the issue of funding and resources.

As an example, when I was the deputy director at BIA law enforcement over four years ago, we could count our headquarters staff on two hands. Little has changed since then. How can they possibly be expected to perform the monumental task at hand with less staff than it takes to run a fast food restaurant? Without attendant funding, the provisions of the draft bill will go simply unaddressed.

The draft bill serves to establish the necessary lines of communication and defines areas of required accountability to bring true public safety to Indian Country. I will offer a number of comments which will be submitted in my written testimony. However, I will state with regard to the BIA Office of Justice Services, considering the tremendous importance of law enforcement, the draft bill should address the need to elevate the Office of Justice Services to the Bureau of Justice Services and properly re-delegate the current Deputy Director position to a Director position.

Further, the Indian Law and Order Commission is potentially the strongest provision of the draft bill, and offers an opportunity to bring together top Indian Country experts to address the complex matters facing our tribal justice programs. However, the provision should encourage the consideration of Indian preference in commission selection.

Section 2, Findings; Purposes, reiterate the United States holds distinct legal, treaty and trust obligations to provide for the safety of Indian Country. The trust responsibility obligation is negated by Federal performance-based funding requirements of GPRA and PART. How can trust responsibility be effectively carried out when tribes are not provided sufficient funding to perform effectively and then are penalized and not provided additional funding? Only through needs-based funding initiatives can tribal law enforcement ever reach parity with their State and local counterparts.

Indian Country has the capacity to provide effective law enforcement which is demonstrated by the tribes that have financial resources to fund their public safety programs. So it is not a matter of if we can, it is a matter of the Federal Government meeting its obligation to provide the required funding and resources. It is my hope, my sincere hope that this intended legislation will give us that opportunity.

I wonder, I wonder how many lives were needlessly lost or harmed in Indian Country in the time that it takes to hold this hearing? Thank you very much.

[The prepared statement of Mr. Lamar follows:]

PREPARED STATEMENT OF WALTER E. LAMAR, PRESIDENT/CEO, LAMAR ASSOCIATES

Honorable Chairman and members of the Committee, good morning. I very much appreciate this opportunity to offer my remarks regarding the Draft Indian Law and Order bill. By way of introduction, I am Walter Lamar, an enrolled member of the Blackfeet Nation of Montana and a descendant of the Wichita Tribe of Oklahoma,

am a former FBI Special Agent and the past Deputy Director of the Bureau of Indian Affairs (BIA) law enforcement program.

It seems every two or three years there is a scathing report decrying the state of Indian country public safety. Over and over the symptoms of a broken system are reiterated, yet we remain where we were yesterday.

In a 1975 BIA law enforcement publication detailing the history of Indian country law enforcement are the following words:

“Civilization has loosened, in some places broken, the bonds which regulate and hold together Indian society . . . and has failed to give people law and officers of justice in their place. . . . Women are beaten and outraged; men are murdered in cold blood; the Indians . . . are intimidated and preyed upon by the evil disposed; children are molested on their way to school . . . ; but there is no redress It is a disgrace to our land. It should make every man who sits in the national halls of legislation blush the effect of civil agents, teachers and missionaries are like the struggle of drowning men weighted with lead, as long as by the absence of law Indian society is left without base.” (Bishop William Hobart Hare quoted in an Indian Commission Report dated, 1877)

In the late 1930's a BIA official reported to congress that many characteristics of the Indian criminal justice system remained as they were at the turn of the century. Jails were so inadequate that judges rarely committed anyone.

Budget cuts for Indian country law enforcement were so severe in the late 1940s that by 1950, Senator J. Chandler Gurney, South Dakota, stated, “They cannot have a dance at night because there is nobody to control the peace of the community Indian Commissioner John R. Nichols told the Senator that the situation in his state existed throughout Indian country. “This is the lowest point in the history of law and order,” Nichols said.

Amazing how this sounds so very familiar. Was it, indeed, the lowest point?

The Senate Committee on Indian Affairs is to be applauded for taking this affirmative step forward to ensure the protection of Indian country citizens, visitors and residents. While this draft bill is a commendable and positive step, it is but a first step in addressing a very complex issue. Section 2 of the draft bill, entitled, “Findings; Purposes” clearly encapsulates the devastating issues facing Indian country that have been documented in report after report. A former tribal prosecutor and judge commented to me that this draft bill potentially represents “a dream come true.”

As this honorable committee strives to protect Indian Country lives, we must examine the reasons Indian county public safety remains in a state of crisis. Most of the tools outlined in the provisions of the draft bill are already in the hands of the government agencies. So we must then ask why they are not being used to their fullest potential. Is it for lack of will, understanding of the issues or simply a lack of concern? I know there exist examples for all three, but typically it boils down to the issue of funding and resources.

As an example, when I was Deputy Director at BIA law enforcement over four years ago, we could count our headquarters staff on two hands. Little has changed since then. How can they possibly be expected to perform the monumental task at hand with less staff than it takes to run a fast food restaurant? Without attendant funding the provisions of the draft bill will go unanswered.

The draft bill serves to establish the necessary lines of communication and defines areas of required accountability to bring true public safety to Indian country. I will offer a number of comments which will be submitted in my written testimony; however, I will state with regard to the BIA Office of Justice Services; considering the tremendous importance of law enforcement the draft bill should address the need to elevate the Office of Justice Services to the Bureau of Justice Services and properly re-delegate the current Deputy Director position to Director. Further, the Indian Law and Order Commission, is potentially the strongest provision of the draft bill and offers an opportunity to bring together top Indian Country experts to address the complex matters facing our tribal justice programs; however, the provision should encourage the consideration of Indian preference in commission selection.

Section 2., Findings: Purposes., reiterate that the United States holds distinct legal, treaty and trust obligations to provide for the public safety of Indian country. The trust responsibility obligation is negated by the Federal performance based funding requirements of GPRA and PART. How can trust responsibility be effectively carried out when tribes are not provided sufficient funding to perform effectively and are then penalized for the lack of performance? Only through needs based funding initiatives can tribal law enforcement ever reach parity with their state and local counterparts.

Indian country has the capacity to provide effective law enforcement which is demonstrated by tribes that have the financial resources to fund their public safety programs. So it is not a matter if we can—it is a matter of the Federal government meeting its obligation to provide the required funding and resources. It is my hope that this intended legislation will give us that opportunity.

I wonder how many Indian country lives were needlessly lost or harmed just in the time it takes to hold this hearing.

Under Section 2, Findings; Purposes, mention should be made regarding the need for prisoner transport services. With the number of jail closures police officers are taken out of service for extended periods to transport prisoners hundreds of miles to and from jail facilities.

Under Title I, Section 103, it should be noted that the responsibility for background investigations for Special Prosecutors will rest with the DOJ so as not to place undue burden on tribes.

The requirement for the tribal liaisons to provide training sessions and seminars for Special Law Enforcement Commissions is a positive step toward minimizing the backlog of officers requiring the requisite training for SLEC certification.

The elevation of the Office of Tribal Justice to a division and establishment of the Office of Indian Country Crime, overseen by a Deputy Assistant Attorney General at the DOJ will serve to place the rightful priority on Indian country. The DOJ must also move to create specific Indian country prosecutive guidelines that ensure aggressive prosecution, particularly when the crimes relate to drug trafficking.

Title II, Section 202 (d), suggests that the financial resources of each entity to be taken into consideration of the grant process. The idea to incentivize tribal, state and local cooperation is diminished by considering the financial resources of each. Further, it would be appropriate to include verbiage under Section 202 that encourages Federal law enforcement agencies to participate on the DOJ funded teams.

Title III, Section 301(a) needs to clarify the type of training. If the intent is to provide flexibility for Indian country police officers to chose alternatives to the Indian Police Academy for basic law enforcement training then it must further clarify that Tribal officers may opt to attend a state, local or tribal academy; however, BIA Police Officers must continue to be trained as Federal officers at the Indian Police Academy. It should be stressed that all basic training for Indian Country police officers must meet or exceed the basic training program of the Indian Police Academy. The Section refers to a National Peace Officer Standard of Training, there is no such standard, as each state has responsibility for developing their individual standards of law enforcement training.

Title III, Section 303., Access to National Criminal Information Databases, must take into consideration that to have a terminal for access to National Criminal Information Databases, tribal law enforcement programs must meet a series of stringent measures intended to safe guard such information. Physical security, trained operators, operator security clearances, and dedicated secure connections all require funding, training and technical assistance. Such funding and training should be managed in the form of the DOJ grant process.

Title III, Section 304., Tribal Court Sentencing Authority contains the provision to empower tribes to impose imprisonment beyond the current one year limitation is an important tool which will potentially lessen the United States Attorney case load while offering sentencing flexibility to tribal court judges. However, there must be a provision to ensure we are not simply warehousing our people. Detention facilities used to house Indian Country inmates must be able to provide culturally sensitive services that include at a minimum, educational programming, workforce integration training, substance abuse treatment and mental health care. The provision to utilize the Bureau of Prisons (BOP) on its face seems to alleviate long-term prisoner housing issues; however, sending Indian Country prisoners to BOP facilities raises concern. Prisoners will likely be separated from their Native communities by great distance and could be subjected to a more sophisticated and dangerous inmate population.

Title IV, Section 402., Indian Alcohol and Substance Abuse. Recognizing there are unacceptable numbers of Native Americans injured or killed each year from alcohol related traffic accidents, this draft bill must call for the National Highway Safety Administration and BIA Indian Highway Safety's involvement in providing funding for reporting, training, equipment, enforcement and specific prevention initiatives.

Title IV, Section 404., Tribal Jails Program. Recent history has proven that new detention facilities can be constructed; however the issue then reverts to an inability to open the facilities for lack of funding for recruitment, hiring, and training of new staff. In fact the former Director of BIA Law Enforcement, Theodore Quasula informed me that a newly constructed juvenile detention facility on the Hualapai reservation sets empty nearly a year after construction. Juvenile crime on the reserva-

tion is rampant to the point that the very juveniles who should be incarcerated in the facility are vandalizing it. Provisions must be in place to ensure appropriate funding is available to staff planned detention construction.

Respectfully submitted,

Walter E. Lamar

The CHAIRMAN. Mr. Lamar, thank you very much.

Mr. Ragsdale, I mean no disrespect by having you testify last, but I wanted you to have the opportunity to hear the other testimony. You represent the Department of the Interior and the Bureau of Indian Affairs here today. You are the Director of the Office of Justice Services at the U.S. Department of the Interior. I felt it would be helpful for you to hear the comments of a wide variety of other witnesses.

We appreciate your being here, and we will recognize you for your statement.

STATEMENT OF W. PATRICK RAGSDALE, DIRECTOR, OFFICE OF JUSTICE SERVICES, U.S. DEPARTMENT OF THE INTERIOR

Mr. RAGSDALE. Thank you, Mr. Chairman, thank you, Madam Vice Chair, and thank you, Senator Thune, for being here today.

I will try to be mercifully brief, Mr. Chairman, to allow time for as many questions as the Committee has time for.

I am pleased to represent the Department of Interior here this morning. I would like to first point out that Secretary Kempthorne has truly been a champion for law enforcement within Indian Country. When he first came on board, he had a five minute meeting scheduled for me for briefing. He took an hour and a half. At the conclusion of that meeting, he said, "This should not stand. We have got to do something." Out of that commitment, he came forward with the Safe Indian Communities Initiative, which we are trying to implement today. Operation Dakota Peacekeeper is an outgrowth of the Secretary's initiative.

I would also like to say that in terms of our relationships, that is, the Department of Interior and tribal law enforcement, in my view, our relationships are stronger with the United States Attorneys, the FBI, the other Federal agencies that we work with in collaboration to do casework and provide law and order on reservations.

You have my written testimony on the scope of law enforcement authority and our responsibilities in the Department of Interior, so I will leave that for your review in the record.

In terms of our meetings and discussions with tribal leaders, Secretary Kempthorne in 2006, in collaboration with NCAI, kicked off the Safe Indian Communities Initiative, which we are now in the process of implementing. We do regular discussions, consultations, with a number of my friends here at this table on a regular basis. We are usually talking about resources, facilities, points and issues of the day on case work and so forth.

My perspective on all of that, everybody is dedicated to trying to get the job done and maximize the limited resources that we have to provide for basic law enforcement within Indian Country. My testimony reflects our comments on the crime data collection. I will just say briefly that our collection of crime data within Interior has been severely hindered by the loss of internet resources and acces-

sibility to all of the array of Federal systems that are available to modern police departments throughout the United States of America.

That hindrance, our inhibition to use internet, has now been lifted, so we look forward to rapidly coming forward to this century in terms of information technology.

Turning to my written testimony concerning special law enforcement commissions, we currently have the authority under the 1990 Indian Law Enforcement Reform Act to maximize cooperative law enforcement throughout the Country. The Bureau of Indian Affairs has strongly encouraged tribes to do that. The inhibitions to that authority to deputize State and local officers is one that there must be consent by the tribal authorities involved, and also that sworn tribal and State officers under the agreement have to have the requisite training requirements in order to be deputized with Federal law enforcement commissions.

One thing I wanted to say about our training. There has been some concern that Indian law enforcement officers are not properly trained in terms of domestic violence and how to handle those types of issues and crimes and crimes against children. Previously, I invited Committee staff, and I would also invite the Committee to do a serious review of our entire law enforcement curriculum, particularly the training that we provide Indian law enforcement officers. I believe it is second to none. Over 105 hours are provided to our basic police officers, both tribal and BIA, in domestic violence, crimes against children, both in written exercise, lectures and practical applications at our academy.

Finally, turning to the issues of tribal sentencing authority, the concept in the draft bill, I will just tell you something I am sure that you are all keenly aware of, that there is limited detention space on or near most Indian communities. There are also limited funds to contract for detention bed space in a non-tribal or non-BIA facility. Extending sentences for longer than one year, provided there are actually facilities available, will result in a big increase in costs to both BIA and the tribal governments.

Secondly, not all tribal courts have an effective appellate process. A defined, effective, consistent and transparent appellate process is important to ensure civil rights of individuals are protected.

Third, consistency in standards and staffing among the facilities would need to be assured as well as constitutional concerns of due process and legal defense. A significant monetary commitment on both the Federal Government and the tribal governments would also be required to close these gaps.

In closing, I want to pay tribute to the law enforcement, corrections and court personnel, as well as other public safety personnel, who work daily at all levels of the tribal, State and Federal sectors of the Government. They do their jobs sometimes at great personal sacrifice to the benefit of our Indian communities.

I noticed this morning the notice about the Eastern Band Cherokee member that was killed serving with the North Carolina Highway Patrol. That is the daily type of risk that our police officers throughout this Country face. As we work to develop better public policy and implement better methods to address public safety issues, I hope we will keep in mind their daily contributions to

make our communities safe and secure. They do their best to ensure a measure of peace and tranquility, reacting to emergency circumstances under too often adverse conditions with very limited resources. They also do their duty selflessly, so that our citizens go about their daily lives without fear of lawlessness. They are true heroes in this society.

Mr. Chairman, members of the Committee, I thank you for providing the opportunity to testify. This concludes my statement.

[The prepared statement of Mr. Ragsdale follows:]

PREPARED STATEMENT OF W. PATRICK RAGSDALE, DIRECTOR, OFFICE OF JUSTICE SERVICES, U.S. DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Committee, I am pleased to provide testimony for the Department of the Interior, regarding concepts aimed toward improving and addressing law and order in Indian Country. Respectfully, the Department is unable to provide a position or comment specifically on draft legislation that has not been introduced at least a week prior to this hearing.

The Bureau of Indian Affairs (BIA) has a service population of about 1.6 million American Indians and Alaska Natives who belong to 562 federally recognized tribes. The BIA supports 191 law enforcement programs with 42 BIA-operated programs and 149 tribally-operated programs. Approximately 78 percent of the total BIA Office of Justice Services' (OJS) programs are under contract to Tribes as authorized under Public Law 93-638, as amended, or compacted to Tribes as authorized under Title IV of the Indian Self Determination and Education Assistance Act, as amended.

The OJS provides a wide range of justice services to Indian country, including police services, criminal investigation, detention facilities, tribal courts, and officer training by the Indian Police Academy.

Indian country law enforcement provides services to a population that is predominantly under the age of 25 and experiences high unemployment rates, and lacks municipal infrastructure. Indian lands range from remote wilderness to urban settings. The close proximity of a number of reservations to the international borders of Mexico and Canada make these locations the perfect targets for drug trafficking and other smuggling operations. Recent reports and news articles outline the challenges faced by criminal justice systems in Indian country. Crime rates on most reservations are unacceptably high.

The Indian Law Enforcement Act of 1990 (25 USC 2801) and the regulations contained in Title 25 of the Federal Code of Regulations provide the statutory and regulatory authority for the BIA. Under this statute, the BIA provides basic police and corrections services while other federal agencies such as the Department of Justice (DOJ), the Federal Bureau of Investigations (FBI), the Drug Enforcement Administration (DEA), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) also have responsibilities to investigate crimes in Indian country.

Currently, the OJS consults with Indian tribes on an ongoing basis to address concerns in Indian Country. These consultations provide a dialogue between the OJS and the Tribes to address staffing concerns or budget matters through the programmatic, appropriations and budget development processes.

Strengthen Tribal Justice Systems and Recruitment/Retention Efforts

The Department of the Interior's BIA provides several programs designed to strengthen Tribal justice systems. For example, the BIA operates the Indian Police Academy (IPA), which provides basic police training (16 weeks) and a variety of other police, jail and radio dispatch courses for tribal and BIA law enforcement and corrections officers. The IPA is co-located with the Department of Homeland Security's Federal Law Enforcement Training Center (FLETC) at Artesia, New Mexico. The IPA works with State and tribal police academies to permit training in their respective areas.

The IPA staff provides basic coursework in policing, criminal investigations, and detention. In addition, the IPA offers numerous advanced training courses such as child abuse investigation procedures, domestic violence training, community policing, drug investigation, use of force, firearms instruction, archaeological resource protection, police management and supervision, crime scene processing, detention, and dispatcher training.

Our training partnership has proven to be very cost-effective because we share trainers and facilities. The BIA and tribal criminal investigators receive specialized

advanced training at the main FLETC facility in Glynco, Georgia. Select BIA and tribal law enforcement managers also participate in the FBI's National Academy in Quantico, Virginia. Many tribal communities choose to use respective state Peace Officer Standards and Training courses to supplement training of their police.

Upon completion and graduation, the officers have the requisite Federal credentials to be commissioned to serve their communities. The training programs are unique to Indian country policing and are similar to other Federal policing and corrections training required by other Federal law enforcement agencies serving the Federal Government.

Additionally, the OJS provides training for tribal court personnel, which is sponsored by the OJS Office of Tribal Justice Support and by the Tribes themselves. It is the BIA's goal to ensure that all training programs offer the best possible training to tribal and BIA law enforcement, corrections, and tribal court staff.

In addition to the BIA's efforts to strengthen tribal justice systems, the BIA has centralized its law enforcement, corrections and tribal courts programs within one program management area titled the Office of Justice Services (OJS). This organization allows for a centralized focus of the administration and management of basic justice services as well as lending to a cohesive approach to program implementation that allows for unity and cooperation throughout programs.

In an effort to improve recruitment and hiring within all service areas, the OJS is implementing a Recruitment Plan that includes task items for short, intermediate, and long term planning efforts. These efforts include, but are not limited to, increasing the personnel staff available to process and track status on OJS personnel actions; working to improve recruitment efforts at colleges and the military to obtain better qualified applicants; improving and streamlining the process for background checks; and investigating the use of other manpower resources from other qualified law enforcement providers.

Crime Rate Data Collection

Currently, the BIA's crime data are collected by the OJS through monthly crime reports that are submitted by Indian Country jurisdictions (tribes and BIA law enforcement). The method currently used by OJS is as follows: crime reports that are collected are entered into an automated database tool that gathers law enforcement statistics at the lowest level. Crime data are entered at the field from the individual law enforcement agencies that are implementing policing programs. Tribal policing programs without direct access to the BIA's automated database tool submit hard copy information to their respective districts for input into the system.

Crime data information submitted for entry into the system is verified by the agency and then is reviewed a second time at the District Commander level. The District Commander must then provide final approval before the crime data are used at the Headquarters Office for quarterly performance reporting and the development of other statistical reports that are made available to the Department of Justice. Since the Department's last statement for the record, the BIA's internet restrictions have been lifted and full internet access should increase the timely collection of crime data.

In our effort to establish better management information systems for the collection of crime data, the OJS is considering the feasibility of the Incident Management Analysis and Reporting System (IMARS), which is a Department-wide information collection, analysis, and reporting system initiative. The concept behind IMARS is to provide a common information sharing capability across all participating functional areas within DOI for capturing and reporting law enforcement, emergency management, and security incident information. Once IMARS is available Department-wide, the OJS will determine the feasibility of providing an opportunity for tribal collection of crime data using IMARS.

Increasing access to national crime databases and collecting and sharing crime data between agencies would assist in addressing crime in Indian Country, but such authority would require assurances in the protection of confidential information between all the entities authorized to access, input and share information on such databases.

Special Law Enforcement Commission (SLEC) Training and Certification

In an effort to make special commissions available to tribal, state, and local law enforcement, the BIA encourages cross-commissioning so that Federal, tribal, and state authorities can make arrests for each jurisdiction. For instance, BIA offers qualified tribal and state law enforcement officers Federal Special Law Enforcement Commissions (SLEC) so they can enforce federal law. This closes loopholes and allows police to focus on investigating the crime instead of sorting out jurisdictional details, which can be done later with the assistance of legal counsel.

Supplemental training is provided by the BIA and, more recently, through the offices of the United States Attorneys to utilize both tribal and state law enforcement officers in Federal and tribal policing as authorized under the Law Enforcement Reform Act. The Office of the Solicitor and the United States Department of Justice offices determine extension of Federal Tort Claim coverage as authorized under the Reform Act. For the Committee's information, please find attached Table C, which illustrates the SLEC count for all District Locations.

Increasing flexibility in commissioning state and local law enforcement officers to enforce all violations of federal law committed on Indian lands may have a positive effect in addressing the law enforcement needs in Indian Country, however, such increased flexibility, presumably would require increased coordination between all entities who provide training to certify Indian Country law enforcement officers serving in Indian Country.

Tribal Sentencing Authority

Current Federal law provides a ceiling on tribal court penal authority to sentences of no longer than one year and up to a \$5,000 fine for each offense. Some tribes currently sentence tribal offenders concurrently for more than one offense which, in the aggregate, can total more than one year. There are at least two major challenges faced by BIA and tribal corrections programs with the care of inmates subject to long-term sentences for non-Federal felony crimes committed in Indian country:

- 1.) There is limited detention space on or near most Indian communities. There are also limited funds to contract for detention bed space in a non-tribal or non-BIA facilities. Extending sentences for longer than one year will result in increased costs to both the BIA and tribal governments.
- 2.) Not all tribal courts have an effective appellate process. A defined, effective, consistent, and transparent appellate process is important to ensure civil rights are protected and the tribes are not unduly subjected to habeas corpus claims in Federal court.

Tribal court penal authority to sentence offenders for longer terms and maybe choose alternate forms of incarceration may give rise to certain constitutional concerns and also federal policy concerns. Consistency in standards and staffing among the facilities would need to be assured in order to alleviate these concerns. Such consistency among the choices of incarceration, presumably, would again be a significant monetary commitment on both the federal government and tribal governments.

Mr. Chairman and members of the Committee, I thank you for providing the Department of Interior's Bureau of Indian Affairs the opportunity to comment on the issues related to Law and Order in Indian Country. We will continue to work closely with the Committee and your staff, tribal leaders, and our Federal partners. I will be happy to answer any further questions you may have.

SLEC Count for all District Locations

District I	
Rosebud	16
Winnebago	3
District II	
Miami Tribe of Oklahoma	5
Miami Police Dept	30
Eastern Shawnee Tribal Police	6
Chickasaw Nation	12
Choctaw Nation	18
Citizen Band of Potawatomi	14
Prairie Band of Potawatomi	4
Cherokee Nation Marshall Service	19
District III	
Sycuan Tribal PD	7
Hualapai Tribal PD	2
Pascua Yaqui Tribal PD	22
Gila Hoopland Tribal PD	6
River Tribal PD	56
Washoe Tribal PD	3
Las Vegas Tribal PD	1
Tohono O'Odham Tribal PD	8
Tule River Tribal PD	3
Ft. Mohave Tribal PD	7
La Jolla Tribal PD	1
FT. McDowell Tribal PD	13
Los Coyotes Tribal PD	1
District IV	
Laguna	4
Jicarilla	3
Montezuma	26
Cortez	22
Southern Ute	52
District V	
Shoshone & Arapaho	4
Crow Tribal	3
Skokomish Tribal	1
Ft. Hall Tribal	21
Marion County, Sheriff's Office	61
District VI	
Chitimacha Police Department	6
Choctaw Police Department	36
Oneida Nation Police Department	30
Coushatta Police Department	9
Poarch Creek Police Department	15
Seminole Police Department	44
Cherokee Police Department	36
Mohegan Police Department	17
Mashantucket Police Department	18
Narragansett Police Department	3
St. Regis Police Department	13
Total SLECs for all OJS Locations	681

The CHAIRMAN. Mr. Ragsdale, thank you very much for being here and for your testimony.

You heard the testimony of Ms. Stoner and Mr. Lamar. Their testimony said, look, we have such a serious problem here, a crisis of sorts. We have people that commit violent crimes, rape, sexual assaults and other things that are not even prosecuted, and walk around because nothing happened to them. Do you think that is the case? Do you dispute their representation of what is happening on reservations?

Mr. RAGSDALE. No, I don't dispute it. I am also a student of Indian history, particularly in terms of our warrior traditions that go back since time immemorial, about protecting our own communities. I would not disagree with the content of their statements.

I would say that my experience, I spent about seven or eight years as a tribal police chief in eastern Oklahoma. The cooperation that I received from the U.S. Attorneys, whether I had an Indian defendant or a non-Indian defendant, was always outstanding. If I had a good, solid criminal case, the United States Attorney prosecuted, took it to grand jury and went through the process, both in the northern and the eastern districts of Oklahoma. We do have jurisdiction of non-Indian offenders that commit crimes in Indian Country.

So I think what is happening, Mr. Chairman, and I have spent a lot of time, I have a lot of experience in Indian affairs, but I spent a lot of time in Indian Country as well, is that the rate of crime has jumped so much in the last decade or so that many of our police officers are like on a conveyor belt, they are responding and reacting to the incidents of the day. If that is all you do and you do not have the time to sit down and do the hard work of writing the investigation up, providing the criminal information to a prosecutor, whether it is a tribal prosecutor, State prosecutor or a Federal prosecutor, you don't get crimes prosecuted.

The CHAIRMAN. I understand. That in itself undermines the law enforcement system.

Ms. Shappert, we had testimony before Congress by a former high ranking Justice official who came to testify. She said U.S. Attorneys were reprimanded because they "spent an excessive amount of time on Native American issues." We had another U.S. Attorney state publicly that the Justice Department doesn't care about prosecuting crimes on Indian reservations.

I want to ask you to respond to that, and as I do, let me say that three months ago, we wrote to the Justice Department and said, tell us, how many declinations are there, how many cases do you decline, under what conditions do you decline them? What I heard back from the Justice Department just yesterday after three months was, at this time we do not have statistics that we believe accurately reflect the rate of declinations in Indian Country. That is all they say, we don't have any statistics.

And yet what we hear anecdotally from around the Country is that declinations occur all the time. Sometimes for no purposes. I think Ms. Stoner mentioned, you wait for a year, then you get word back after a year, well, we're not going to pursue the case. At that point, the witnesses are gone.

So tell me about this, because we have had testimony that Justice Department actually reprimands U.S. Attorneys that spend too much time on Indian cases.

Ms. SHAPPERT. First of all, I would like to note that when General Mukasey became the Attorney General, one of the first things he did was meet with Native American leaders from Indian Country. He had a meeting in his office with a number of leaders to talk about issues in Indian Country. Indian Country was not part of his background, but he made it a priority beginning early on in his term.

He also made a trip out to Arizona for the express purpose of meeting with tribal leaders and members of the tribal courts in Arizona because he recognized that it needed to be a Department priority. I can only speak from my experience, Senator. I have never been reprimanded, discouraged or in any way inhibited in my ability or in my efforts to prosecute and forward the initiative in Indian Country. Let me tell you what this Administration is doing in that respect.

With regard to the United States Attorneys in Indian Country, the Native American Issues Subcommittee regularly is meeting for purposes of advising the Attorney General. Not only were we out in South Dakota two weeks ago, we were there with the tribal liaisons, because we recognized, we are about to leave. But to continue the mission of the Department of Justice, we need to make sure that we empower the Assistant United States Attorneys who are working in Indian Country.

Not only were we there, but the Deputy Attorney General sent representatives, the Executive Office of U.S. Attorneys was there, and we were there with other law enforcement. We are currently planning yet another meeting of the same components in Arizona for September. We are on the agenda for the Attorney General's Advisory Committee.

You want me to talk about declinations.

The CHAIRMAN. Yes, please.

Ms. SHAPPERT. Okay, glad to. There are two different kinds of cases that U.S. Attorneys prosecute, proactive and reactive. Proactive cases are the paper-intensive, grand jury-intensive, document-intensive Title III wiretap going after Enron cases that we typically do. The reactive cases are more akin to what we do in Indian Country and are frequently more akin to what local district attorneys do. They are the violent crimes, they are responding to issues of violent crime.

Fully a quarter of the violent crime prosecuted by U.S. Attorneys is in Indian Country. It requires a different skill set and it requires a different criteria. When we accept a case for prosecution, a couple of things. First of all, we can only accept it if we can prove it beyond a reasonable doubt. We can't indict a case without being able to prove it beyond a reasonable doubt. Probable cause is not a high enough standard, because we are not only interested in protecting the rights of victims, we have to be concerned about rights of defendants, and do justice. So we don't indict a case if we can't prove it.

When we are looking at a case in Indian Country, we are going to look to make sure it is Indian Country, we are going to look at

whether the victim is an Indian or non-Indian and we are going to be looking at whether the perpetrator is an Indian or non-Indian. So we go through that kind of an analysis.

The CHAIRMAN. I would understand you do that. My question is not, is there work going on. My question is about the result and the Justice Department says, we don't have the foggiest idea how many declinations there are. Now, you have heard the testimony here, you have heard it from Chairman His Horse Is Thunder, Chairman Garcia, you have heard it from Ms. Stoner. It seems to me that the system doesn't work.

Let me make one other point. The current Attorney General, I understand your point about him. I met with him. I provided him the testimony by a U.S. Attorney who said, we were reprimanded. I talked about the crisis, and I appreciate the fact that he apparently took that seriously. My discussion is about a good number of years prior to that, in which we have seen this fester and build, and the violence continue.

But my specific question about declinations is in response to Ms. Stoner and others that I have heard from repeatedly that you send a case up of a violent rape, you don't have the foggiest idea whether somebody is going to pursue it or not, and maybe you don't hear back for a year and a half, and they say, we have decided not to pursue it. If the Justice Department can't even tell us how many they have declined, I don't understand what kind of track they are keeping of these issues.

Ms. SHAPPERT. First of all, the Department of Justice is currently working through the Office of Justice Affairs to improve the quality of our stat keeping, which needs improvement and we are currently working on that. So that is a work in progress.

And I would be glad to report back to this Committee as to what the Department is doing to improve their stat keeping.

Secondly, sometimes cases are referred to another jurisdiction, be it the State or tribal court, for prosecution. Under the current status of the law, it is within the discretion of the U.S. Attorney whether to report our declination. We may not do it for a couple of reasons, Senator. One is, if it is an ongoing grand jury investigation, there may be confidentiality concerns. We may have a victim who is related to a tribal law enforcement officer. And our first concern will always be protecting the victim. So we may not disclose it if we are trying to protect a victim or certain witnesses. So we have those kinds of concerns.

But with regard to the stat keeping, I will be glad to see that we report back to you. But we are working to improve our stat keeping.

The CHAIRMAN. And this is not about statistics so much as it is about U.S. Attorney's office deciding that this ought to be in the front of their office rather than the back of their office, the serious requirement to prosecute felons on reservations.

Mr. Ragsdale, let me ask you, are there, as Mr. Lamar indicated in his testimony and as I have heard before, are there juvenile detention centers that have been built, paid for and standing open unused at this point?

Mr. RAGSDALE. There are, sir.

The CHAIRMAN. Tell me the reason.

Mr. RAGSDALE. The reason, one of the primary reasons is difficulty staffing them, staffing them and recruiting qualified people, because there is no place for them to live. That is one problem.

Another problem is that some of the recent facilities that were brought online were not designed to keep the type of typical juvenile offender that we maintain in our systems today and need improvements.

The CHAIRMAN. Let me ask you specifically about the provision in Mr. Lamar's testimony, the Hualapai Reservation, the juvenile detention center, newly-constructed, on that reservation, sits empty a year after construction. Juvenile crime on the reservation is rampant to the point of the very juveniles who should be incarcerated in that facility are now vandalizing the facility.

What is the purpose of having that facility sit vacant, do you know?

Mr. RAGSDALE. There is not a good purpose for having a facility sit vacant.

The CHAIRMAN. Why is it sitting vacant?

Mr. RAGSDALE. It is sitting vacant because of two reasons. One reason is that we have not been able to staff that facility with the necessary personnel, because it is located in a remote location. The current tribal council is proposing, originally the tribe wanted us to operate the facility, us being the BIA, as a direct operation. They have since decided that they want to contract out the facility and that they want to provide the service directly and are in the process of doing that.

In the meantime, while we have been going back and forth with the tribe on the contracting issue, we have been trying to recruit, but have not been able to staff the facility adequately. And there are improvements that need to be made. Excuse me, I am thinking about another facility. I am sorry, Senator. I don't know that we need to make improvements at Hualapai. The issue has been primarily not being able to staff it.

The tribal government also thinks that they need more money than we have allocated to run the facility. So that has been an issue between the tribe and us.

The CHAIRMAN. You know, Mr. Ragsdale, I have been very critical of the BIA recently. It is, in my judgment, so bureaucratic, so difficult to see accomplishments coming from the agency. And I don't understand why it is not an emergency situation, when you have violent juvenile crime occurring, you have a new facility that is sitting there empty a year after it was built. Why is that not an emergency? You need to make things happen. I am so disappointed with the Bureau of Indian Affairs for its failure to make things happen, in so many different areas.

Mr. RAGSDALE. May I respond?

The CHAIRMAN. You may respond, yes, of course.

Mr. RAGSDALE. Senator, from your perspective, I understand where you are coming from. The Bureau works with very limited resources. There is a system that we have to abide by doing security checks under the post-9/11 requirements. We have been working very hard to try to streamline the bureaucracy so that we can hire people. But even the personnel resources that we have available to us to focus on law enforcement issues is very limited. We

are trying very hard, and the Secretary of Interior is right behind that effort to try and make that better. That is what we are trying to do.

The CHAIRMAN. This limited resources thing, I don't hear anybody coming to these tables from the BIA saying, look, we have a crisis going on here, people are dying, there are people being raped, victims of sexual assault. The fact is, Senator Thune talked a bit about this at the start when we asked for some additional resources to go into the Standing Rock Reservation. This is not a third world country. This is part of our Country.

The dilemma here is we have this fractionated law enforcement system that doesn't work at all, in my judgment. But this notion of not enough resources, I understand that, I believe that is the case. I would like somebody to come to the table who runs the BIA, and it doesn't matter whether it is in the past Administration or this Administration, that says, by God, we need more money to save lives and to help people. Nobody ever does that, because the requirement is to come to this table and support the Administration's budget.

The last person that came to the table and said, I don't agree, we need more resources, got fired the next morning. The very next morning. So I understand why they all—

Mr. RAGSDALE. Well, Senator, I will tell you we need more resources, and I am not afraid to say that. I have testified before this Committee a number of times, and I have not tried to varnish over the situation that we have with regard to public safety in Indian Country. It is a national disgrace.

The CHAIRMAN. I hope you are all right tomorrow morning, then.

Mr. RAGSDALE. We will see.

The CHAIRMAN. But I appreciate that. And what kind of resources are necessary? How much are we short here? I know what we are short in health care, 40 percent of the health care needs are unmet, so we have rationing going on.

But in law enforcement, it seems to me we are desperately short of doing what we need to do. How much do we need here?

Mr. RAGSDALE. Senator, we did a gap analysis. Typically we find, and there are variances, because there are some tribal law enforcement departments that do very well and put their own money and resources into it. But typically, we have about one-third to one-half as many as you would find in the rest of America, as compared to rural law enforcement in America, which is not really a real high standard.

With respect to detention and corrections, in my view, what the Administration and the Congress needs to do is to step back for a moment and look at the status of detention and what we are trying to provide throughout Indian Country. We have to do things differently. Everybody cannot have a detention facility. We have to strategically place detention facilities so that we can handle the kind of population that we have in our facilities.

When I first got started in the Indian Bureau, which is a long time ago, most of our detention facilities were like the hometown jails, where somebody that was arrested for alcoholic behavior or misbehavior associated with alcohol, they were checked into the jail, they sobered up and then they came out. That is not the kind

of offender that we hold in our jails today. We hold dangerous offenders serving one year or more terms that have come from every type of criminal activity from rape to homicide to serious assaults and all those things. The people that we used to hold in our jails we don't hold, because we can't hold them.

The CHAIRMAN. I have so many additional questions, but I don't want to dominate this. The Vice Chair I know has questions as well. Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman. I know that Senator Thune has to leave, so I will defer to him for a few questions and then if I may ask my round. Thank you.

Senator THUNE. Thank you, Mr. Chairman. I want to thank Senator Murkowski for giving me an opportunity to ask some questions.

I appreciate the testimony of the panel. It seems to me, at least, that there ought to be a basic expectation of people who live on the reservations, Indian and non-Indian, that public safety is going to be there. I think that is something that most people in America sort of accept as a basic premise, that that is something that their Government ought to be able to provide. And because of the trust and treaty responsibilities that the Federal Government has with respect to our reservations, the lack of public safety seems to me like a major failure. It is tragic, what we are seeing happening on our reservations, and the data bears that out.

I think the thing I would like to get at, is the resource issue, and I think Mr. Ragsdale has spoken to that. I offered an amendment to the budget resolution this year, when it went through the Senate, to increase the funding for tribal justice by \$200 million over a five-year period or \$40 million a year. Senators Dorgan and Murkowski were supportive of that effort. But it seems to me that is a big—I don't dispute for a moment that that is an issue here. We have to do something to address the resource issue. But we have so many challenges and problems that we face on our reservations today, none of which can be solved until we deal with the basic fundamental issue of public safety. I just don't know how you can have children learning, absent having a secure environment in which to learn. You can't create jobs, you can't have economic development if you don't have public safety. You can't get a company to create jobs on a reservation if they are worried about vandalism or they are worried about crime.

So many of these issues tie back to resources, it all starts there. I think this is the foundation of a lot of the issues that we are facing on the reservations today. So I just say that as a basic overall observation. I think that we have a responsibility, which perhaps because of insufficient funding we haven't met here. But I also think that we just have to have a focus from the BIA on this issue. That is not to say that to the detriment of other important work that the BIA is doing.

But we have jails in our State of South Dakota. The Crow Creek jail closed on the assumption that the Lower Brule jail was going to open. It has not been adequately staffed. They are shipping people to Cheyenne River. We have all these ongoing issues with the wide geography that we have in South Dakota, 2.4 million acres, as Chairman His Horse Is Thunder has testified on Standing Rock,

and just inadequate law enforcement presence out there. It just goes up and down the chain.

That is why I think this bill is so important, because there are so many issues that need to be addressed, some of which are policy-related, I think addressing the issue of tribal courts being able to put people in jail for longer than a year at a time is important. That seems to me to be, you have to know that if you are going to get involved in crime on the reservation, there are going to be consequences to that.

But I guess I say all that in a circuitous way of getting around to a question. Mr. Ragsdale, I do want to ask you, because I think this Operation Dakota Peacekeeper could be a model that could be implemented other places around the Country, certainly on some of the reservations in South Dakota. So I would like to have you speak a little bit more specifically to that, perhaps Mr. Chairman, you could add some insights on that, too. I know this is an issue we have discussed on a number of different occasions.

Mr. Ragsdale, when you were in South Dakota in the last couple of weeks and I had a conversation with you, you indicated that you had seen first hand and actually detained and made some arrests while you were out there. But this seems like a runaway problem, and the only way we are going to address it is to really attack that problem.

I think that Operation Dakota Peacekeeper is, to me at least, an important first step. I am curious to get your reaction about how that has worked, how it might be used as a model on other reservations, and what is necessary in terms of resources to do that. Senator Dorgan raised the issue about resources, too. What is it, what do we need to do to bring some security to our reservations and how can this Operation Dakota Peacekeeper be a part of that solution?

Mr. RAGSDALE. Thank you, Senator. When Mr. Artman first brought up the idea about doing something at Standing Rock because of the problems and the issues and because of the concern of both States' delegations, I was kind of skeptical, because the problem boils down to having the right number of public safety personnel to cover a very large reservation. I sat down with my staff, we did some planning. We decided to employ our emergency service function team, which is set out to do national incidents like responding to hurricanes and national incidents and such. We have used that team to supplement the existing law enforcement operation that we have there.

In terms of numbers, we have uniformed police officers integrated into the local police department, which about measures up to the gap analysis that we need. We have about 12, 14 officers there to operate 24/7 over huge geographic differences. We have supplemented that with about 20 officers, which is still less than the gap, but it appears to be really making a difference.

We have also sent in additional criminal investigators to assist in the difficult crime cases. We have people that are meeting with local officials on a daily basis. What we hope to do is, because we are not going to be able to sustain it for much more than three months, what we hope to do is to help the community find its way

so that we can develop some community strategies, so that we can do better with the limited resources we have.

It appears to be working. The community has accepted us. I was surprised when I was out there on the streets talking to the grandmas and mamas and little kids, how grateful they were to have police officers on the streets. I guess the point is, if we can do that at Standing Rock and make a huge difference and rally the community, to do the community policing that we would like to do, but if you are just reacting to incidents, you don't have time to talk to neighbors and set up neighborhood watches and work with the church leaders and so forth.

So I am hopeful that if we can do that in three months at Standing Rock and make a difference, and as we start to withdraw that the community will be in better shape, and we may be able to employ this tactic at other places. As someone has pointed out, we chose Standing Rock because we had strong tribal support from the chairman, from the delegation. It seems to be working real well.

But Standing Rock is not our worst reservation, by far. Standing Rock has six times the national violent crime rate. We have reservations that it is up to 32 times. We have reservations where police are just reacting, reacting, reacting to calls.

The CHAIRMAN. Senator Thune, President Garcia has an 11:25 departure for an airplane. So in the remaining minute before President Garcia has to leave, might we ask President Garcia, do you wish to comment on some of the other statements you have heard before you have to depart to catch an airplane?

Mr. GARCIA. Yes, Senator, thank you.

The CHAIRMAN. Thank you, Senator Thune.

Mr. GARCIA. I think that if you have statistics like this, this model that we are just now talking about, you have the cost breakdown for a model, you have the effectiveness, because you have monitored it very closely. So roughly, what might happen is that there should be a suggestion that this is X amount of dollars that it costs, and if you can implement that same model throughout Indian Country to some realistic level, that automatically gives you a number that we ought to be requesting to take care of the crime rates and break the cycle of crime, if you will.

But if that kind of data is not provided for you, like the question you asked, Senator, on what is the need, and so I will answer that question about what is the need. I think the funding level for BIA in terms of law enforcement, it is probably less than 20 percent of the needs in Indian Country, is the funding level that they receive. So in order to break the cycle of crime, we need that amount of dollars to move and to make some kind of impact.

If we don't get that, then we are struggling. Because when does the budget cycle start and who implements that budget request? It comes from the President, goes through OMB, and so the only thing that I see the Bureau and the Department asking for is really honing in and trying to hold to the budget request that the President makes, and never mind the needs out there in Indian Country. It is a big dilemma. So I think that is why it is so important that the legislation needs to reflect that. I see that is where we are headed.

But major, major change needs to happen. We can go on and on on criteria and performance and lack of funding and all of that. But I think this sets the tone for where we need to go. So I hope that is what we can do and I hope the funding comes with the legislation.

The CHAIRMAN. President Garcia, thank you. Section 101 of the bill requires the BIA to submit an annual unmet needs report, so we would know their assessment of the quantity of unmet needs and the cost of it.

Thank you very much for being with us.

Senator Thune?

Senator THUNE. Thank you, Mr. Chairman.

I will let you continue, Senator Murkowski, with your questions. But I would just like to, if I could, get maybe some perspective from Chairman His Horse Is Thunder, too. And I appreciate the fact that it takes a lot of leadership to make this model that is being attempted to be implemented here in the Standing Rock Sioux Tribe work, sometimes standing up against some forces that would not like to see it work. So I appreciate the leadership you have provided.

But maybe just your thoughts about that, too, how this particular project has worked. I know it is early in terms of implementation, but I think the concern that most people have is how do we continue it after this three-month period, the so-called surge is completed. I think again, I appreciate, a lot of things in this bill have been based upon input that we have received at all aspects of tribal justice. Hopefully the funding issue we can help address in the budget process. I recognize the need to do that.

But we really need to get our arms around this. I don't know how we can continue to have huge populations of people living in fear. That is not right and we have to do something about it.

I need to go before long, too, but Mr. Chairman, if you would care to comment about your observations about how this Peacekeeper operation is working, I would appreciate that.

Mr. HIS HORSE IS THUNDER. Mr. Chairman, Senator Thune, it appears to be making a huge impact. As Mr. Ragsdale talked about the gap in law enforcement officers and the need that was on our reservation, that the gap analysis said we need somewhere around 36 law enforcement officers. Currently there are an additional 20 law enforcement officers on the reservation. We have 10 who were there before, we have 2 unfilled slots, at least they are not there yet.

So we have 30 police officers. It is close to what we need in terms of filling that gap. The most law enforcement officers Standing Rock ever had is in 1890. We had 45 law enforcement officers on the reservation. As soon as they arrested and killed Sitting Bull, then the number of law enforcement officers started to dwindle on our reservation, to the point today we only have 10.

The Dakota Peacekeepers operation, it is a good operation. But you hit it on the nose, Senator, and that is, what happens after three months, when these 20 law enforcement officers then leave? Do the criminals then come back out of the woodwork? That is a concern.

In terms of what Mr. Ragsdale talked about, that is engaging the community, the churches, the district communities, myself as well, too, in trying to bring the resolve back to the community in terms of, they have an obligation to take care of some of the problem, it is not just a police officer problem, it is a community problem. We agree. It is a community problem, it is.

However, with lack of police officers there, I am afraid that in many ways it will revert back to the same reservation it was before, that we do need additional dollars in order for the community to stay engaged, to have some of the resources it is going to need to supplement, if you will, the lack of law enforcement officers. If we had community security forces, we wouldn't need to be paying nearly as much as regular law enforcement officers, but resources to engage the community in terms of having foot patrols in the communities, programs to engage the youth, the Boys and Girls Clubs are starting to pop up on the reservation, but they are severely under-funded. Opportunities for children to engage in other activities other than criminal activities would be great. So taking a look at resources for those types of programs, in the end it comes down to resources.

Right now, it is a good influx of police officers. It does create one additional problem for us, and that is our court systems. Our court system is arraigning people now seven days a week and our jails are full. We have not been given the additional resources we need to man our courts to keep up with the number of criminals that are arrested on the reservation.

It is a good surge, it is making a difference. I don't think we are going to have the resources to continue, with community support for it, once the surge ends. As Mr. Ragsdale talks about, this peace-keeping pilot was a pilot program to test their abilities to respond to emergencies, such as hurricanes and floods, et cetera. Hurricanes and floods go away. The regular police force that was in those communities where they had hurricanes and floods, et cetera, don't have as big of a task once those natural disasters are taken care of. This is not a natural disaster here, we need a long-term solution.

The CHAIRMAN. Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman. Thank you all for your testimony.

We all appreciate that funding is the crux of so much of the problem. If you don't have adequate funding, it is very difficult to institute any of the initiatives. But Chairman His Horse Is Thunder, I appreciate the recognition, as you spoke in your opening comments, for instance, when you talk about the level of consistency with law enforcement, having the available number of law enforcement, it is not just the numbers. It is the quality of the training that they have.

But we have to appreciate that it is not just a situation where you are able to hire a certain number of qualified individuals, train a certain number. You then have the issues that we face, certainly on your reservation, but we face it up in the State of Alaska, we are trying to get law enforcement individuals out into very remote areas, areas where the environment is not hospitable, you are not on the road system, you are not connected, you have lots of dif-

ferent things going against you. You don't have support for those that are providing the law enforcement there. And then you don't have basic services. And housing is the most basic. If you can't provide for a place in a rural area, you have a trained individual who is willing to come out, willing to make that commitment. But if your family is miserable out there because you are crammed into very inhospitable spaces, I appreciate your reminding us that it is not just about getting a certain number of individuals to sign onto a program. There is a whole host of other factors that allow for success in making sure that we have the quality individual, and those folks that are able to do their jobs.

I don't know what the answer is. I know in Alaska, as we were looking at our teacher shortage issue, we had to make a commitment to build housing for our teachers in certain villages. We have to have housing that is provided by the villages to those who are willing, the village safety officers, that are willing to come in. Otherwise, there is no way that we can keep them.

So as we look to the law enforcement issues, I think we need to recognize that it is bigger than just the prison facilities, the detention facilities and the numbers. We have to have the other aspects of a quality life there as well.

I wanted to ask you, Ms. Shappert, because you have indicated that the Department opposes placing the Indian defendants in the Bureau of Prisons facilities. Yet the reason this is in the draft is because nearly all the tribes have no detention facilities, or very limited space available. If we can't support using the Bureau of Prisons facilities, what is the alternative? Where do you go? What do you do?

Ms. SHAPPERT. I think I have to reiterate the same issues of resource that we have heard from the other members of the Committee. But let me try to explain some of the concerns we have about BOP in particular.

As I think you are probably aware, Senator, the Bureau of Prisons right now is 37 percent over capacity. Most but certainly not all the prisoners in the detention facilities in Indian Country right now are one year offenders. Many of them have much less serious criminal records than the people in the Bureau of Prisons.

If we put them into the Bureau of Prisons, a couple of things. First of all, on a one year sentence, they may never make it into BOP. They would be housed in a detention facility or a State or local jail that is contracted with BOP, because their sentences are so short they wouldn't actually get to BOP. So they may not actually have the advantages of the BOP resources.

The other concern that we have heard raised by some of the tribes is that if they are placed in Bureau of Prison Federal detention facilities, any infractions or violations of the law implicate Federal law and they are subject to punishment under Federal law.

The third thing I would ask you to do, and we will be glad to provide it, is look at a map of where the BOP facilities are in the United States and juxtapose it with Indian Country. There are not many BOP facilities in Indian Country. So as a practical matter, somebody who was convicted in the Great Plains, if they were to go into BOP, might be housed in Florida, might be housed in Pennsylvania. And in respecting the sensitivity of ethnicity and tribal

relationships and family communities and the need to maintain those ties in Indian Country, we are going to lose that if individuals are housed 1,000 miles from where they are otherwise.

Senator MURKOWSKI. And we appreciate that. We are faced with the same situation in Alaska, where we send many of our prisoners, many of whom are Alaska Natives, they go down to Arizona. It is not the ideal situation. But it does seem to me that this is an area that we have to be thinking creatively here.

Mr. Ragsdale, you had mentioned in your comments constitutional concerns that you have, not you necessarily, but that the Department may have with increasing the tribal court sentencing authority as well as placing the Indian defendants in the Bureau of Prisons. Can you elaborate a little bit more on what you believe those constitutional concerns to be?

Mr. RAGSDALE. Yes, ma'am. Typically, as you know, the Federal law sets the maximum amount of punishment to \$5,000 and one year in jail, which in this Country is considered a misdemeanor, even though it may be a felony type crime that someone has committed that the tribe has adjudicated. All tribes do not provide defense attorneys. I know the Navajo Nation does, the Cherokee Nation does, I don't know about the Eastern Band. But there is not a requirement. So that is one issue that would probably have to be addressed.

The other issue would be, there are, and this is a sovereignty issue, is there is a lack of separation of powers between, in many of our tribal government institutions, which is not necessarily bad. But it would raise those kinds of concerns and for both the tribe and the United States of America, in my opinion, to ensure, there would have to be, in my opinion, some reform or consistency overall within the tribal court system.

Senator MURKOWSKI. I have more specific questions about certain provisions in the draft bill that I will direct to individuals by way of written questions. But I wanted to ask you, Mr. Lamar, because of your experience with the BIA and in law enforcement, in Section 104 of the draft legislation, where an office of Indian Country crime within the DOJ Criminal Division is created, this has been objected to by the Department of Justice because they believe that it may pull Indian Country experts from the field.

What do you think about this as a concern? And kind of give me your comments on how you think this new office that we are proposing would assist in prioritizing or coordinating activities between DOJ and how they relate to law enforcement in Indian Country?

Mr. LAMAR. I think, number one, such an office would probably be able to pull up the statistics rather quickly with regard to the declination rates in Indian Country. I know when I was at the FBI, we had a fairly sophisticated records management system back then, in the mid-1990s. In the mid-1990s, there was a question from the FBI agents with regard to the number of declinations. They felt like those declinations were inappropriately high. So it is a push of a couple of buttons on a computer that says how many cases were presented to the United States Attorneys, how many were closed on declination. So those numbers are actually readily available, and I am surprised—

Senator MURKOWSKI. You just need to ask the right division, is that what you are suggesting?

Mr. LAMAR. I think the numbers are readily available, and it is a matter of saying, let's find out what this really is and let's give an inkling to this Committee, is it really an issue and how large is the issue.

The CHAIRMAN. Might I just ask, if you would yield on this.

Senator MURKOWSKI. Yes, please.

The CHAIRMAN. The Justice Department presentation to us yesterday, dated June 17th, says "We do not have statistics that we believe accurately reflect the declinations in Indian Country." Do you say that is not accurate?

Mr. LAMAR. Well, I wouldn't say that that is not accurate, because that would leave out the Bureau of Indian Affairs declinations, and would only account for the FBI declinations. But I think it would give an inkling, because the FBI is a primary investigative agency in Indian Country with regard to those crimes. So I think that would give an idea, is it really the problem that we think it is. I believe that it is. I believe that those numbers are going to be extremely high.

So I think that division would be able to then concentrate the right priority on Indian Country. The Department of Justice has previously come in this very room and testified that there is no further need for funding for detention facilities. When I was at the Department of Interior, we were begging for additional dollars to continue to build facilities. Though we had a hard time, as does Mr. Ragsdale, with funding and staffing those facilities, we continued to ask for money to build facilities because the need was there. Yet the Department of Justice testified that the need was not there and that the current facilities were only 79 percent filled.

Clearly, we need more facilities in Indian Country. I think that the Department of Justice, given Indian Country the right priority, will be able to answer those questions, will be able to respond stronger in Indian Country to the crimes that are presented. Clearly, their resources as well are tapped. But if you have 25 percent of your violent crime that is associated with Indian Country, are 25 percent of the resources at the Department of Justice dedicated to that?

When I left the Department of Interior, the Department of Interior is one of the largest Federal law enforcement, represented one of the largest Federal law enforcement contingencies in the United States. So I would say that here you have the Bureau of Indian Affairs occupying about three or four offices at the end of a wing, and an entire building that, a Department that represents a law enforcement agency of that size from the Park Service of BLM, Reclamation and so on. Why aren't some of those folks moved over and detailed to Bureau of Indian Affairs to help them solve some of these tremendous problems?

Senator MURKOWSKI. I appreciate your response, sir. I think it is helpful. I recognize that oftentimes around here, it is not only asking the right question, but making sure that it is exactly the right person that you are asking that question to. It is somewhat frustrating that the Chairman has received a letter saying, we

can't give you the information that some of you believe is available, perhaps just not as fully as they would want.

I would like to point out, and President Garcia mentioned this, that in his opinion, this draft legislation wasn't, I don't think he used the term wasn't complete, but that one of the areas where there was an absence was as it related to Alaska Natives. We recognize that many of the issues as they relate to law enforcement and jurisdiction are different in Alaska than they are in the lower 48, and that has been one of the reasons why we have been a little more reserved as this legislation, or this draft legislation has gone forward. Our State Attorney General has expressed some concerns with the way the legislation is drafted at this point and just how Alaska fits in. So it is something that I want to work with you, Mr. Chairman, as we advance this.

But listening to the testimony this morning, the concerns that are raised, I heard good comments about the general direction. There were some good suggestions in terms of those areas where we perhaps have not yet addressed. So I think this is the start of a very meaningful dialogue on an issue that is of great importance across the Country. I look forward to working with you and other members that are currently co-sponsoring this, to see if we can't make a difference. Knowing that we thought we did something good back in 1990, and then 18 years later, we realize we are no further along than many of us thought. So I would like to know that we can advance this. I look forward to working with you.

The CHAIRMAN. Senator Murkowski, thank you very much. I look forward to working with you as well.

Mr. Ragsdale, thank you for being here and for being candid with us. I am candid with you about my frustrations with the BIA. I hope, I mean, I think we need the BIA to work and work well, work aggressively, work smart on a wide range of issues.

I happen to think we are under-funded on a wide range of things, including health care, housing, education and law enforcement. We are going to work to try to address all of those issues.

Today's hearing was about law enforcement. I think the information given us by a number of witnesses describes the urgency here. Ms. Stoner, thank you for your background and the years you have spent in these areas. I notice you indicated you were at Spirit Lake, you were a tribal judge, I believe, at Spirit Lake for eight or nine years?

Ms. STONER. Tribal prosecutor, yes.

The CHAIRMAN. At the Spirit Lake Nation. And you are now in academics, but you are contributing as well to the same area, and we appreciate that.

Mr. Lamar, thank you for your candid observations and helpful observations. Ms. Shappert, thank you for traveling here to give us the perspective of the U.S. Attorneys. Chairman His Horse Is Thunder, as always, thanks for your leadership day to day on one of our Country's important Indian reservations.

The hearing record will remain open for two weeks for additional submissions to the record. We likely will be submitting additional questions to witnesses and ask that you would respond.

This hearing is adjourned.

[Whereupon, at 11:50 a.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. FLOYD JOURDAIN, JR., CHAIRMAN, RED LAKE BAND OF CHIPPEWA INDIANS

Mr. Chairman, I thank you and the other distinguished members of the Committee for this opportunity to provide testimony on behalf of the Red Lake Band of Chippewa Indians (the "Tribe"). My name is Floyd Jourdain, Jr., and I am the duly-elected Chairman of the Tribal Council of the Red Lake Band.

The focus of my testimony will be on the Tribe's juvenile detention facility, which was constructed in 2005 mainly with Department of Justice (DOJ) corrections facility grant funds, but which has sat empty for the past three years because the BIA failed in its commitment to provide staffing and operational dollars.

In the mid-1990s, the DOJ launched its Indian Country Justice Initiative to enhance and streamline its support for tribal community law enforcement programs. For several years beginning in 1999, Congress appropriated \$34 million annually to DOJ to award correctional facility grants to tribes for the purpose of repair or replacement of dilapidated detention facilities.

In the 1990s, Red Lake was in dire need of a new detention facility. Our old jail was nothing more than an old storage garage designed for our Red Lake Forestry program that was converted in the 1970s for use as a jail, law enforcement center, and courthouse. The facility was severely overcrowded and had been condemned by the BIA.

Between 1999 and 2001, the Tribe was fortunate to receive a DOJ Corrections Facility grant to build two detention facilities. The first detention facility (Phase I) was a 42-bed, medium security facility designed primarily for adult detention, but with capabilities to house an additional 26 juveniles on a short-term basis. The second detention facility (Phase III) was a 24-bed, minimum-security juvenile detention facility, designed for longer-term stays, and with counseling and classroom education capabilities.

The BIA participated in the development of both facilities by providing design funding, and by reviewing and approving the designs prior to construction. The two buildings were inspected by the BIA after construction, and both facilities were certified for occupancy by the BIA. The BIA owns the two facilities and has provided Facility Operations and Maintenance funding for both buildings since the time the BIA approved their occupancy. The BIA also provided furnishings for both facilities, including flat screen televisions, bunk beds, desks, and other equipment for the Phase III juvenile detention facility.

The initiative to repair and replace Indian Country jails was to be a partnership between DOJ and BIA. Funds to construct facilities were to be provided by the DOJ and funds to staff and operate the new facilities were to be provided by BIA. The BIA did provide funding for staffing and operation of the Tribe's Phase I adult detention facility since it was opened in 2003. But the BIA has provided no funds for the operation of our Phase III juvenile facility, despite multiple promises to do so.

In August of 2004 the Tribe held its CY 2005 Self-Governance negotiations with BIA and OSG. At that time, construction of the Phase III juvenile detention facility was nearing completion, and was expected to be operational in CY 2005. The Tribe, during its negotiations, requested staffing and operations funding for the juvenile facility in the amount of \$1,218,482, consistent with the Tribe's operational budget for the facility. The BIA agreed by contract to assist the Tribe in obtaining the \$1.2 million for staffing and operations in CY 2005. Additionally, the BIA agreed by contract to include \$1.2 million in funding for the juvenile facility in the next President's budget request (FY 2006). The Tribe relied on the BIA to follow through with its contractual commitments to the Tribe and to honor its partnership agreement with DOJ by requesting the funds to staff and operate the Tribe's new juvenile detention facility.

In 2004, a few months before the BIA agreed to provide funding for the Tribe's juvenile facility for CY 2005, this Committee and the Committee on Finance held hearings on the Interior Department's Office of Inspector General Report: "Neither

Safe Nor Secure: An Assessment of Indian Detention Facilities.” General Devaney told the Finance Committee on September 21, 2004, that:

BIA–LES was unable to produce any annual budget submissions for our [OIG] review. We later learned that BIA–LES managers use historical funding levels as their new annual budget requests and have rarely asked for actual budget increases. In addition, we discovered that BIA–LES does not seek to obtain accurate or realistic budget projections from detention facility administrators. In fact, funds allocated to individual jails by BIA–LES are not even tracked. Their failure to make an effort to assess the true cost of operations or to have any internal controls in place becomes a self-fulfilling prophecy.

These fiscal management failures also impact new detention facilities built with funds awarded as grants by the Department of Justice (DOJ). Since 1997, DOJ has provided over \$150 million in construction grants for new detention facilities. However, these grants are only for construction of the facility. BIA is then responsible for providing the funding for operational costs. Given the poor budget planning and execution by BIA–LES, it was not surprising to learn that facilities completed with DOJ grant monies often do not get the necessary funding to actually open for business.

General Devaney forecast what would happen to Red Lake a year later when BIA abandoned its contractual obligations to Red Lake. We received no funds in CY 2005. The BIA failed to request funding for the Tribe’s juvenile facility in the FY 2006 budget and provided no other assistance to the Tribe to obtain such funding.

The Tribe was shocked to learn of this breach of contract and breach of trust. The Tribe needs this facility to be opened and operated. It is intended to help us deal with a significant number of youth involved with drugs, alcohol, violence, and gangs. Many of these youth have been in and out of our tribal court system and are often released because they are too vulnerable or too young to be placed in the adult detention facility. The purpose of the Phase III juvenile facility is to house and rehabilitate these young offenders and turn their lives around before it is too late.

About the time we first learned of BIA’s failure to honor its commitments to the Tribe, the tragic events of March 21, 2005 unfolded, in which a troubled juvenile went on a shooting rampage at our Reservation high school, killing 10 people, including himself. After the tragedy of March 21, the Tribe reached out for assistance for its youth and received some aid, including the ultimate realization of a new Boys and Girls Club facility from non-BIA sources. But the Tribe still needs a juvenile detention facility to deal with troubled teens who currently are sent through a revolving door. These kids require an environment in which there is confinement and security, but at the same time one which enables continuation of their education and offers rehabilitative treatment. In the aftermath of the shootings, the Tribe declared that the BIA had breached its contractual obligations to the Tribe, and asked again that the BIA include the Tribe’s juvenile detention facility funding in the FY 2007 budget process. So what was BIA’s response to the Tribe’s request that BIA finally make good on its promises? The BIA pivoted and began arguing that the Tribe’s new juvenile detention facility was not a facility eligible for BIA funding. Considering that BIA participated every step of the way, from funding its design to certifying the facility for occupancy and furnishing it, this new position of the BIA was outrageous.

So where are we today? The Tribe sorely needs a juvenile detention facility. It has one, but it has been sitting empty for over three years now. DOJ did its job as part of the DOJ–BIA partnership and constructed the Red Lake Juvenile Jail. But BIA failed to do its job and fund the operation of our juvenile facility, forcing the Tribe to sue the BIA in federal court. In the meantime, for over three years now, troubled juveniles at Red Lake are devoid of the option for rehabilitation that the Tribe’s new juvenile detention facility was intended to provide.

Mr. Chairman and members of the Committee, this story is not a happy one, but I thank you for the opportunity to tell it to you today.

PREPARED STATEMENT OF HON. ELBRIDGE COOCHISE, INDEPENDENT COURT REVIEW
TEAM

Our Team has spent the last three years traveling throughout Indian Country. We have reviewed approximately 37 Tribal Courts. We have, perhaps, more knowledge and experience than anyone else regarding Tribal Courts. We offer this knowledge and experience in our comments on this draft bill.

This is, without question, a good bill. There is much in here to be satisfied with. Thus, we have, with few exceptions, limited comments to proposed changes. We understand this is a Tribal wish list and that DOJ and Interior have not yet weighed

in. It is our experience that Crime is uncontrolled in Indian Country. This, we feel, needs to be the priority for Congress. With this in mind, we offer the following comments.

Within the bill, Programs are extended to 2013. Given the usual length of legislation, this we feel is too short. It would be better if the programs in the bill were given a seven year life to 2015.

The legislation amends several bills to include Tribes in a similar status to states. This should have been done in the first place and is a welcome update of this legislation.

The legislation also includes and considers DOJ over site of Indian Country. Considering the U.S. Attorney portion of law enforcement in Indian Country, this should also have been done sooner.

If this bill has a major failing, it is the failure to deal with *Oliphant*. Non-Indians are moving to reservations to make and deal drugs, including Meth. Non-Indians are abuser/perpetrators in relationships with Indian women and nothing can be done. It may be unrealistic to overturn *Oliphant*. However, this is, after all, misdemeanor jurisdiction. Some classes of crimes, such as DV, lend themselves to jurisdictional oversight by the most available sovereign. Limited criminal jurisdiction would not be a problem for Tribes in such cases. At the least, this legislation should acknowledge in the findings the potential for problems with non-Indian defendants as support for cross-jurisdictional law enforcement agreements.

It is vital to understand that you can't just hire more police and build more jails and the problems will go away. The step between law enforcement and jails is Tribal Courts. Funding for Courts, for training and staff, (Judges, Prosecutors and clerks) is just as important as it is for cops. This is often ignored. For this bill to be successful, adequate attention must be paid to the Tribal Courts.

Finally, the recent centralization of the Bureau of Indian Affairs Police has insulated them from responding to legitimate questions and concerns of Tribal leaders. The chain of command makes it difficult to establish an exact location of supervisors who should respond to Tribal leaders. In reality, the police administration considers itself answerable only to itself. Authority over police should be returned to the Superintendents of the Agencies of the BIA.

Specific Comments.

Section 102. Declination Reports

This section is very important. The DOJ could accomplish this administratively, however; it would show the level of work that isn't being done in Indian Country. It is not surprising this type of data isn't being collected.

There is some concern that the crimes committed, and subsequently declined, will decrease in severity. So that it doesn't look like an aggravated assault was declined, that crime will be labeled a simple assault. Recommend the crime recorded for data purposes is the crime charged by the initial Tribal investigation.

Tribal Prosecutor can pursue the case in Tribal Court once the Feds decline. This is good. Tribal Courts are not prepared legally or financially to prosecute what will likely be a number of severe (felony-level) cases. They will need training and funding.

Maintenance of Records. Records should also be maintained by reservation.

Confidential or Privileged Communication. This should be defined so it can not be used as an excuse to limit evidence that would hinder Tribal prosecutions.

Section 103. Prosecution of Crimes in Indian Country

Tribal Liaisons. Indian Cases have always had the lowest priority in a U.S. Attorney Office. Pay or other incentives should be used to insure the Tribal Liaison does not become an unwanted position.

To Hold Trials and Other Proceedings in Indian Country. This seems to presume U.S. Attorneys will practice in Tribal Courts. Not a bad idea. Perhaps better to consider them Special Prosecutors and require they comply with the rules of the Tribal Court regarding practice by outside attorneys.

Section 106. Office of Tribal Justice

If this is the only legislative duty of the Office of Tribal Justice, care must be taken their other important duties are not neglected down the road.

Meaningful and Timely Consultation with Tribal Leaders. Is this distinguishable from consultation not labeled "meaningful and timely" later in the bill?

Coordinate Prosecutions of Crimes of National Significance. Is the intent of this so Duro/Hicks type cases won't reach the Supreme Court? It is likely impossible to convince DOJ that the OTJ should exclusively handle these types of cases. It may be better not to try.

Section 201. State Criminal Jurisdiction and Resources

Needs a section; if a Tribe chooses where the Tribe is paying for or capable of paying for a sufficient standard of law enforcement, retrocession of state jurisdiction will be permitted. Many gaming Tribes are capable but denied this authority by their states.

Section 202. Incentives for State, Tribal and Local Law Enforcement Cooperation

Grants should also be available to develop cooperative agreements. Many states and Tribes have the incentive but do not have the funding to develop agreements.

Section 304. Tribal Court Sentencing Authority

Increase to 3 years and \$15,000 is reasonable. Three times current levels.

In Accordance with Guidelines Developed by the BIA. A deadline should be imposed so these guidelines do not take years to develop.

Appropriate Federal Facility. Though some will object, this should help rid Tribes of their most serious offenders.

Violent Crimes, Sexual Abuse and Serious Drug Offenses. An appropriate list of crimes for Federal prisons. Habeas Corpus and Federal review is still available.

Transfer of a Tribal Court Offender. Is it the intent to require a separate agreement for every prisoner that needs one? This is too cumbersome. It should be by charge . . . which would also limit favoritism.

Section 305. Indian Law and Order Commission

Experience and Expertise. These are not intended to be Tribal Leaders. Or even Indians. There should be some assurance Indians will be represented on this Commission.

Powers. The Commission should have subpoena authority because some, probably state officials, won't want to testify.

Commission Personnel Matters. There is no provision for staff. . . . Or even an Executive Director. It needs someone to compile the data. The Commissioners are volunteers. Most Tribes are poor. This assures only financially secure individuals and organizations are represented. It may cut out valuable applicants.

Section 403. Cops Tribal Resources Grant Program

It may be better to identify and designate a percentage of the grant funds for Tribes or Tribes, with limited grant-writing skills, will not get funded.

Section 404. Tribal Jails Program

(See above.) Set aside and designation of \$35 million for Tribal Jails will, over time, go a long way toward fixing the Jail space problem in Indian Country. Staffing may be a larger problem than facilities. Need training and staff funding as well.

Section 601. Violation of Tribal Orders

Under consideration. Any additional protection for victims is valuable. Requiring that Tribal Courts meet certain standards before Order reaches Federal felony status is not unreasonable.

PREPARED STATEMENT OF JAMES S. RICHARDSON SR., PRESIDENT, FEDERAL BAR ASSOCIATION

Dear Chairman Dorgan and Vice Chairman Murkowski:

The Federal Bar Association is pleased to submit these comments for inclusion in the June 19 record of the Committee's hearing on the draft bill addressing law enforcement in Indian Country. The FBA shares the Committee's concerns about this subject and supports its effort to develop legislation designed to address a longstanding problem of great importance to the health and well-being of tribal communities.

In particular, the FBA supports the collaborative approach the Committee has taken and its commitment to working with tribal leaders in developing the legislation. The FBA, too, supports the principles of tribal sovereignty and self-determination. Accordingly, FBA supports modification of the draft legislation to extend criminal jurisdiction to tribal courts over non-Indian offenders in cases of domestic and family violence in accordance with tribal criminal law where the offense occurs within the territorial jurisdiction of an Indian tribe.

The FBA is an association of legal professionals that run the gamut of federal practice from attorneys practicing in small to large legal firms, attorneys in corporations and federal agencies, and members of the judiciary. The FBA's

Indian Law Section is the largest organization in the United States devoted to federal Indian legal issues. What our members have most in common is dedication to the advancement of the science of jurisprudence and promoting the welfare, interests, education, and professional development of all attorneys involved in federal law. Our primary objectives are to:

- Promote and support legal research and education
- Advance the science of jurisprudence
- Facilitate the administration of justice
- Foster improvements in the practice of Federal law.

The FBA's Indian Law Section, one of the largest and most active of the Association, is comprised largely of attorneys who practice in the field of federal Indian law.¹ The Section has long been concerned about law enforcement problems in Indian Country. The FBA, through its legislative agenda, has expressed support for Congressional action that removes the limitation on the jurisdiction of tribal courts over non-Indian perpetrators of family violence in Indian Country. Because of the significant and harmful impact of family violence, we urge the Committee to modify the draft bill by conferring appropriate jurisdiction to tribal courts over non-Indian perpetrators of family violence arising in Indian Country. A practical jurisdictional void exists that must be addressed. We are pleased to have the opportunity to share our views on this aspect of the problems the Committee has identified.

Under present law, a tribal court is without criminal jurisdiction over non-Indians, even those residing in Indian Country and who have family or domestic ties to tribal members.² Furthermore, except in certain limited circumstances (P.L. 280 states), only the United States possesses criminal jurisdiction to prosecute non-Indians for crimes committed against Indians. Unfortunately, federal law enforcement resources are often stretched too thin to provide the level of support needed in tribal communities to adequately confront this problem. The result is that an offending non-Indian spouse, domestic partner, or parent may escape the criminal justice system unless and until the violence has escalated to tragic proportions. Many U.S. Attorneys offices remain understaffed and inadequately trained to deal with domestic violence, sexual assault and domestic counseling issues. Ironically, the governmental entity closest to the

¹ The FBA's Indian Law Section officers include: D. Michael McBride III, Section Chair, *Crowe & Dunlevy, P.C.*; Allie Greenleaf Maldonado, *Little Traverse Bay Band of Odawa Indians*; Prof. Elizabeth Kronk, *University of Montana School of Law*; Lloyd B. Miller, *Sonosky, Chambers, Sachse, Endreson & Perry, LLP*, and Lawrence R. Baca. The Section's Committee on Legislation includes: Elizabeth L. Homer, Chair, *Homer Law Chartered*; Mark Van Norman, *National Indian Gaming Association*; Jay Johnson, *Chickasaw Enterprises*; Patricia Zell, *Zell & Cox Law PC*; Shenan Atcity, *Holland & Knight*; Jeff Davis, *Asst. U.S. Attorney (W.D. Mich.)*.

² See *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

problem with the highest interest in redressing the situation is largely helpless to do anything about it given the current state of the law.

The Indian Child Protection and Family Violence Prevention Act,³ was enacted in 1990, nearly two decades ago, in response to Congressional concerns about the seriousness of the problem of family violence in Indian Country. In it, the Congress acknowledged the responsibility of the United States to assist tribal governments to address the problem, stating as follows:

...there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and the United States has a direct interest, as trustee, in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe. *Id.*

Since then, we have uncovered much more in relation to the scope and incidence of family violence. According to a study prepared by the Justice Department's Bureau of Justice Statistics, American Indians experienced violence at a rate (101 violent crimes per 1,000 American Indians) more than twice the rate for the Nation (41 per 1,000 persons).⁴ Studies also indicate that Indian women suffer a disproportionate level of intimate partner violence and sexual assault.⁵

Family violence, including child physical and sexual abuse, child neglect and maltreatment, intimate partner violence, and elder abuse, takes place in homes across the country every day. It is far from unique in Indian Country, but there is one critical distinction. Current law undermines perhaps the most effective means of addressing it: utilization of the tribal criminal justice system. If tribal self-determination is to be meaningful, tribal governments must be free to not only enact law, but also to enforce it and punish wrongdoers, especially in relation to those who for all practical purposes have become an integral part of the tribal community and whose wrongful conduct has such a devastating and longstanding impact upon it. The only practicable means to remedy or even begin to ameliorate the problem is to empower tribal government to safeguard the most vulnerable members of tribal communities by providing effective law enforcement intervention and access to the tribe's criminal justice system.

There is no question that family and domestic violence has a devastating impact on both children and adults in violent households and communities,

³ 25 U.S.C. 3201.

⁴ Perry, Steven W., *American Indians and Crime*, Washington, D.C., Bureau of Justice Statistics, December 2004, NCJ 203097.

⁵ Tjaden, Patricia, and Nancy Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence, Findings from the National Violence Against Women Survey*, Washington, D.C.: National Institute of Justice, July 2000, NCJ 181867, p. 25.

whether they are direct victims of abuse or simply helpless witnesses to it. The evidence is overwhelming. Numerous Justice Department studies reveal that children exposed to violence at an early age have a drastically increased propensity to become either perpetrators of abuse or victims of violence in adulthood. In May 2000, the Bureau of Justice Statistics (BJS) published a report based on data from the 1993-1998 National Crime Victimization Survey (NCVS), which compiles crime data throughout the U.S. The report stated that between 1993 and 1998, the average number of victims of intimate partner violence who lived with children under the age of 12 was 459,590.⁶ The researchers indicated that such incidence of family violence is sufficient to raise concerns about the very future of American society, even if only one child in each of those households is exposed to violence.

In a study commissioned by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the author of the report stated:

Contemporary social scientists agree that the continued maltreatment of children today is primarily the result of poorly trained adults who, in their roles as parents and caretakers, attempt to instill discipline and educate children within the context of the violence they themselves experienced as children.⁷

This and other reports describe a process through which abused children or witnesses to abuse often become violent offenders themselves, a phenomenon described as "cycle of violence." In a study conducted by the National Institute of Justice (NIJ) and conducted in a metropolitan Midwestern county area, arrest records of 908 abused and/or neglected children, age 11 or younger at the time of abuse/neglect, were compared with arrest records for 667 children who were not abused or maltreated. Initial results were gathered in 1988 and additional arrest data was gathered in 1994. The study found that "being abused or neglected as a child increased the likelihood of arrest as a juvenile by 59 percent, as an adult by 28 percent, and for a violent crime by 30 percent."⁸

Additionally, children who do not become offenders or victims may face great obstacles in emotional, mental, and physical development. These obstacles include attention deficits, educational difficulties, substance abuse, mental health problems, symptoms of post-traumatic stress disorder, and lack of appropriate social skills.⁹ Another aspect of family violence includes the crime of elder

⁶ Intimate Partner Violence, Bureau of Justice Statistics, 2000.

⁷ Bavelock, Stephen, The Nurturing Parenting Programs, Bulletin, Office of Juvenile Justice and Delinquency Prevention Programs, 2000.

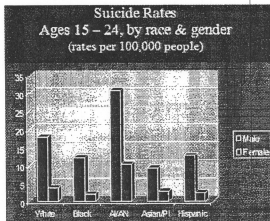
⁸ An Update on the Cycle of Violence, National Institute of Justice, 2001.

⁹ Safe From the Start: Taking Action on Children Exposed to Violence, Office of Juvenile Justice and Delinquency Prevention, 2000.

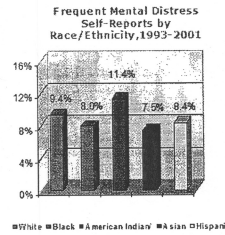
abuse. In 2004, the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Program conducted a study on violence among family members and intimate partners. The data for this study came from the UCR Program's National Incident-Based Reporting System (NIBRS) database. The findings report that 444 elderly relatives were the victims of murder/non-negligent manslaughter between 1996 and 2001.¹⁰

Given the data and research findings, it is not difficult to recognize the likely connection between the high incidence of violent crime in Indian Country and the incidence of family violence, but there are other significant indicators as well. According to the Indian Health Service (IHS), more than one-third of the demand on health care facilities in Indian Country is related to mental health, alcoholism, and substance abuse. The IHS reports:

Considerable disparities exist in the psychological well-being of AI/AN people compared to the general population. The suicide rate for American Indians is 70% higher than the general population. Also, AI/ANs



ages 15-24 have the highest rates of suicide of any racial group of the same age group in the U.S. Compared to the general population, AI/ANs tend to underutilize services, experience higher therapy drop-out rates, are less likely to respond to treatment, and have negative opinions about non-Indian providers. Also, poverty continues to afflict AI/AN communities at significant rates.



Poverty often leads to a lack of housing and overcrowding in homes, as well as other socioeconomic, education, and health problems. Economic concerns are often related to domestic violence, sexual assault, and childhood sexual abuse. Studies have shown that AI/AN women are 2.5 times more likely to be sexually assaulted as other women in the United States. The potential for behavioral health concerns is evident.¹¹

During the recent June 19 hearing, the Committee heard excellent testimony from tribal leaders, law enforcement officials, each of whom confirmed through personal knowledge and experience, the very disturbing conditions that

¹⁰ *Crime in the United States – 2003*, Federal Bureau of Investigation, 2004.
¹¹ IHS Fact Sheet, Behavioral Health, <http://info.ihs.gov/Bhealth.asp>

federal researchers have confirmed through formal study. According to the Justice Department's report on American Indians and Crime:¹²

The rate of violent victimization is well above that of other U.S. racial or ethnic subgroups and is more than twice as high as the national average.

American Indians are more likely than people of other races to experience violence at the hands of someone of a different race, and the criminal victimizer.

Approximately 60% of American Indian victims of violence, about the same percentage as of all victims of violence, described the offender as white.

The rate of violent victimization among American Indian women was more than double that among all women.

The Indian Health Service reports that homicide is the third leading cause of years of potential life lost before age 65 for Native Americans.¹³ It estimates an even higher percentage of inter-racial violence than the Bureau of Justice Statistics, reporting that "at least 70% of the violent victimizations experienced by American Indians are committed by persons not of the same race — a substantially higher rate of interracial violence than experienced by white or black victims."¹⁴

The FBA believes that conditions in Indian Country will not change unless tribal governments have the tools to address these problems. Regardless of the good intentions of people and agencies outside of tribal governments, there is no substitute for action by tribal government institutions when it comes to resolving problems within the tribal community. To paraphrase an old adage, the best government is the government closest to the people. To empower tribal law enforcement to handle these matters and tribal courts to entertain them will provide long delayed justice to some of this Nation's most vulnerable and neglected victims of violent crime.

Thank you for the opportunity to submit these comments for inclusion in the hearing record. Once again, we applaud the Committee for the collaborative approach toward the crafting of legislation to address the improvement of law enforcement efforts in Indian Country. The leaders of our Indian Law Section join

¹² Greenfield, Lawrence A. and Smith, Steven K., American Indians and Crime, <http://www.ojp.usdoj.gov/bjs/>

¹³ *Supra* at n.10.

¹⁴ *Id.*

me in extending our interest in continuing to work with the Committee on the legislation in the days ahead.

Sincerely yours,



James S. Richardson, Sr.
President

WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO HON. RON HIS HORSE IS THUNDER*

Question 1. Can you please describe the Standing Rock Tribe's Court system? Please indicate whether there is an appellate court system, public defenders' office, and other relevant information.

Question 2. How do you the BIA could more effectively performing its law enforcement duties for direct service tribes like Standing Rock?

Question 3. In their testimony, the Interior and Justice Departments indicated their opposition to Section 305 of the draft bill that would increase tribal court sentencing authority to 3 years imprisonment. The agencies stated their concern that the provision could adversely impact defendants' constitutional rights in tribal courts. Please discuss your thoughts on the protection of constitutional rights in the Standing Rock Tribal Court system?

Question 4. You mentioned that Operation Dakota Peacekeeper is already providing increased enforcement of crimes on your Reservation. Can you please additional details on the effects of the Operation, identify the most positive aspects of the Operation, and provide a recommendation of what essential components of the program should be maintained.

WRITTEN QUESTIONS SUBMITTED BY HON. LISA MURKOWSKI TO HON. RON HIS HORSE IS THUNDER*

Question 1. This draft bill authorizes the Drug Enforcement Administration to award technical assistance grants to tribal law enforcement agencies. What other recommendations do you have to improve relations between Indian tribes and the DEA and drug abuse prevention and interdiction in Indian Country?

Question 2. Your testimony suggested improving the availability of housing on the Indian reservations to assist in recruiting and retaining law enforcement officers. What other recommendations do you have to assist in the recruitment and retention of law enforcement officers?

Question 3. The Department of Justice has raised several concerns about providing declination reports to tribal justice officials and indicated that releasing case files to the tribal prosecutors may generate potentially discoverable material. You suggested that the federal prosecutors should release the entire case file to tribal prosecutors so they may proceed accordingly.

How could tribes protect the confidentiality of such information so that it does not impede the successful prosecution of offenders in either the tribal or federal courts?

Question 4. The Operation Dakota Peacekeeper program has increased the number of law enforcement officers on your reservation. However, you had indicated concerns regarding the temporary nature of that program. Would it be more beneficial to the law enforcement efforts and public safety in general to make permanent

* Response to written questions was not available at the time this hearing went to press.

across Indian Country programs such as Operation Dakota Peacekeeper and the Safe Indian Communities Initiative?

WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO WALTER E. LAMAR *

Question 1. The Committee has heard concerns about the BIA's Internal Affairs Division. Please describe your thoughts on the possible consequences of the current Internal Affairs system. And, if you believe necessary, do you have any recommended legislative proposals to ensure that the BIA and tribal law enforcement agencies have adequate internal affairs practices?

Question 2. As a former FBI agent serving Indian Country, what in your opinion could be done on the part of the FBI—other than dedicating additional positions—to aid the investigation of crimes in Indian Country?

WRITTEN QUESTIONS SUBMITTED BY HON. LISA MURKOWSKI TO WALTER E. LAMAR *

Question 1. Section 303 of the draft bill would allow tribes broader access to national criminal databases. What recommendations do you have for improving the tribal law enforcement officials' ability to access the NCIC as well as other data or information sharing capabilities?

Question 2. Background investigations and proper training are costly for Indian tribes. Section 301 of the draft bill authorizes law enforcement officers to obtain training through state police academies. What are other options should be made available to Indian tribes, such as accessing the FBI fingerprinting systems, to conduct proper background investigations and training which might decrease the costs incurred by Indian tribes in the hiring of qualified law enforcement officers?

Question 3. There are a significant number of law enforcement agencies and jurisdictions involved in Indian Country. Cross-deputization agreements have been one tool to improve coordination between the agencies and reduce confusion over such matters as jurisdiction. Section 301 of the draft bill also contemplates a plan being developed to enhance the provision of special law enforcement commissions to tribal and state law enforcement officers. What other tools are needed to ensure adequate coordination and response from and between the various law enforcement agencies is provided to victims of crimes in Indian Country?

Question 4. Your testimony indicated that the Federal Bureau of Investigation may have the number of their cases declined by the U.S. Attorney's Offices, but may not include the BIA or tribal cases referred to the U.S. Attorney's Offices. What other recommendations do you have to gather comprehensive data on the declination rates?

WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO KELLY GAINES STONER *

Question. I want to clarify that the enhanced sentencing provision for tribal courts in Section 304 is optional. The intent of the provision is to maintain the current standards for prosecutions subject to 1 year or less. However, if a Tribe chooses to enact criminal laws subject to sentences between more than 1 year and up to three years, the tribal court must afford the defendant certain protections. I agree that funding for tribal public defense programs must be included. Section 402 of the draft bill would reauthorize the Indian Tribal Justice Support and Technical and Legal Assistance Acts, which includes programmatic funding for tribal public defender programs. In your opinion, what other initiatives should be included in these tribal courts programs? For example, how could the BIA or Tribes collect and provide better data on tribal court statistics?

WRITTEN QUESTIONS SUBMITTED BY HON. LISA MURKOWSKI TO KELLY GAINES STONER *

Question 1. What types of training should be included for law enforcement officials to increase the chances of successful prosecutions of domestic and sexual violence?

* Response to written questions was not available at the time this hearing went to press.

Question 2. Your testimony indicated that you referred cases to the federal prosecutor and either did not receive a declination report or received a delayed response from the federal prosecutor. The Committee received testimony from the Department of Justice that there are several serious concerns about releasing declination reports. What is your view about those concerns? Do you have any recommendations for how the Federal and tribal prosecutors and law enforcement could work together to address these concerns?

Question 3. The Department of Justice indicated that it opposes codifying the duties of the tribal liaisons within the U.S. Attorney's Offices which are outlined in the draft bill. What would you recommend for the U.S. Attorney's Offices in defining the tribal liaisons roles so that Indian Country crimes would receive significant attention, priority and be addressed in a consistent government to government relationship?

Question 4. The Committee has heard that in some jurisdictions the tribal prosecutors must turn cases over to the FBI, who then must review and present them to the U.S. Attorney's Office. Was this the case when you were the tribal prosecutor at Fort Totten? What problems, if any, could tribal prosecutors face in such circumstances?

WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO HON. GRETCHEN C. F. SHAPPERT *

Question 1. Please provide the number of federal reservation-based misdemeanor prosecutions by District for the years 2006 and 2007. Please indicate the percentage of Native American defendants in these cases.

Question 2. The draft bill would enable the use of declination reports as a positive tool to coordinate prosecutions with tribal prosecutors, and to inform Congress regarding where additional resources are needed. This information is not available. Please provide a list by Federal District of the percentage of Indian Country criminal cases that were declined by U.S. Attorneys offices nationwide in 2006 and 2007? Again, by Federal District, please indicate the general reasons for declinations, attributing percentages to those reasons?

Question 3. Please describe the Department's policy on taping recording interviews with suspects, and provide reasons behind the policy.

Question 4. Please describe the Federal Bureau of Investigations efforts to aid background investigations for potential employees of gambling facilities operated by Indian Tribes, including the use if any of the Integrated Automated Fingerprint Identification System (IAFIS). Would the Department support similar coordination for purposes of expediting background checks for candidates for tribal and BIA police and corrections officers?

Question 5. Please provide the current number of offenders in federal custody (the Federal Bureau of Prisons System) that were convicted in either State, local government, or territorial courts?

Question 6. The Interior Department-contracted "Master Plan for Justice Services in Indian Country" indicates that most tribal jails have reached or will soon reach the end of their useful life. It notes that 90 percent of jails older than 5 years should be replaced. And it notes that contract beds at State and local jails are overcrowded and often far from remote tribal communities.

You indicated the Department's opposition to the proposal to permit coordination between tribal courts and the Federal Bureau of Prisons. What viable alternatives to incarceration for tribal justice programs would the Department support?

WRITTEN QUESTIONS SUBMITTED BY HON. LISA MURKOWSKI TO HON. GRETCHEN C. F. SHAPPERT *

Question 1. Your written testimony indicated that the Department of Justice N-Dex Program office is developing relationships with several Indian tribes to submit data to the N-Dex system. What kind of infrastructure does this N-Dex system requires for tribal agency participation?

Question 2. Your written testimony indicated that the Department's efforts in Indian Country have been above average across the board. As an example, your testimony cites that in FY 2006, the Department filed 606 cases against 688 defendants

* Response to written questions was not available at the time this hearing went to press.

in Indian Country which is nearly 5 percent higher than the average rate of filing since 1994 of 580 cases against 643 defendants per year. Does that 5 percent figure correspond with the percentage increase in crime rates in Indian Country? What is the basis for determining an “above average” effort across the board?

Question 3. Your written testimony states that the number of FBI agents working Indian Country cases has increased by 7 percent since 2001. What has been the percentage increase or decrease in work-hours or Time Utilization Recordkeeping hours dedicated to Indian Country since 2001?

Question 4. Your written testimony indicates that the Department has concerns about releasing declination reports for several reasons, particularly the creation of potentially discoverable material. What kind of information do you think could be conveyed to the tribal justice officials to enable them to understand the status of the case and make a decision on proceeding in tribal court without creating potentially discoverable material?

WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO W. PATRICK RAGSDALE*

Question 1. Please explain the Interior Department’s efforts to coordinate with the Justice Department on the construction/renovation and the operation/maintenance of tribal jails.

Question 2. The Interior Department-contracted “Master Plan for Justice Services in Indian Country” indicates that most tribal jails have reached or will soon reach the end of their useful life. It notes that 90 percent) of jails older than 5 years should be replaced. And it notes that contract beds at State and local jails are overcrowded and often far from remote tribal communities.

You indicated the Department’s opposition to the proposal that would enhance tribal court sentencing authority to 3 years, and permit coordination between tribal courts and the Federal Bureau of Prisons. What viable alternatives to incarceration for tribal justice programs would the Department support?

Question 3. Please describe the Department’s efforts to fight juvenile crime in Indian Country.

Question 4. Please provide a detailed spending plan for the \$23.7 million appropriated in FY 2008 for the Department’s Safe Indian Communities Initiative? Include the amount spent on Operation Dakota Peacekeeper and other implementation to date.

Question 5. Please describe in your opinion what aspects of Operation Dakota Peacekeeper are working, and comment on whether and how the Operation will duplicated in other tribal communities.

WRITTEN QUESTIONS SUBMITTED BY HON. LISA MURKOWSKI TO W. PATRICK RAGSDALE*

Question 1. The draft bill would require the Office of Justice Services to coordinate with the Department of Justice to develop specialized family violence training for all of the law enforcement officials and prosecutors responsible for Indian country. What kind of training currently exists for such specialized family and domestic violence training for BIA and tribal law enforcement? How many BIA law enforcement officers have received this specialized type of family and domestic violence training?

Question 2. Your written testimony indicates that the Department may have constitutional and federal policy concerns with increasing the tribal court sentencing authority as well as placing Indian defendants sentenced by tribal courts in the federal Bureau of Prisons. You stated that there may need to be a separation of powers within tribal governments as one means of addressing these concerns. Please elaborate on your statement about separation of power—in particular, how or why it would address constitutional concerns.

Question 3. Would a “separation of powers” requirement also require some tribes to amend their constitutions?

Question 4. Your testimony indicated that the Operation Dakota Peacekeepers Initiative is for a limited time, but that the number of law enforcement officers is reaching the standard under the GAP Analysis and that it appears to be making

* Response to written questions was not available at the time this hearing went to press.

a difference. You also mentioned that you will review this initiative to see if it could be employed at other Indian reservations. What other initiatives could be employed immediately on other Indian reservations, some of which are experiencing even higher crime rates than the Standing Rock Sioux Reservation?

Question 5. Your testimony indicated that there are Indian reservations with crime rates as high as 32 times the national average. Please explain the basis for the statement that crime rates on certain Indian reservations were 32 times the national average?

Question 6. How is the BIA coordinating with tribal law enforcement to improve the background checks process?

Question 7. How does the Indian Child Protection and Family Violence Act improve the background check process?

Question 8. Please describe the process followed by the BIA and Federal Bureau of Investigation to coordinate their efforts in investigating crimes in Indian Country?

Question 9. Your written testimony indicated that the Incident Management Analysis Reporting System (IMARS) is intended to provide a common information sharing capability across all participating functional areas within the Department of Interior for capturing and reporting law enforcement information. Once it is Department-wide, OJS will determine the feasibility of providing an opportunity for tribal collection of crime data using IMARS. What is the time frame for IMARS becoming Department-wide? How will OJS determine the feasibility of allowing Indian tribes to participate in the IMARS?

Question 10. What can be accomplished in the interim to assist Indian tribes in law enforcement data collection and information sharing?

Question 11. Your written testimony indicated that consistency in standards and staffing among the detention facilities needs to be assured to alleviate both constitutional and federal policy concerns regarding increasing the tribal sentencing authority from one year to three years. What assistance can the BIA provide to Indian tribes to achieve these standards and staffing levels?

WRITTEN QUESTIONS SUBMITTED BY HON. PETE V. DOMENICI TO W. PATRICK RAGSDALE*

Question 1. I often hear from New Mexico tribal officials regarding the difficulties tribal leaders face in trying to deal with crime including drug activity, gangs and other criminal activity. What program(s) or assistance does BIA provide to local tribes for the training of local tribal law enforcement officers?

Question 2. What law enforcement resources, both officers and support personnel, does the BIA have deployed in New Mexico at this time?

Question 3. Are crime rates on New Mexico reservations higher than those of other states per capita?

Question 4. In 2004, the Department of Interior Inspector General issued a report entitled "Neither Safe Nor Secure." The report outlined the poor conditions of detention facilities throughout Indian Country. Since the 2004 report, how has the BIA and DOJ worked together to plan for correctional facility replacement?

Question 5. What is the status of plans for correctional facility replacement and renovation and specifically in New Mexico?

Question 6. Would it be helpful for Congress to clarify what type of collaborative process would be required for BIA and DOJ's work on correctional facility replacement and collaboration?

WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO W. PATRICK RAGSDALE*

Question 1. Regarding data collection, do all tribes participate in the BIA's crime data collection efforts? Do they all use the same standards? How many tribes are still submitting hard copies of their data and what effort is being made to move these tribes towards electronic submission?

Question 2. At the conclusion of Operation Dakota Peacekeeper could you provide a report on the successes and failures of the operation as well as its long term project effect on crime on the Standing Rock Sioux Tribe?

* Response to written questions was not available at the time this hearing went to press.

Question 3. What percentage of BIA officers are cross-commissioned? How about tribal officers?

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO HON. JOE A. GARCIA

Question 1. In their testimony, the Interior and Justice Departments indicated their opposition to Section 304 of the draft bill that would increase tribal court sentencing authority to 3 years imprisonment. The agencies stated their concern that the provision could adversely impact defendants' constitutional rights in tribal courts. Please discuss NCAI's position on the protection of constitutional rights in tribal court systems?

Answer. Section 305 of the draft legislation would extend tribal sentencing limitations under the Indian Civil Rights Act to provide for up to 3 year sentences for more serious offenders. In the original 1968 law, tribal sentencing authority was limited to 6 months or \$500. In 1986, the authority was expanded to 1 year or \$5000.

As a general matter, the rights guaranteed by the United States Constitution do not apply to tribal courts. Rather, the Indian Civil Rights Act (ICRA) incorporates similar protections as are found in the U.S. Constitution and makes them applicable to tribal courts. As such, defendants in tribal courts do not have "constitutional rights" other than rights recognized in the tribal constitution. Defendants in tribal courts do, of course, have a statutorily guaranteed right to many of the due process protections contained in the U.S. Constitution under ICRA.

We assume that the federal agencies are raising concerns that the full panoply of rights that have been enumerated in the U.S. Constitution would not be available to defendants in tribal courts, to the extent that some of those rights are triggered by a sentence that is greater than one year.

First, the Supreme Court has recently confirmed that an Indian tribe acts as a separate sovereign when it prosecutes its own members or nonmember Indians, and such prosecution is not an exercise of federal power. *United States v. Lara*, 541 U.S. 193 (2004). The power that Congress would exercise here is Congress's broad power in Indian affairs with its source in several places in the Constitution, and there is "no explicit language in the Constitution suggesting a limitation on Congress' institutional authority to relax restrictions on tribal sovereignty previously imposed by the political branches." *Lara*, 541 U.S. at 546.

As a matter of constitutional law, the length of the sentence imposed matter differently across constitutional rights. For example, the Sixth Amendment right to counsel is applicable as long as the defendant receives any imprisonment at all. See, *Alabama v. Shelton*, 535 U.S. 654 (2002). The right to a jury trial does not attach to all criminal offenses, but only attaches for all offenses that are not "petty offenses," which the Supreme Court has defined as six months in jail or less. See, *Blanton v. City of North Las Vegas, Nev.*, 489 U.S. 538 (1989).

The Fifth Amendment provides a right to a grand jury indictment for "infamous" crimes, and a one-year sentence is the dividing line for infamous crimes. See, e.g., *U.S. v. Fitzgerald*, 89 F.3d 218 (5th Cir. 1996) ("Any federal offense punishable by imprisonment for more than one year is an offense for which the Fifth Amendment requires a grand jury indictment."). This is the only criminal procedure issue we can find that would relate to the expansion of tribal sentencing authority beyond one year.

However, unlike many other provisions of the Bill of Rights, the Supreme Court has ruled that the right to indictment by grand jury is not a fundamental aspect of due process, and was not incorporated to apply to state courts via the Fourteenth Amendment, and states therefore may elect not to use grand juries. *Hurtado v. California*, 110 U.S. 516 (1884). "[W]e are unable to say that the substitution for a presentment or indictment by a grand jury of the proceeding by information, after examination and commitment by a magistrate, certifying to the probable guilt of the defendant, with the right on his part to the aid of counsel, and to the cross-examination of the witnesses produced for the prosecution, is not due process of law."

Because tribal prosecution is not an exercise of federal power, and because the right to a grand jury indictment has never been considered a fundamental aspect of due process, we do not believe that the expansion of tribal sentencing authority should trigger constitutional concerns for Congress. However, NCAI strongly supports the protection of due process in tribal courts, and we note that the legislation would specifically protect the right to assistance of counsel and the general right to due process in criminal proceedings.

Question 2. Please provide your legislative recommendations, if any, to initiatives that should be included in the reauthorizations of the tribal courts, tribal youth, and other tribal justice programs.

Answer. As noted in our testimony, one of the primary recommendations of tribal leaders has been to make funding from the Department of Justice programs more readily available and more useful for the actual needs on reservations. Right now, the funding requires a significant grant-writing capability and is often compartmentalized in ways that do not make sense. Our recommendation would be for Congress to consider something like the following:

25 U.S.C. § 458 —to read:

(a) Notwithstanding any other provision of law, the Attorney General shall carry out a program within the Department of Justice to be known as the Tribal Justice Self-Determination and Self-Governance Program.

(b) Notwithstanding any other provision of law, the Attorney General shall enter into contracts, compacts and funding agreements in accordance with Title I and IV of the Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended, with any Indian tribe who elects to utilize the authority of this title to govern any funds available to Indian tribes under the authority of the Attorney General.

(c) Notwithstanding any other provision of law, the negotiation and implementation of each agreement entered into under this section shall be governed by this title and the provisions of Title I or IV of the Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended.

(d) Regulations.

(I) Not later than 90 days after [DATE OF ENACTMENT], the Secretary shall initiate procedures under subchapter III of chapter 5 title 5 to negotiate and promulgate such regulations as are necessary to carry out this part.

(II) A negotiated rulemaking committee established pursuant to section 565 of title 5 to carry out this section shall have as its members only Federal and tribal government representatives, a majority of whom shall be representatives of Indian tribes with self-governance agreements under this chapter.

(III) The Secretary shall adapt the negotiated rulemaking procedures to the unique context of Self-Determination and Self-Governance and the government-to-government relationship between the United States and the Indian tribes.

(IV) The lack of promulgated regulations shall not limit the effect of this part.

Question 3. Please include any other recommendations or comments on the draft bill.

Answer. NCAI strongly encourages the Committee to consider including the pilot project to expand tribal jurisdiction in cases of domestic violence that was included in the concept paper for the bill last November. This provision was widely supported by Indian country and is a common-sense solution to one of the most pressing problems in tribal communities. Tribal governments should have the authority to intervene when a non-Indian who has chosen to become a member of the tribal community abuses his Indian family members.

NCAI also encourages the Committee to consider including some of the recommendations for improving the effectiveness of the Adam Walsh Act in Indian Country that were made at the July 17, 2008 hearing on sex offender registration.

There are many excellent provisions in the legislation and NCAI has had a significant opportunity to provide input, so we will limit our recommendations at this time to these two, and encourage the Committee to continue to continue its efforts to receive recommendations from tribes.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. LISA MURKOWSKI TO HON.
JOE A. GARCIA

Question 1. Both the Departments of the Interior and Justice appear to have serious concerns about provisions in the draft bill that would increase tribal court sentencing authority and allow tribally-sentenced Indian defendants to serve their time in the Bureau of Prisons system. How might tribes address the additional requirement of the defendant's right to legal counsel in implementing the increase in tribal sentencing authority to three years as contemplated by the draft bill?

Answer. First, NCAI strongly supports the provision which would allow tribes to send serious offenders to serve their time in the Bureau of Prisons system. As the Committee is aware, tribal detention facilities have been neglected and are significantly under funded. This is one of the most important provisions of this legislation.

Second, we agree that protecting the right to counsel is important to protect the constitutionality of tribal justice systems. In *United States v. Lara*, the Supreme Court left open the question of whether additional due process challenges could be raised to tribal prosecutions. “Hence, we need not, and we shall not, consider the merits of *Lara’s* due process claim. Other defendants in tribal proceedings remain free to raise that claim should they wish to do so. See 25 U.S.C. § 1303 (vesting district courts with jurisdiction over habeas writs from tribal courts).”

NCAI’s understanding is that a significant number of tribes already provide counsel to indigent persons who are prosecuted in tribal courts for offenses that could include imprisonment. For the remaining tribes, the issue is largely funding. We would encourage Congress to provide additional funds for tribal justice systems, but also note that the proposed statute would give tribes some flexibility. If the tribe chooses to impose sentences greater than one year, the tribal court would be able to provide counsel for indigent defendants on a case-by-case basis.

Question 2. The Operation Dakota Peacekeeper program will provide additional law enforcement officers on the Standing Rock Sioux Indian reservation for a limited period of time. Would it be more beneficial to the law enforcement efforts and public safety in general to make permanent throughout Indian Country programs such as Operation Dakota Peacekeeper and the Safe Indian Communities Initiative?

Answer. NCAI strongly agrees that increased law enforcement presence and focus is the top priority to improve law enforcement in Indian communities. Tribal leaders have made this their first concern, and this has only been reinforced by the recent successes of the Dakota Peacekeeper Operation. As noted in our testimony, we strongly urge increased resources for BIA law enforcement and the creation of specifically focused enforcement units within the Department of Justice and the Federal Bureau of Investigation.

Question 3. The Committee received testimony recommending that, to improve and prioritize law enforcement, the Office of Justice Services within the Bureau of Indian Affairs should be elevated to a Bureau directly responsible to the Assistant Secretary for Indian Affairs, similar in status to the Bureau of Indian Education, and the Deputy Director elevated to a Director. Does the NCAI agree with this recommendation?

Answer. NCAI does not agree with the recommendation at this time. Tribal leaders have been opposed to reorganization efforts to separate out the functions of the Bureau of Indian Affairs for two primary reasons. First, creating a separate bureaucracy requires the creation of additional high-level management positions that take away resources from reservation-level services. The priority of tribal leaders is to maximize the services provided at the reservation level, and this is particularly true for law enforcement. Second, the creation of a separate bureaucracy tends to “stove-pipe” decision-making and makes it more difficult to coordinate action at the local level and create bureaucratic delays. To our knowledge, this is not a question that has been discussed with tribal leadership and we would urge the BIA and Congress to take no action to reorganize the Office of Justice Services without support from tribal leaders.

United States Senate
WASHINGTON, DC 20510

June 12, 2008

To whom it may concern:

In the 110th Congress, the Senate Committee on Indian Affairs held four hearings and convened a number of listening sessions and meetings to discuss the growing concern of violent crime on Indian reservations. These hearings and meetings confirm what many Indian country residents have known for some time: many tribal communities are in the midst of a public safety crisis.

On November 7, 2007, the Senate Committee on Indian Affairs Chairman released a concept paper consisting of comments and recommendations from interested parties to address this crisis. Committee staff solicited further comments and recommendations since release of the concept paper.

Attached is a discussion draft of proposed legislation that would provide a variety of new tools to address the public safety concerns facing Indian country. This comprehensive approach would: (1) empower tribal governments to address crime in communities located on Indian reservations or restricted Indian lands and provide them with the necessary resources to improve their justice systems; (2) ensure greater accountability on the part of the federal government for its responsibility to provide public safety on Indian lands; (3) encourage greater cooperation at the state and local level; and (4) improve data collection relating to crimes in Indian country and information sharing between tribal, state, and federal law enforcement agencies.


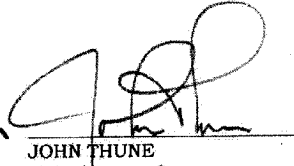
The Committee is interested in obtaining comments on this draft bill from all affected stakeholders in this matter, including but not limited to, people who live or work on Indian reservations or Indian lands, tribal governments and agencies, and state and local governments and agencies. We intend to continue working with all affected stakeholders throughout the legislative process.

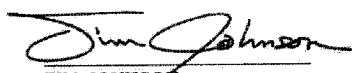

Please review the attached draft bill and forward any comments with the subject line "Discussion Draft Indian Law and Order Bill" via facsimile to (202) 228-2589, via e-mail to john_harte@indian.senate.gov, or by U.S. mail to the address below:

Senate Committee on Indian Affairs
Re: Draft Indian Law and Order Bill
838 Hart Senate Office Building
Washington, DC 20510

Thank you for your time and interest in this important matter.

Sincerely,

	
BYRON L. DORGAN United States Senator	JOHN THUNE United States Senator

	
TIM JOHNSON United States Senator	JON TESTER United States Senator

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1 Title: To amend the Indian Law Enforcement Reform Act, the Indian Tribal Justice Act, the
2 Indian Tribal Justice Technical and Legal Assistance Act of 2000, and the Omnibus Crime
3 Control and Safe Streets Act of 1968 to improve the prosecution of, and response to, crimes in
4 Indian country, and for other purposes.
5
6

7 Be it enacted by the Senate and House of Representatives of the United States of America in
8 Congress assembled,

9 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

10 (a) Short Title.—This Act may be cited as the “Tribal Justice Improvement Act of 2008”.

11 (b) Table of Contents.—The table of contents of this Act is as follows:

12 Sec.1.Short title; table of contents.

13 Sec.2.Findings; purposes.

14 Sec.3.Definitions.

15 TITLE I—FEDERAL ACCOUNTABILITY AND
16 COORDINATION

17 Sec.101.Office of Justice Services responsibilities.

18 Sec.102.Declination reports.

19 Sec.103.Prosecution of crimes in Indian country.

20 Sec.104.Administration.

21 TITLE II—STATE ACCOUNTABILITY AND
22 COORDINATION

23 Sec.201.State criminal jurisdiction and resources.

24 Sec.202.Incentives for State, tribal, and local law enforcement cooperation.

25 TITLE III—EMPOWERING TRIBAL LAW ENFORCEMENT
26 AGENCIES AND TRIBAL GOVERNMENTS

27 Sec.301.Tribal police officers.

28 Sec.302.Drug enforcement in Indian country.

29 Sec.303.Access to national criminal information databases.

30 Sec.304.Tribal court sentencing authority.

31 Sec.305.Indian law and order commission.

32 TITLE IV—TRIBAL JUSTICE SYSTEMS

- 1 Sec.401.Indian alcohol and substance abuse.
- 2 Sec.402.Indian tribal justice; technical and legal assistance.
- 3 Sec.403.COPS tribal resources grant program.
- 4 Sec.404.Tribal jails program.
- 5 Sec.405.Tribal probation office liaison program.
- 6 Sec.406.Tribal youth program.

7 **TITLE V—INDIAN COUNTRY CRIME DATA**

- 8 Sec.501.Tracking of crimes committed in Indian country.
- 9 Sec.502.Grants to improve tribal data collection systems.
- 10 Sec.503.Criminal history record improvement program.

11 **TITLE VI—DOMESTIC VIOLENCE AND SEXUAL
12 ASSAULT PROSECUTION AND PREVENTION**

- 13 Sec.601.Violation of tribal orders.
- 14 Sec.602.Prisoner release and reentry.
- 15 Sec.603.Domestic and sexual violent offense training.

16 **SEC. 2. FINDINGS; PURPOSES.**

- 17 (a) Findings.—Congress finds that—
- 18 (1) the United States has distinct legal, treaty, and trust obligations to provide for the
- 19 public safety of Indian country;
- 20 (2) several States have been delegated or have accepted responsibility to provide for the
- 21 public safety of Indian country within the borders of the States;
- 22 (3) Congress and the President have acknowledged that—
- 23 (A) tribal law enforcement officers are often the first responders to crimes on Indian
- 24 reservations; and
- 25 (B) tribal justice systems are ultimately the most appropriate institutions for
- 26 maintaining law and order in Indian country;
- 27 (4) less than 3,000 tribal and Federal law enforcement officers patrol more than
- 28 56,000,000 acres of Indian country, which reflects less than 1/2 of the law enforcement
- 29 presence in comparable rural communities nationwide;
- 30 (5) on many Indian reservations, law enforcement officers respond to distress calls
- 31 without backup and travel to remote locations without adequate radio communication or
- 32 access to national crime information database systems;
- 33 (6) the majority of tribal detention facilities are in a state of disrepair, and the Department
- 34 of the Interior has identified a multibillion-dollar backlog in funding for tribal detention

- 1 facilities;
- 2 (7) tribal courts—
- 3 (A) are the primary arbiters of criminal and civil justice for actions arising in Indian
- 4 country; but
- 5 (B) have been historically underfunded;
- 6 (8) tribal court sentencing authority is limited to sentences of not more than 1 year of
- 7 imprisonment, forcing tribal communities to rely solely on the Federal Government and
- 8 certain State governments for the prosecution of felony crimes in Indian country;
- 9 (9) a significant percentage of cases referred to Federal agencies for prosecution of
- 10 alleged crimes occurring in Indian country are declined to be prosecuted;
- 11 (10) the complicated jurisdictional scheme that exists in Indian country—
- 12 (A) has a significant negative impact on the ability to provide public safety to Indian
- 13 communities; and
- 14 (B) has been increasingly exploited by criminals;
- 15 (11) the violent crime rate in Indian country is—
- 16 (A) nearly twice the national average; and
- 17 (B) more than 20 times the national average on some rural Indian reservations;
- 18 (12)(A) domestic and sexual violence against Indian and Alaska Native women has
- 19 reached epidemic proportions;
- 20 (B) 34 percent of Indian and Alaska Native women will be raped in their lifetimes; and
- 21 (C) 39 percent of Indian and Alaska Native women will be subject to domestic violence;
- 22 (13) the lack of police presence and resources in Indian country has resulted in significant
- 23 delays in responding to victims' calls for assistance, which adversely affects the collection
- 24 of evidence needed to prosecute crimes of domestic and sexual violence;
- 25 (14) alcohol and drug abuse plays a role in more than 80 percent of crimes committed in
- 26 Indian country;
- 27 (15) the rate of methamphetamine addiction in Indian country is 3 times the national
- 28 average;
- 29 (16) the Department of Justice has reported that drug organizations have increasingly
- 30 targeted Indian country to produce and distribute methamphetamine, citing the limited law
- 31 enforcement presence and jurisdictional confusion as reasons for the increased activity;
- 32 (17) tribal communities face significant increases in instances of domestic violence,
- 33 burglary, assault, and child abuse as a direct result of increased methamphetamine use on
- 34 Indian reservations;
- 35 (18)(A) criminal jurisdiction in Indian country is complex, and responsibility for Indian
- 36 country law enforcement is shared among Federal, tribal, and State authorities; and
- 37 (B) that complexity requires a high degree of commitment and cooperation from Federal

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- 1 and State officials that can be difficult to establish;
- 2 (19) agreements for cooperation among certified tribal and State law enforcement officers
3 have proven to improve law enforcement in Indian country; and
- 4 (20) crime data is a fundamental tool of law enforcement, but for decades the Bureau of
5 Indian Affairs and the Department of Justice have not been able to coordinate or
6 consistently report crime and prosecution rates in Indian country.
- 7 (b) Purposes.—The purposes of this Act are—
- 8 (1) to clarify the responsibilities of Federal, State, tribal, and local governments with
9 respect to crimes committed in Indian country;
- 10 (2) to increase coordination and communication among Federal, State, tribal, and local
11 law enforcement agencies;
- 12 (3) to empower tribal governments with the authority, resources, and information
13 necessary to safely and effectively provide public safety in Indian country;
- 14 (4) to reduce the prevalence of violent crime in Indian country and to combat violence
15 against Indian and Alaska Native women;
- 16 (5) to address and prevent drug trafficking and reduce rates of alcohol and drug addiction
17 in Indian country; and
- 18 (6) to increase and standardize the collection of criminal data and the sharing of criminal
19 history information among Federal, State, and tribal officials responsible for responding to
20 and investigating crimes in Indian country.

21 SEC. 3. DEFINITIONS.

- 22 (a) In General.—In this Act:
- 23 (1) INDIAN COUNTRY.—The term “Indian country” has the meaning given the term in
24 section 1153 of title 18, United States Code.
- 25 (2) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in section
26 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).
- 27 (3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.
- 28 (4) TRIBAL GOVERNMENT.—The term “tribal government” means the governing body of
29 an Indian tribe.
- 30 (b) Indian Law Enforcement Reform Act.—Section 2 of the Indian Law Enforcement Reform
31 Act (25 U.S.C. 2801) is amended by adding at the end the following:
- 32 “(10) TRIBAL JUSTICE OFFICIAL.—The term ‘tribal justice official’ means—
- 33 “(A) a tribal prosecutor;
- 34 “(B) a tribal law enforcement officer; or
- 35 “(C) any other person responsible for investigating or prosecuting an alleged
36 criminal offense in tribal court.”.

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1 TITLE I—FEDERAL ACCOUNTABILITY AND
2 COORDINATION
3 SEC. 101. OFFICE OF JUSTICE SERVICES
4 RESPONSIBILITIES.

5 (a) Additional Responsibilities of Division.—Section 3(c) of the Indian Law Enforcement
6 Reform Act (25 U.S.C. 2802(e)) is amended—

7 (1) in paragraph (8), by striking “and” at the end;

8 (2) in paragraph (9), by striking the period at the end and inserting a semicolon; and

9 (3) by adding at the end the following:

10 “(10) communicating with tribal leaders, tribal justice officials, and reservation residents
11 on a regular basis regarding public safety and justice concerns facing tribal communities;

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

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

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

22 “(14) submitting to Congress, for each fiscal year, a detailed spending report regarding
23 tribal public safety and justice programs that includes—

24 “(A) the number of employees and amounts spent by category, including a
25 breakdown by position of direct Bureau and tribal government employees, for each
26 of—

27 “(i) criminal investigators;

28 “(ii) uniform police;

29 “(iii) dispatchers;

30 “(iv) detention officers; and

31 “(v) executive personnel, including special agents in charge, and directors and
32 deputies of various offices in the Office of Justice Services;

33 “(B) an itemized list of spending by the Secretary on vehicles, equipment,
34 transportation costs, improvement, and repair of facilities, emergency events,
35 personnel transfers, detailees and related costs of their details, and other public safety
36 and justice-related expenses; and

37 “(C) a list of, and relevant details regarding, the unmet staffing needs of uniform

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1 police and detentions officers at tribal and Bureau of Indian Affairs police departments
2 and corrections facilities; and

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

6 (b) Law Enforcement Authority.—Section 4 of the Indian Law Enforcement Reform Act (25
7 U.S.C. 2803) is amended—

8 (1) in paragraph (2)(A) by striking ")", or" and inserting "or with respect to issuing central
9 citations, the Bureau); or"; and

10 (2) in paragraph (3) by striking subparagraph (C) and inserting the following:

11 "(C) the offense is a misdemeanor crime and the employee has reasonable grounds
12 to believe that the individual to be arrested has committed, or is committing, the
13 crime;"

14 SEC. 102. DECLINATION REPORTS.

15 Section 10 of the Indian Law Enforcement Reform Act (25 U.S.C. 2809) is amended by
16 striking subsections (a) through (d) and inserting the following:

17 "(a) Reports.—

18 "(1) LAW ENFORCEMENT OFFICIALS.—Subject to subsection (d), if a law enforcement
19 officer or employee of any Federal department or agency declines to initiate an
20 investigation of an alleged violation of Federal law in Indian country, or terminates such an
21 investigation without referral for prosecution, the officer or employee shall—

22 "(A) submit to the appropriate tribal justice officials a report describing each reason
23 why the investigation was declined or terminated; and

24 "(B) submit to the Office of Indian Country Crime information regarding the alleged
25 violation, including—

26 "(i) the type of crime alleged;

27 "(ii) the status of the accused as a tribal citizen;

28 "(iii) the status of the victim as a tribal citizen; and

29 "(iv) the reason for the determination to decline or terminate the investigation.

30 "(2) UNITED STATES ATTORNEYS.—Subject to subsection (d), if a United States attorney
31 declines to prosecute, or acts to terminate prosecution of, an alleged violation of Federal law
32 in Indian country referred for prosecution by a law enforcement officer or employee of a
33 Federal department or agency or other law enforcement officer authorized to enforce
34 Federal law, the United States attorney shall—

35 "(A) coordinate and communicate, sufficiently in advance of the statute of
36 limitations, reasonable details regarding the case to permit the tribal prosecutor to
37 pursue the case in tribal court; and

38 "(B) submit to the Office of Indian Country Crime information regarding the alleged

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- 1 violation, including—
- 2 “(i) the type of crime alleged;
- 3 “(ii) the status of the accused as a tribal citizen;
- 4 “(iii) the status of the victim as a tribal citizen; and
- 5 “(iv) the reason for the determination to decline or terminate the investigation.
- 6 “(b) Maintenance of Records.—
- 7 “(1) IN GENERAL.—The Director of the Office of Indian Country Crime shall establish
- 8 and maintain a compilation of information received under paragraph (1) or (2) of subsection
- 9 (a) to decline to investigate or prosecute, or to terminate an investigation or prosecution.
- 10 “(2) AVAILABILITY TO CONGRESS.—Each compilation under paragraph (1) shall be made
- 11 available to Congress on an annual basis.
- 12 “(c) Inclusion of Case Files.—A report submitted to the appropriate tribal justice officials
- 13 under paragraph (1) or (2) of subsection (a) may include the case file, including evidence
- 14 collected and statements taken that could support an investigation or prosecution by the
- 15 appropriate tribal justice officials.
- 16 “(d) Effect of Section.—
- 17 “(1) IN GENERAL.—Nothing in this section requires any Federal agency or official to
- 18 transfer or disclose any confidential or privileged communication, information, or source to
- 19 an official of any Indian tribe.
- 20 “(2) REGULATIONS.—Each Federal agency required to submit a report pursuant to this
- 21 section shall adopt, by regulation, standards for the protection of confidential or privileged
- 22 communications, information, and sources under paragraph (1).”

23 **SEC. 103. PROSECUTION OF CRIMES IN INDIAN**

24 **COUNTRY.**

25 (a) Appointment of Special Prosecutors.—Section 543(a) of title 28, United States Code, is

26 amended by inserting before the period at the end the following: “, including the appointment of

27 qualified tribal prosecutors and other qualified attorneys to assist in prosecuting Federal offenses

28 committed in Indian country”

29 (b) Tribal Liaisons.—The Indian Law Enforcement Reform Act (25 U.S.C. 2801 et seq.) is

30 amended by adding at the end the following:

31 **“SEC. 11. ASSISTANT UNITED STATES ATTORNEY**

32 **TRIBAL LIAISONS.**

33 “(a) Appointment.—Each United States attorney the jurisdictional district of which includes

34 Indian country shall appoint not less than 1 assistant United States attorney to serve as a tribal

35 liaison for the district.

36 “(b) Duties.—A tribal liaison shall be responsible for, with respect to the district of the

37 applicable United States attorney office—

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- 1 “(1) coordinating the prosecution of crimes that occur in Indian country;
- 2 “(2) developing multidisciplinary teams to combat child abuse and domestic and sexual
- 3 violence offenses in Indian country;
- 4 “(3) developing working relationships and maintaining communication with tribal leaders
- 5 and tribal justice officials to gather information from, and share information with, tribal
- 6 justice officials;
- 7 “(4) coordinating with tribal prosecutors in cases in which a tribal government has
- 8 concurrent jurisdiction over an alleged crime, in advance of the expiration of any applicable
- 9 statute of limitation;
- 10 “(5) providing technical assistance and training regarding evidence gathering techniques
- 11 to tribal justice officials and other individuals and entities that are instrumental to
- 12 responding to Indian country crimes;
- 13 “(6) conducting training sessions and seminars to certify special law enforcement
- 14 commissions to tribal justice officials and other individuals and entities responsible for
- 15 responding to Indian country crimes;
- 16 “(7) coordinating with the Office of Indian Country Crime, as necessary; and
- 17 “(8) conducting such other activities to address and prevent violent crime in Indian
- 18 country as the applicable United States attorney determines to be appropriate.
- 19 “(c) Sense of Congress Regarding Evaluations of Tribal Liaisons.—
- 20 “(1) FINDINGS.—Congress finds that—
- 21 “(A) many tribal communities rely solely on United States Attorneys offices to
- 22 prosecute felony crimes occurring on Indian land; and
- 23 “(B) tribal liaisons have dual obligations of—
- 24 “(i) coordinating prosecutions of Indian country crime; and
- 25 “(ii) developing relationships with tribal communities and serving as a link
- 26 between tribal communities and the Federal justice process.
- 27 “(2) SENSE OF CONGRESS.—It is the sense of Congress that the Attorney General
- 28 should—
- 29 “(A) take all appropriate actions to encourage the aggressive prosecution of all
- 30 crimes committed in Indian country; and
- 31 “(B) if appropriate, take into consideration the dual responsibilities of tribal liaisons
- 32 described in paragraph (1)(B) in evaluating the performance of the tribal liaisons.
- 33 “(d) Enhanced Prosecution of Minor Crimes.—Each United States Attorney serving a district
- 34 that includes Indian country may, and is encouraged to—
- 35 “(1) appoint Special Assistant United States Attorneys pursuant to section 543(a) of title
- 36 28, United States Code, to prosecute crimes in Indian country in which—
- 37 “(A) the crime rate exceeds a rate equal to twice the national average crime rate; or
- 38 “(B) the rate at which criminal offenses are declined to be prosecuted exceeds the

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- 1 national average rate; and
2 “(2) coordinate with applicable United States magistrate and district courts—
3 “(A) to ensure the provision of docket time for prosecutions of Indian country
4 crimes; and
5 “(B) to hold trials and other proceedings in Indian country, as appropriate.”

6 SEC. 104. ADMINISTRATION.

- 7 (a) Office of Tribal Justice.—
8 (1) DEFINITIONS.—Section 4 of the Indian Tribal Justice Technical and Legal Assistance
9 Act of 2000 (25 U.S.C. 3653) is amended—
10 (A) by redesignating paragraphs (2) through (7) as paragraphs (3) through (8),
11 respectively; and
12 (B) by inserting after paragraph (1) the following:
13 “(2) DIRECTOR.—The term ‘Director’ means the Director of the Office of Tribal
14 Justice.”
15 (2) STATUS.—Title I of the Indian Tribal Justice Technical and Legal Assistance Act of
16 2000 is amended—
17 (A) by redesignating section 106 (25 U.S.C. 3666) as section 107; and
18 (B) by inserting after section 105 (25 U.S.C. 3665) the following:

19 “SEC. 106. OFFICE OF TRIBAL JUSTICE.

- 20 “(a) In General.—Not later than 90 days after the date of enactment of the Tribal Justice
21 Improvement Act of 2008, the Attorney General shall modify the status of the Office of Tribal
22 Justice as the Attorney General determines to be necessary to establish the Office of Tribal
23 Justice as a division of the Department.
24 “(b) Personnel and Funding.—The Attorney General shall provide to the Office of Tribal
25 Justice such personnel and funds as are necessary to establish the Office of Tribal Justice as a
26 division of the Department under subsection (a).
27 “(c) Additional Duties.—In addition to the duties of the Office of Tribal Justice in effect on
28 the day before the date of enactment of the Tribal Justice Improvement Act of 2008, the Office
29 of Tribal Justice shall—
30 “(1) serve as the program and legal policy advisor to the Attorney General with respect to
31 the treaty and trust relationship between the United States and Indian tribes;
32 “(2) serve as the point of contact for federally recognized tribal governments and tribal
33 organizations with respect to questions and comments regarding policies and programs of
34 the Department and issues relating to public safety and justice in Indian country; and
35 “(3) coordinate with other agencies and divisions within the Department of Justice to
36 ensure that each agency has an accountable process to ensure meaningful and timely
37 consultation with tribal leaders in the development of regulatory policies and other actions

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1 with tribal implications.”.

2 (b) Office of Indian Country Crime.—The Indian Law Enforcement Reform Act (25 U.S.C.
3 2801 et seq.) (as amended by section 102(b)) is amended by adding at the end the following:

4 **“SEC. 12. OFFICE OF INDIAN COUNTRY CRIME.**

5 **“(a) Establishment.**—There is established in the criminal division of the Department of Justice
6 an office, to be known as the ‘Office of Indian Country Crime’.

7 **“(b) Duties.**—The Office of Indian Country Crime shall—

8 **“(1) develop, enforce, and administer the application of Federal criminal laws applicable**
9 **in Indian country;**

10 **“(2) coordinate with the United States attorneys that have authority to prosecute crimes in**
11 **Indian country;**

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

14 **“(4) develop and implement criminal enforcement policies for United States attorneys**
15 **and investigators of Federal crimes regarding cases arising in Indian country; and**

16 **“(5) submit to Congress annual reports describing the prosecution and declination rates of**
17 **cases involving alleged crimes in Indian country referred to United States Attorneys.**

18 **“(c) Deputy Assistant Attorney General.**—

19 **“(1) APPOINTMENT.**—The Attorney General shall appoint a Deputy Assistant Attorney
20 **General for Indian Country Crime.**

21 **“(2) DUTIES.**—The Deputy Assistant Attorney General for Indian Country Crime shall—

22 **“(A) serve as the head of the Office of Indian Country Crime;**

23 **“(B) serve as a point of contact to United State Attorneys serving districts including**
24 **Indian country, tribal liaisons, tribal governments, and other Federal, State, and local**
25 **law enforcement agencies regarding issues affecting the prosecution of crime in Indian**
26 **country; and**

27 **“(C) carry out such other duties as the Attorney General may prescribe.”.**

28 **TITLE II—STATE ACCOUNTABILITY AND**
29 **COORDINATION**

30 **SEC. 201. STATE CRIMINAL JURISDICTION AND**
31 **RESOURCES.**

32 **(a) Concurrent Authority of United States.**—Section 401(a) of Public Law 90–284 (25 U.S.C.
33 1321(a)) is amended—

34 **(1) by striking the section designation and heading and all that follows through “The**
35 **consent of the United States” and inserting the following:**

1 "SEC. 401. ASSUMPTION BY STATE OF CRIMINAL
2 JURISDICTION.

3 "(a) Consent of United States.—

4 "(1) IN GENERAL.—The consent of the United States"; and

5 (2) by adding at the end the following:

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

10 (b) Applicable Law.—Section 1162 of title 18, United States Code, is amended by striking
11 subsection (c) and inserting the following:

12 "(c) Applicable Law.—At the request of an Indian tribe, and after consultation with the
13 Attorney General, sections 1152 and 1153 of this title shall remain in effect in the areas of the
14 Indian country of the Indian tribe."

15 SEC. 202. INCENTIVES FOR STATE, TRIBAL, AND
16 LOCAL LAW ENFORCEMENT COOPERATION.

17 (a) Establishment of Cooperative Assistance Program.—The Attorney General may provide
18 grants, technical assistance, and other assistance to State, tribal, and local governments that enter
19 into cooperative agreements, including agreements relating to mutual aid, hot pursuit of suspects,
20 and cross-deputization for the purposes of—

21 (1) improving law enforcement effectiveness; and

22 (2) reducing violence in Indian country and nearby communities.

23 (b) Program Plans.—

24 (1) IN GENERAL.—To be eligible to receive assistance under this section, a group
25 composed of not less than 1 of each of a tribal government and a State or local government
26 shall jointly develop and submit to the Attorney General a plan for a program to achieve the
27 purpose described in subsection (a).

28 (2) PLAN REQUIREMENTS.—A joint program plan under paragraph (1) shall include a
29 description of—

30 (A) the proposed cooperative tribal and State or local law enforcement program for
31 which funding is sought, including information on the population and each geographic
32 area to be served by the program;

33 (B) the need of the proposed program for funding under this section, the amount of
34 funding requested, and the proposed use of funds, subject to the requirements listed in
35 subsection (c);

36 (C) the unit of government that will administer any assistance received under this
37 section, and the method by which the assistance will be distributed;

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- 1 (D) the types of law enforcement services to be performed on each applicable Indian
2 reservation and the individuals and entities that will perform those services;
- 3 (E) the individual or group of individuals who will exercise daily supervision and
4 control over law enforcement officers participating in the program;
- 5 (F) the method by which local and tribal government input with respect to the
6 planning and implementation of the program will be ensured;
- 7 (G) the policies of the program regarding mutual aid, hot pursuit of suspects,
8 deputization, training, and insurance of applicable law enforcement officers;
- 9 (H) the recordkeeping procedures and types of data to be collected pursuant to the
10 program; and
- 11 (I) other information that the Attorney General determines to be relevant.
- 12 (c) Permissible Uses of Funds.—An eligible entity that receives a grant under this section may
13 use the grant, in accordance with the program plan described in subsection (b)—
- 14 (1) to hire and train new career tribal, State, or local law enforcement officers, or to make
15 overtime payments for current law enforcement officers, that are or will be dedicated to—
- 16 (A) policing tribal land and nearby land; and
17 (B) investigating alleged crimes on that land;
- 18 (2) procure equipment, technology, or support systems to be used to investigate crimes
19 and share information between tribal, State, and local law enforcement agencies; or
- 20 (3) for any other uses that the Attorney General determines will meet the purposes
21 described in subsection (a).
- 22 (d) Factors for Consideration.—In determining whether to approve a joint program plan
23 submitted under subsection (b) and, on approval, the amount of assistance to provide to the
24 program, the Attorney General shall take into consideration the following factors:
- 25 (1) The size and population of each Indian reservation and nearby community proposed
26 to be served by the program.
- 27 (2) The complexity of the law enforcement problems proposed to be addressed by the
28 program.
- 29 (3) The range of services proposed to be provided by the program.
- 30 (4) The proposed improvements the program will make regarding law enforcement
31 cooperation beyond existing levels of cooperation.
- 32 (5) The crime rates of the tribal and nearby communities.
- 33 (6) The available financial resources possessed by each entity applying for a grant under
34 this section for dedication to public safety in the respective jurisdictions of the entities.
- 35 (e) Annual Reports.—To be eligible to renew or extend a grant under this section, a group
36 described in subsection (b)(1) shall submit to the Attorney General, together with the joint
37 program plan under subsection (b), a report describing the law enforcement activities carried out
38 pursuant to the program during the preceding fiscal year, including the success of the activities,

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1 including any increase in arrests or prosecutions.

2 (f) Reports by Attorney General.—Not later than January 15 of each applicable fiscal year, the
3 Attorney General shall submit to the Committee on Indian Affairs of the Senate and the
4 Committee on Natural Resources of the House of Representatives a report describing the law
5 enforcement programs carried out using assistance provided under this section during the
6 preceding fiscal year, including the success of the programs.

7 (g) Technical Assistance.—On receipt of a request from a group composed of not less than 1
8 tribal government and 1 State or local government, the Attorney General shall provide technical
9 assistance to the group to develop and enter into [to be supplied].

10 (h) Authorization of Appropriations.—There are authorized to be appropriated such sums as
11 are necessary to carry out this section for each of fiscal years 2009 through 2015.

12 **TITLE III—EMPOWERING TRIBAL LAW ENFORCEMENT**
13 **AGENCIES AND TRIBAL GOVERNMENTS**

14 **SEC. 301. TRIBAL POLICE OFFICERS.**

15 (a) Flexibility in Training Law Enforcement Officers Serving Indian Country.—Section 3(e)
16 of the Indian Law Enforcement Reform Act (25 U.S.C. 2802(e)) is amended—

17 (1) in paragraph (1)—

18 (A) by striking “(e)(1) The Secretary” and inserting the following:

19 “(e) Standards of Education and Experience and Classification of Positions.—

20 “(1) STANDARDS OF EDUCATION AND EXPERIENCE.—

21 “(A) IN GENERAL.—The Secretary”; and

22 (B) by adding at the end the following:

23 “(B) TRAINING.—The training standards established under subparagraph (A) shall
24 permit law enforcement personnel of the Division of Law Enforcement Services or an
25 Indian tribe to obtain training at a State or tribal police academy, a local or tribal
26 community college, or another training academy that meets the National Peace Officer
27 Standards of Training.”; and

28 (2) in paragraph (3), by striking “Agencies” and inserting “agencies”.

29 (b) Special Law Enforcement Commissions.—Section 5 of the Indian Law Enforcement
30 Reform Act (25 U.S.C. 2804) is amended to read as follows:

31 **“SEC. 5. SPECIAL LAW ENFORCEMENT COMMISSIONS.**

32 “(a) Agreements.—

33 “(1) STATEMENT OF ENCOURAGEMENT.—The Secretary may, and is encouraged to, enter
34 into agreements for the use (with or without reimbursement) of personnel and facilities of
35 Federal, tribal, State, or other government agencies to assist in the enforcement or
36 administration in Indian country of Federal law or the laws of an Indian tribe that authorizes
37 the Secretary to enforce tribal law.

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1 “(2) CERTAIN ACTIVITIES.—Pursuant to an agreement described in paragraph (1), the
2 Secretary shall authorize the law enforcement officers of any applicable government agency
3 to carry out any activity authorized under section 4.

4 “(3) REQUIREMENT.—An agreement under paragraph (1) shall be in accordance with any
5 applicable agreement between the Secretary and the Attorney General.

6 “(b) Program Enhancement.—

7 “(1) TRAINING SESSIONS IN INDIAN COUNTRY.—The Secretary (or a designee) and the
8 Attorney General (or a designee) shall develop a plan to enhance the provision of special
9 law enforcement commissions to tribal law enforcement agencies pursuant to this section,
10 including by hosting regular regional training sessions in Indian country to educate and
11 certify tribal law enforcement officials and, subject to subsection (d), State and local law
12 enforcement officials.

13 “(2) MEMORANDA OF AGREEMENT.—

14 “(A) IN GENERAL.—Not later than 180 days after the date of enactment of the Tribal
15 Justice Improvement Act of 2008, the Secretary, in consultation with Indian tribes and
16 tribal law enforcement agencies, shall develop minimum requirements to be included
17 in special law enforcement commission agreements with tribal governments pursuant
18 to this section.

19 “(B) AGREEMENT.—Not later than 60 days after the date on which the Secretary
20 determines that all applicable requirements under subparagraph (A) are met, the
21 Secretary shall offer to enter into a special law enforcement commission agreement
22 with the applicable Indian tribe.

23 “(c) Enhancement.—The Secretary (or a designee) and the Attorney General (or a designee)
24 shall develop a plan to enhance the agreements entered into pursuant to this section, including by
25 hosting, not less frequently than biannually, regional training sessions to educate and certify
26 tribal justice officials and (subject to the agreement of the affected Indian tribes) State and local
27 law enforcement officers to enforce tribal and Federal criminal laws in Indian country.

28 “(d) Limitation on Use of Certain Personnel.—

29 “(1) CONSULTATION.—The Secretary shall consult with each affected Indian tribe before
30 entering into any agreement under subsection (a) with a non-Federal agency that will
31 provide personnel for use in any area under the jurisdiction of the Indian tribes.

32 “(2) PROHIBITION.—The Secretary shall not use the personnel of a non-Federal agency
33 under this section in an area of Indian country if the Indian tribe with jurisdiction over that
34 area has adopted a resolution objecting to the use of personnel of the non-Federal agency.

35 “(e) Coordination by Federal Agencies.—Notwithstanding section 1535 of title 31, United
36 States Code, the head of a Federal agency with law enforcement personnel or facilities shall
37 coordinate and, as needed, enter into agreements (with or without reimbursement) with the
38 Secretary under subsection (a).

39 “(f) Encouragement of Other Federal Agency Heads.—Congress encourages the head of each
40 Federal agency with law enforcement personnel or facilities, including the Drug Enforcement
41 Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives, and the Bureau of

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1 Immigration and Customs Enforcement, to enter into agreements (with or without
2 reimbursement) with an Indian tribe relating to—

- 3 “(1) the law enforcement authority of the Indian tribe;
4 “(2) the administration of Federal or tribal criminal law; and
5 “(3) the conduct of investigations, the sharing of information and training techniques, and
6 the provisions of other related technical assistance to prevent and prosecute violations of
7 Federal or tribal criminal law in Indian country.”.

8 **SEC. 302. DRUG ENFORCEMENT IN INDIAN COUNTRY.**

9 (a) Education and Research Programs.—Section 502 of the Controlled Substances Act (21
10 U.S.C. 872) is amended in subsections (a)(1) and (c), by inserting “tribal,” after “State,” each
11 place it appears.

12 (b) Public-Private Education Program.—Section 503 of the Comprehensive Methamphetamine
13 Control Act of 1996 (21 U.S.C. 872a) is amended—

- 14 (1) in subsection (a), by inserting “tribal,” after “State,”; and
15 (2) in subsection (b)(2), by inserting “, tribal,” after “State”.

16 (c) Cooperative Arrangements.—Section 503 of the Controlled Substances Act (21 U.S.C.
17 873) is amended—

- 18 (1) in subsection (a)—
19 (A) by inserting “tribal,” after “State,” each place it appears; and
20 (B) in paragraphs (6) and (7), by inserting “, tribal,” after “State” each place it
21 appears; and
22 (2) in subsection (d)(1), by inserting “, tribal,” after “State”.

23 (d) Powers of Enforcement Personnel.—Section 508(a) of the Controlled Substances Act (21
24 U.S.C. 878(a)) is amended in the matter preceding paragraph (1) by inserting “, tribal,” after
25 “State”.

26 **SEC. 303. ACCESS TO NATIONAL CRIMINAL**
27 **INFORMATION DATABASES.**

28 (a) Access to National Criminal Information Databases.—Section 534 of title 28, United
29 States Code, is amended—

- 30 (1) in subsection (a)(4), by inserting “Indian tribes,” after “the States,”;
31 (2) by striking subsection (d) and inserting the following:

32 “(d) Indian Law Enforcement Agencies.—The Attorney General shall permit Indian law
33 enforcement agencies—

- 34 “(1) to access and enter information into Federal criminal information databases; and
35 “(2) to obtain information from the databases.”; and

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1 (3) in subsection (f)(2), in the matter preceding subparagraph (A), by inserting “, tribal,”
2 after “Federal”.

3 (b) Requirement.—

4 (1) IN GENERAL.—The Attorney General shall ensure that tribal law enforcement officials
5 that meet applicable Federal or State requirements are authorized to access national crime
6 information databases.

7 (2) SANCTIONS.—For purpose of sanctions for noncompliance with requirements of, or
8 misuse of, national crime information databases and information obtained from those
9 databases, a tribal law enforcement agency or official shall be treated as Federal law
10 enforcement agency or official.

11 SEC. 304. TRIBAL COURT SENTENCING AUTHORITY.

12 Section 202 of Public Law 90–284 (25 U.S.C. 1302) is amended—

13 (1) in the matter preceding paragraph (1), by striking “No Indian tribe” and inserting the
14 following:

15 “(a) In General.—No Indian tribe”;

16 (2) in paragraph (7) of subsection (a) (as designated by paragraph (1)), by striking “and a
17 fine” and inserting “or a fine”; and

18 (3) by adding at the end the following:

19 “(b) Tribal Courts and Prisoners.—

20 “(1) IN GENERAL.—Notwithstanding paragraph (7) of subsection (a) and in addition to the
21 limitations described in the other paragraphs of that subsection, no Indian tribe, in
22 exercising any power of self-government involving a criminal trial pursuant to this section,
23 may—

24 “(A) deny any person in a criminal proceeding the assistance of defense counsel;

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

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

29 “(2) SENTENCES.—A tribal court acting pursuant to paragraph (1) may require a
30 convicted offender—

31 “(A) to serve the sentence of the offender—

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

35 “(ii) in the nearest appropriate Federal facility, at the expense of the United
36 States pursuant to a memorandum of agreement with Bureau of Prisons in
37 accordance with paragraph (3); or

38 “(iii) in an alternative rehabilitation center of an Indian tribe; or

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- 1 “(B) to serve another alternative form of punishment, as determined by the tribal
2 court judge.
- 3 “(3) MEMORANDA OF AGREEMENT.—A memorandum of agreement between an Indian
4 tribe and the Bureau of Prisons under paragraph (2)(A)(ii)—
- 5 “(A) shall acknowledge that the United States will incur all costs involved, including
6 the costs of transfer, housing, medical care, rehabilitation, and reentry of transferred
7 prisoners;
- 8 “(B) shall limit the transfer of prisoners to prisoners convicted in tribal court of
9 violent crimes, crimes involving sexual abuse, and serious drug offenses, as
10 determined by the Bureau of Prisons, in consultation with tribal governments, by
11 regulation;
- 12 “(C) shall not affect the jurisdiction, power of self-government, or any other
13 authority of an Indian tribe over the territory or members of the Indian tribe;
- 14 “(D) shall contain such other requirements as the Bureau of Prisons, in consultation
15 with the Bureau of Indian Affairs and tribal governments, may determine, by
16 regulation; and
- 17 “(E) shall be executed and carried out not later than 180 days after the date on which
18 the applicable Indian tribe contacts the Bureau of Prisons to accept a transfer of a tribal
19 court offender pursuant to this subsection.
- 20 “(c) Effect of Section.—Nothing in this section affects the obligation of the United States, or
21 any State government that has been delegated authority by the United States, to investigate and
22 prosecute any criminal violation in Indian country.”

23 SEC. 305. INDIAN LAW AND ORDER COMMISSION.

- 24 (a) Establishment.—There is established a commission to be known as the Indian Law and
25 Order Commission (referred to in this section as the “Commission”).
- 26 (b) Membership.—
- 27 (1) IN GENERAL.—The Commission shall be composed of 9 members, of whom—
- 28 (A) 3 shall be appointed by the President, in consultation with—
- 29 (i) the Attorney General; and
- 30 (ii) the Secretary of the Interior;
- 31 (B) 2 shall be appointed by the Majority Leader of the Senate, in consultation with
32 the Chairperson of the Committee on Indian Affairs of the Senate;
- 33 (C) 1 shall be appointed by the Minority Leader of the Senate, in consultation with
34 the Vice Chairperson of the Committee on Indian Affairs of the Senate;
- 35 (D) 2 shall be appointed by the Speaker of the House of Representatives, in
36 consultation with the Chairperson of the Committee on Natural Resources of the House
37 of Representatives; and
- 38 (E) 1 shall be appointed by the Minority Leader of the House of Representatives, in

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- 1 consultation with the Ranking Member of the Committee on Natural Resources of the
2 House of Representatives.
- 3 (2) REQUIREMENTS FOR ELIGIBILITY.—Each member of the Commission shall have
4 significant experience and expertise in—
- 5 (A) the Indian country criminal justice system; and
6 (B) matters to be studied by the Commission.
- 7 (3) CONSULTATION REQUIRED.—The President, the Speaker and Minority Leader of the
8 House of Representatives, and the Majority Leader and Minority Leader of the Senate shall
9 consult before the appointment of members of the Commission under paragraph (1) to
10 achieve, to the maximum extent practicable, fair and equitable representation of various
11 points of view with respect to the matters to be studied by the Commission.
- 12 (4) TERM.—Each member shall be appointed for the life of the Commission.
- 13 (5) TIME FOR INITIAL APPOINTMENTS.—The appointment of the members of the
14 Commission shall be made not later than 60 days after the date of enactment of this Act.
- 15 (6) VACANCIES.—A vacancy in the Commission shall be filled—
- 16 (A) in the same manner in which the original appointment was made; and
17 (B) not later than 60 days after the date on which the vacancy occurred.
- 18 (c) Operation.—
- 19 (1) CHAIRPERSON.—Not later than 15 days after the date on which all members of the
20 Commission have been appointed, the Commission shall select 1 member to serve as
21 Chairperson of the Commission.
- 22 (2) MEETINGS.—
- 23 (A) IN GENERAL.—The Commission shall meet at the call of the Chairperson.
24 (B) INITIAL MEETING.—The initial meeting shall take place not later than 30 days
25 after the date described in paragraph (1).
- 26 (3) QUORUM.—A majority of the members of the Commission shall constitute a quorum,
27 but a lesser number of members may hold hearings.
- 28 (4) RULES.—The Commission may establish, by majority vote, any rules for the conduct
29 of Commission business, in accordance with this Act and other applicable law.
- 30 (d) Comprehensive Study of the Criminal Justice System Relating to Indian Country.—The
31 Commission shall conduct a comprehensive study of—
- 32 (1) jurisdiction over crimes committed in Indian country and the impact of that
33 jurisdiction on—
- 34 (A) the investigation and prosecution of Indian country crimes; and
35 (B) residents of Indian country;
- 36 (2) the tribal jail and Federal prisons systems and the effect of those systems with respect
37 to—

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- 1 (A) reducing Indian country crime; and
 2 (B) rehabilitation of offenders; and
 3 (3) the impact of the Indian Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.) on—
 4 (A) the authority of Indian tribes; and
 5 (B) the rights of defendants subject to tribal government authority.
 6 (e) Recommendations.—Taking into consideration the results of the study under paragraph
 7 (1), the Commission shall develop recommendations on necessary modifications and
 8 improvements to justice systems at the tribal, Federal, and State levels, including consideration
 9 of—
 10 (1) simplifying jurisdiction in Indian country;
 11 (2) enhancing the penal authority of tribal courts and exploring alternatives to
 12 incarceration;
 13 (3) the establishment of satellite United States magistrate or district courts in Indian
 14 country;
 15 (4) changes to the Indian jails and Federal prison systems; and
 16 (5) other issues that, as determined by the Commission, would reduce violent crime in
 17 Indian country.
 18 (f) Report.—Not later than 2 years after the date of enactment of this Act, the Commission
 19 shall submit to the President and Congress a report that contains—
 20 (1) a detailed statement of the findings and conclusions of the Commission; and
 21 (2) the recommendations of the Commission for such legislative and administrative
 22 actions as the Commission considers to be appropriate.
 23 (g) Powers.—
 24 (1) HEARINGS.—
 25 (A) IN GENERAL.—The Commission may hold such hearings, meet and act at such
 26 times and places, take such testimony, and receive such evidence as the Commission
 27 considers to be advisable to carry out the duties of the Commission under this section.
 28 (B) PUBLIC REQUIREMENT.—The hearings of the Commission under this paragraph
 29 shall be open to the public.
 30 (2) WITNESS EXPENSES.—
 31 (A) IN GENERAL.—A witness requested to appear before the Commission shall be
 32 paid the same fees as are paid to witnesses under section 1821 of title 28, United States
 33 Code.
 34 (B) PER DIEM AND MILEAGE.—The per diem and mileage allowance for a witness
 35 shall be paid from funds made available to the Commission.
 36 (3) INFORMATION FROM FEDERAL, TRIBAL, AND STATE AGENCIES.—
 37 (A) IN GENERAL.—The Commission may secure directly from a Federal agency such

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- 1 information as the Commission considers to be necessary to carry out this section.
- 2 (B) TRIBAL AND STATE AGENCIES.—The Commission may request the head of any
3 tribal or State agency to provide to the Commission such information as the
4 Commission considers to be necessary to carry out this section.
- 5 (4) POSTAL SERVICES.—The Commission may use the United States mails in the same
6 manner and under the same conditions as other agencies of the Federal Government.
- 7 (5) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of
8 services or property.
- 9 (h) Commission Personnel Matters.—
- 10 (1) TRAVEL EXPENSES.—A member of the Commission shall be allowed travel expenses,
11 including per diem in lieu of subsistence, at rates authorized for an employee of an agency
12 under subchapter I of chapter 57 of title 5, United States Code, while away from the home
13 or regular place of business of the member in the performance of the duties of the
14 Commission.
- 15 (2) DETAIL OF FEDERAL EMPLOYEES.—On the affirmative vote of $\frac{2}{3}$ of the members of
16 the Commission and the approval of the appropriate Federal agency head, an employee of
17 the Federal Government may be detailed to the Commission without reimbursement, and
18 such detail shall be without interruption or loss of civil service status, benefits, or privileges.
- 19 (3) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—On request of the
20 Commission, the Attorney General and Secretary shall provide to the Commission
21 reasonable and appropriate office space, supplies, and administrative assistance.
- 22 (i) Contracts for Research.—
- 23 (1) RESEARCHERS AND EXPERTS.—
- 24 (A) IN GENERAL.—On an affirmative vote of $\frac{2}{3}$ of the members of the
25 Commission, the Commission may select nongovernmental researchers and experts to
26 assist the Commission in carrying out the duties of the Commission under this section.
- 27 (B) NATIONAL INSTITUTE OF JUSTICE.—The National Institute of Justice may enter
28 into a contract with the researchers and experts selected by the Commission under
29 subparagraph (A) to provide funding in exchange for the services of the researchers
30 and experts.
- 31 (2) OTHER ORGANIZATIONS.—Nothing in this subsection limits the ability of the
32 Commission to enter into contracts with any other entity or organization to carry out
33 research necessary to carry out the duties of the Commission under this section.
- 34 (j) Authorization of Appropriations.—There are authorized to be appropriated such sums as
35 are necessary to carry out this section, to remain available until expended.
- 36 (k) Termination of Commission.—The Commission shall terminate 90 days after the date on
37 which the Commission submits the report of the Commission under subsection (c)(3).
- 38 (l) Nonapplicability of FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall
39 not apply to the Commission.

1 TITLE IV—TRIBAL JUSTICE SYSTEMS

2 SEC. 401. INDIAN ALCOHOL AND SUBSTANCE ABUSE.

3 (a) Correction of References.—

4 (1) INTER-DEPARTMENTAL MEMORANDUM OF AGREEMENT.—Section 4205 of the Indian
5 Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2411) is
6 amended—

7 (A) in subsection (a)—

8 (i) in the matter preceding paragraph (1)—

9 (I) by striking [“the date of enactment of this subtitle”] and inserting “the
10 date of enactment of the Tribal Justice Improvement Act of 2008”; and

11 (II) by inserting “, the Attorney General,” after “Secretary of the Interior”;

12 (ii) in paragraph (2)(A), by inserting “, Bureau of Justice Assistance, Substance
13 Abuse and Mental Health Services Administration,” after “Bureau of Indian
14 Affairs,”;

15 (iii) in paragraph (4), by inserting “, Department of Justice, Substance Abuse
16 and Mental Health Services Administration,” after “Bureau of Indian Affairs”;

17 (iv) in paragraph (5), by inserting “, Department of Justice, Substance Abuse
18 and Mental Health Services Administration,” after “Bureau of Indian Affairs”;

19 (v) in paragraph (7), by inserting “, the Attorney General,” after “Secretary of
20 the Interior”;

21 (B) in subsection (c), by inserting “, the Attorney General,” after “Secretary of the
22 Interior”; and

23 (C) in subsection (d), by striking [“the date of enactment of this subtitle”] and
24 inserting “the date of enactment of the Tribal Justice Improvement Act of 2008”.

25 (2) TRIBAL ACTION PLANS.—Section 4206 of the Indian Alcohol and Substance Abuse
26 Prevention and Treatment Act of 1986 (25 U.S.C. 2412) is amended—

27 (A) in subsection (b), in the first sentence, by inserting “, the Bureau of Justice
28 Assistance, the Substance Abuse and Mental Health Services Administration,” before
29 “and the Indian Health Service service unit”;

30 (B) in subsection (c)(1)(A)(i), by inserting “, the Bureau of Justice Assistance, the
31 Substance Abuse and Mental Health Services Administration,” before “and the Indian
32 Health Service service unit”;

33 (C) in subsection (d)(2), by striking “fiscal year 1993 and such sums as are
34 necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000”
35 and inserting “[the period of] fiscal years 2009 through 2013”;

36 (D) in subsection (e), in the first sentence, by inserting “, the Attorney General,”
37 after “the Secretary of the Interior”; and

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- 1 (E) in subsection (f)(3), by striking "fiscal year 1993 and such sums as are necessary
2 for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000" and
3 inserting "[the period of] fiscal years 2009 through 2013".
- 4 (3) DEPARTMENTAL RESPONSIBILITY.—Section 4207(a) of the Indian Alcohol and
5 Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2413(a)) is amended by
6 inserting "the Attorney General" after "Bureau of Indian Affairs".
- 7 (4) REVIEW OF PROGRAMS.—Section 4208a(a) of the Indian Alcohol and Substance
8 Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2414a(a)) is amended in the matter
9 preceding paragraph (1) by inserting "the Attorney General," after "the Secretary of the
10 Interior".
- 11 (5) FEDERAL FACILITIES, PROPERTY, AND EQUIPMENT.—Section 4209 of the Indian
12 Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2415) is
13 amended—
- 14 (A) in subsection (a), by inserting "the Attorney General," after "the Secretary of
15 the Interior";
- 16 (B) in subsection (b)—
- 17 (i) in the first sentence, by inserting "the Attorney General," after "the
18 Secretary of the Interior";
- 19 (ii) in the second sentence, by inserting "nor the Attorney General," after "the
20 Secretary of the Interior"; and
- 21 (iii) in the third sentence, by inserting "the Department of Justice," after "the
22 Department of the Interior"; and
- 23 (C) in subsection (c)(1), by inserting "the Attorney General," after "the Secretary
24 of the Interior".
- 25 (6) NEWSLETTER.—Section 4210 of the Indian Alcohol and Substance Abuse Prevention
26 and Treatment Act of 1986 (25 U.S.C. 2416) is amended—
- 27 (A) in subsection (a), in the first sentence, by inserting "the Attorney General,"
28 after "the Secretary of the Interior"; and
- 29 (B) in subsection (b), by striking "fiscal year 1993 and such sums as may be
30 necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000"
31 and inserting "[the period of] fiscal years 2009 through 2013".
- 32 (7) REVIEW.—Section 4211(a) of the Indian Alcohol and Substance Abuse Prevention
33 and Treatment Act of 1986 (25 U.S.C. 2431(a)) is amended in the matter preceding
34 paragraph (1) by inserting "the Attorney General," after "the Secretary of the Interior".
- 35 (b) Indian Education Programs.—Section 4212 of the Indian Alcohol and Substance Abuse
36 Prevention Act of 1986 (25 U.S.C. 2432) is amended by striking subsection (a) and inserting the
37 following:
- 38 "(a) Pilot Programs.—
- 39 "(1) IN GENERAL.—The Assistant Secretary for Indian Affairs shall develop and
40 implement pilot programs in selected schools funded by the Bureau of Indian Affairs

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- 1 (subject to the approval of the local school board or contract school board) to determine the
2 effectiveness of summer youth programs in advancing the purposes and goals of this Act.
- 3 “(2) COSTS.—The Assistant Secretary shall defray all costs associated with the actual
4 operation and support of the pilot program in a school from funds appropriated to carry out
5 this subsection.
- 6 “(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to
7 carry out the pilot programs under this subsection such sums as are necessary for each of
8 fiscal years 2009 through 2013.”.
- 9 (c) Emergency Shelters.—Section 4213(e) of the Indian Alcohol and Substance Abuse
10 Prevention and Treatment Act of 1986 (25 U.S.C. 2433(e)) is amended—
- 11 (1) in paragraph (1), by striking “as may be necessary” and all that follows through the
12 end of the paragraph and inserting “as are necessary for each of fiscal years 2009 through
13 2013.”;
- 14 (2) in paragraph (2), by striking “\$7,000,000” and all that follows through the end of the
15 paragraph and inserting “\$10,000,000 for each of fiscal years 2009 through 2013.”; and
16 (3) by indenting paragraphs (4) and (5) appropriately.
- 17 (d) Review of Programs.—Section 4215(a) of the Indian Alcohol and Substance Abuse
18 Prevention and Treatment Act of 1986 (25 U.S.C. 2441(a)) is amended by inserting “, the
19 Attorney General,” after “the Secretary of the Interior”.
- 20 (e) Illegal Narcotics Traffic on the Tohono O’odham and St. Regis Reservations; Source
21 Eradication.—Section 4216 of the Indian Alcohol and Substance Abuse Prevention and
22 Treatment Act of 1986 (25 U.S.C. 2442) is amended—
- 23 (1) in subsection (a)—
- 24 (A) in paragraph (2), by striking “United States Custom Service” and inserting
25 “United States Customs and Border Protection”; and
26 (B) by striking paragraph (3) and inserting the following:
- 27 “(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to
28 carry out this subsection such sums as are necessary for each of fiscal years 2009 through
29 2013.”; and
- 30 (2) in paragraph (2) of subsection (b), by striking “as may be necessary” and all that
31 follows through the end of the paragraph and inserting “as are necessary for each of fiscal
32 years 2009 through 2013.”.
- 33 (f) Law Enforcement and Judicial Training.—Section 4218 of the Indian Alcohol and
34 Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2451) is amended—
- 35 (1) by striking subsection (a) and inserting the following:
- 36 “(a) Training Programs.—
- 37 “(1) IN GENERAL.—The Secretary of the Interior, in coordination with the Attorney
38 General, the Administrator of the Drug Enforcement Administration, and the Director of the
39 Federal Bureau of Investigation, shall ensure, through the establishment of a new training

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- 1 program or by supplementing existing training programs, that all Bureau of Indian Affairs
2 and tribal law enforcement and judicial personnel have access to training regarding—
3 “(A) the investigation and prosecution of offenses relating to illegal narcotics; and
4 “(B) alcohol and substance abuse prevention and treatment.
5 “(2) YOUTH-RELATED TRAINING.—Any training provided to Bureau of Indian Affairs or
6 tribal law enforcement or judicial personnel under paragraph (1) shall include training in
7 issues relating to youth alcohol and substance abuse prevention and treatment.”; and
8 (2) in subsection (b), by striking “as may be necessary” and all that follows through the
9 end of the subsection and inserting “as are necessary for each of fiscal years 2009 through
10 2013.”.
11 (g) Juvenile Detention Centers.—Section 4220(b) of the Indian Alcohol and Substance Abuse
12 Prevention and Treatment Act of 1986 (25 U.S.C. 2453(b)) is amended—
13 (1) by striking “such sums as may be necessary for each of the fiscal years 1994, 1995,
14 1996, 1997, 1998, 1999, and 2000” each place it appears and inserting “such sums as are
15 necessary for each of fiscal years 2009 through 2013”; and
16 (2) by indenting paragraph (2) appropriately.
- 17 **SEC. 402. INDIAN TRIBAL JUSTICE; TECHNICAL AND**
18 **LEGAL ASSISTANCE.**
19 (a) Indian Tribal Justice.—Section 201 of the Indian Tribal Justice Act (25 U.S.C. 3621) is
20 amended—
21 (1) in subsection (a)—
22 (A) by striking “the provisions of sections 101 and 102 of this Act” and inserting
23 “sections 101 and 102”; and
24 (B) by striking “the fiscal years 2000 through 2007” and inserting “fiscal years 2009
25 through 2013”;
26 (2) in subsection (b)—
27 (A) by striking “the provisions of section 103 of this Act” and inserting “section
28 103”; and
29 (B) by striking “the fiscal years 2000 through 2007” and inserting “fiscal years 2009
30 through 2013”;
31 (3) in subsection (c), by striking “the fiscal years 2000 through 2007” and inserting
32 “fiscal years 2009 through 2013”; and
33 (4) in subsection (d), by striking “the fiscal years 2000 through 2007” and inserting
34 “fiscal years 2009 through 2013”.
35 (b) Technical and Legal Assistance.—The Indian Tribal Justice Technical and Legal
36 Assistance Act of 2000 is amended—
37 (1) in section 106 (25 U.S.C. 3666), by striking “2000 through 2004” and inserting “2009

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1 through 2013"; and
2 (2) in section 201(d) (25 U.S.C. 3681(d)), by striking "2000 through 2004" and inserting
3 "2009 through 2013".

4 **SEC. 403. COPS TRIBAL RESOURCES GRANT PROGRAM.**

5 Section 1701 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd)
6 is amended—

- 7 (1) in subsection (b)—
- 8 (A) in each of paragraphs (1) through (4) and (6) through (17), by inserting "to"
9 after the paragraph designation;
- 10 (B) in paragraph (1), by striking "State and" and inserting "State, tribal, or";
- 11 (C) in paragraphs (9) and (10), by inserting ", tribal," after "State" each place it
12 appears;
- 13 (D) in paragraph (15)—
- 14 (i) by striking "a State in" and inserting "a State or Indian tribe in";
- 15 (ii) by striking "the State which" and inserting "the State or tribal community
16 that"; and
- 17 (iii) by striking "a State or" and inserting "a State, tribal, or"; and
- 18 (E) by redesignating paragraphs (6) through (17) as paragraphs (5) through (16),
19 respectively;
- 20 (2) in subsection (g)—
- 21 (A) by striking "The portion" and inserting the following:
22 "(1) IN GENERAL.—The portion";
- 23 (B) in the second sentence, by striking "In relation" and inserting the following:
24 "(2) CERTAIN GRANTS.—In relation"; and
- 25 (C) by adding at the end the following:
26 "(3) WAIVER.—In acknowledgment of the Federal nexus and distinct Federal
27 responsibility to address and prevent crime in Indian country, for purposes of providing
28 grants to Indian tribes under this subsection, the Attorney General may waive the matching
29 funds requirement of this subsection on the basis of demonstrated financial hardship.
- 30 "(4) USE OF CERTAIN FUNDS.—In addition to providing a waiver under paragraph (3), the
31 Attorney General may allow the use of funds appropriated for any agency of an Indian tribal
32 government or the Bureau of Indian Affairs to carry out law enforcement activities on
33 Indian land to provide the non-Federal share of the cost of a program or project under this
34 section."
- 35 (3) in subsection (i), by striking "The authority" and inserting "Except as provided in
36 subsection (j), the authority"; and

1 (4) by adding at the end the following:

2 "(j) Extension of Program for Indian Tribes.—

3 "(1) IN GENERAL.—Notwithstanding subsection (i) and section 1703, and in
4 acknowledgment of the Federal nexus and distinct Federal responsibility to address and
5 prevent crime in Indian country, the Attorney General may provide grants under this section
6 to Indian tribal governments, for fiscal year 2009 and any fiscal year thereafter, for such
7 period as the Attorney General determines to be appropriate to assist the Indian tribal
8 governments in carrying out the purposes described in subsection (b).

9 "(2) PRIORITY OF FUNDING.—In providing grants to Indian tribal governments under this
10 subsection, the Attorney General shall take into consideration reservation crime rates and
11 tribal law enforcement staffing needs of each Indian tribal government.

12 "(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such
13 sums as are necessary to carry out this subsection for each of fiscal years 2009 through
14 2013."

15 SEC. 404. TRIBAL JAILS PROGRAM.

16 (a) In General.—Section 20109 of the Violent Crime Control and Law Enforcement Act of
17 1994 (42 U.S.C. 13709) is amended by striking subsection (a) and inserting the following:

18 "(a) Reservation of Funds.—Notwithstanding any other provision of this part, of amounts
19 made available to the Attorney General to carry out programs relating to offender incarceration,
20 the Attorney General shall reserve \$35,000,000 for each of fiscal years 2009 through 2013 to
21 carry out this section."

22 (b) Regional Detention Centers.—

23 (1) IN GENERAL.—Section 20109 of the Violent Crime Control and Law Enforcement Act
24 of 1994 (42 U.S.C. 13709) is amended by striking subsection (b) and inserting the
25 following:

26 "(b) Grants to Indian Tribes.—

27 "(1) IN GENERAL.—From the amounts reserved under subsection (a), the Attorney
28 General shall provide grants—

29 "(A) to Indian tribes for purposes of—

30 "(i) construction and maintenance of jails on Indian land for the incarceration
31 of offenders subject to tribal jurisdiction;

32 "(ii) entering into contracts with private entities to increase the efficiency of
33 construction of tribal jails; and

34 "(iii) developing and implementing alternatives to incarceration in tribal jails;
35 and

36 "(B) to consortia of Indian tribes for purposes of constructing and operating regional
37 detention centers on Indian land for long-term incarceration of offenders subject to
38 tribal jurisdiction, as the applicable consortium determines to be appropriate.

39 "(2) PRIORITY OF FUNDING.—in providing grants under this subsection, the Attorney

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- 1 General shall take into consideration applicable—
2 “(A) reservation crime rates;
3 “(B) annual tribal court convictions; and
4 “(C) bed space needs.”
5 (2) CONFORMING AMENDMENT.—Section 20109(c) of the Violent Crime Control and Law
6 Enforcement Act of 1994 (42 U.S.C. 13709(c)) is amended by inserting “or consortium of
7 Indian tribes, as applicable,” after “Indian tribe”.
8 [(c) Office of Justice Services Division of Corrections.—Under consideration are proposals
9 that would require the Interior Department’s Office of Justice Services – Division of Corrections
10 to address concerns raised by the Inspector General’s 2004 Indian Jails Report, and require the
11 Office to develop a long term plan in coordination with the Department of Justice and in
12 consultation with Indian Tribes.]

13 **SEC. 405. TRIBAL PROBATION OFFICE LIAISON**
14 **PROGRAM.**

15 Title II of the Indian Tribal Justice Technical and Legal Assistance Act of 2000 (25 U.S.C.
16 3681 et seq.) is amended by adding at the end the following:

17 **“SEC. 203. ASSISTANT PAROLE AND PROBATION**
18 **OFFICERS.**

19 “To the maximum extent practicable, the Director of the Administrative Office of the United
20 States Courts shall appoint individuals residing in Indian country to serve as assistant parole or
21 probation officers for purposes of monitoring and providing service to Federal prisoners residing
22 in Indian country.”

23 **SEC. 406. TRIBAL YOUTH PROGRAM.**

24 (a) Incentive Grants for Local Delinquency Prevention Programs.—

25 (1) IN GENERAL.—Section 504 of the Juvenile Justice and Delinquency Prevention Act of
26 1974 (42 U.S.C. 5783) is amended—

27 (A) in subsection (a), by inserting “, or to Indian tribes under subsection (d)” after
28 “subsection (b)”; and

29 (B) by adding at the end the following:

30 “(d) Grants for Tribal Delinquency Prevention Programs.—

31 “(1) IN GENERAL.—The Administrator shall make grants under this section, on a
32 competitive basis, to eligible Indian tribes or consortia of Indian tribes, as described in
33 paragraph (2)—

34 “(A) to support and enhance tribal juvenile justice systems; and

35 “(B) to encourage accountability of Indian tribal governments with respect to
36 juvenile delinquency responses and prevention.

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- 1 “(2) ELIGIBLE INDIAN TRIBES.—To be eligible to receive a grant under this subsection, an
2 Indian tribe or consortium of Indian tribes shall submit to the Administrator an application
3 in such form and containing such information as the Administrator may require.
- 4 “(3) PRIORITY OF FUNDING.—In providing grants under this subsection, the Administrator
5 shall take into consideration, with respect to the reservation communities to be served—
- 6 “(A) juvenile crime rates;
7 “(B) dropout rates; and
8 “(C) percentages of at-risk youth.”.
- 9 “(2) AUTHORIZATION OF APPROPRIATIONS.—Section 505 of the Juvenile Justice and
10 Delinquency Prevention Act of 1974 (42 U.S.C. 5784) is amended by striking “fiscal years
11 2004, 2005, 2006, 2007, and 2008” and inserting “each of fiscal years 2009 through 2013”.
- 12 “(b) Coordinating Council on Juvenile Justice and Delinquency Prevention.—Section 206(a)(2)
13 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5616(a)(2)) is
14 amended—
- 15 “(1) in subparagraph (A), by striking “Nine” and inserting “Ten”; and
16 “(2) in subparagraph (B), by adding at the end the following:
- 17 “(iv) One member shall be appointed by the Chairperson of the Committee on
18 Indian Affairs of the Senate.”.

19 TITLE V—INDIAN COUNTRY CRIME DATA

20 SEC. 501. TRACKING OF CRIMES COMMITTED IN 21 INDIAN COUNTRY.

- 22 “(a) Gang Violence.—Section 1107 of the Violence Against Women and Department of Justice
23 Reauthorization Act of 2005 (28 U.S.C. 534 note; Public Law 109–162) is amended—
- 24 “(1) in subsection (a)—
- 25 “(A) by redesignating paragraphs (8) through (12) as paragraphs (9) through (13),
26 respectively;
- 27 “(B) by inserting after paragraph (7) the following:
- 28 “(8) the Office of Justice Services of the Bureau of Indian Affairs;”;
- 29 “(C) in paragraph (9) (as redesignated by subparagraph (A)), by striking “State” and
30 inserting “tribal, State,”; and
- 31 “(D) in paragraphs (10) through (12) (as redesignated by subparagraph (A)), by
32 inserting “tribal,” before “State,” each place it appears; and
- 33 “(2) in subsection (b), by inserting “tribal,” before “State,” each place it appears.
- 34 “(b) Bureau of Justice Statistics.—Section 302 of the Omnibus Crime Control and Safe Streets
35 Act of 1968 (42 U.S.C. 3732) is amended—
- 36 “(1) in subsection (c)—

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- 1 (A) in paragraph (1), by inserting “, Indian tribes,” after “contracts with”;
- 2 (B) in each of paragraphs (3) through (6), by inserting “tribal,” after “State,” each
3 place it appears;
- 4 (C) in paragraph (7), by inserting “and in Indian country” after “States”;
- 5 (D) in paragraph (9), by striking “Federal and State Governments” and inserting
6 “Federal Government and State and tribal governments”;
- 7 (E) in each of paragraphs (10) and (11), by inserting “, tribal,” after “State” each
8 place it appears;
- 9 (F) in paragraph (13), by inserting “, Indian tribes,” after “States”;
- 10 (G) in paragraph (17)—
- 11 (i) by striking “State and local” and inserting “State, tribal, and local”; and
- 12 (ii) by striking “State, and local” and inserting “State, tribal, and local”;
- 13 (H) in paragraph (18), by striking “State and local” and inserting “State, tribal, and
14 local”;
- 15 (I) in paragraph (19), by inserting “and tribal” after “State” each place it appears;
- 16 (J) in paragraph (20), by inserting “, tribal,” after “State”; and
- 17 (K) in paragraph (22), by inserting “, tribal,” after “Federal”;
- 18 (2) in subsection (d)—
- 19 (A) by redesignating paragraphs (1) through (6) as subparagraphs (A) through (F),
20 respectively, and indenting the subparagraphs appropriately;
- 21 (B) by striking “To insure” and inserting the following:
22 “(1) IN GENERAL.—To ensure”; and
- 23 (C) by adding at the end the following:
24 “(2) CONSULTATION WITH INDIAN TRIBES.—The Director, acting jointly with the Assistant
25 Secretary for Indian Affairs (acting through the Director of the Office of Law Enforcement
26 Services) and the Director of the Federal Bureau of Investigation, shall work with Indian
27 tribes and tribal law enforcement agencies to establish and implement such tribal data
28 collection systems as the Director determines to be necessary to achieve the purposes of this
29 section.”;
- 30 (3) in subsection (e), by striking “subsection (d)(3)” and inserting “subsection (d)(1)(C)”;
- 31 (4) in subsection (f)—
- 32 (A) in the subsection heading, by inserting “, Tribal,” after “State”; and
- 33 (B) by inserting “, tribal,” after “State”; and
- 34 (5) by adding at the end the following:
35 “(g) Report to Congress on Crimes in Indian Country.—Not later than 1 year after the date of
36 enactment of this subsection, and annually thereafter, the Director shall submit to Congress a

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1 report describing the data collected and analyzed under this section relating to crimes in Indian
2 country.”.

3 **SEC. 502. GRANTS TO IMPROVE TRIBAL DATA**
4 **COLLECTION SYSTEMS.**

5 Section 3 of the Indian Law Enforcement Reform Act (25 U.S.C. 2802) is amended by adding
6 at the end the following:

7 “(f) Grants to Improve Tribal Data Collection Systems.—

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

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

16 **SEC. 503. CRIMINAL HISTORY RECORD IMPROVEMENT**
17 **PROGRAM.**

18 Section 1301(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C.
19 3796h(a)) is amended by inserting “, tribal,” after “State”.

20 **TITLE VI—DOMESTIC VIOLENCE AND SEXUAL**
21 **ASSAULT PROSECUTION AND PREVENTION**

22 **[SEC. 601. VIOLATION OF TRIBAL ORDERS.**

23 A provision is under consideration to establish a Federal felony for violations of tribal
24 protection orders.]

25 **SEC. 602. PRISONER RELEASE AND REENTRY.**

26 Section 4042 of title 18, United States Code, is amended—

27 (1) in subsection (a)(4), by inserting “, tribal,” after “State”;

28 (2) in subsection (b)(1), in the first sentence, by striking “officer of the State and of the
29 local jurisdiction” and inserting “officers of each State, tribal, and local jurisdiction”; and

30 (3) in subsection (c)—

31 (A) in paragraph (1)—

32 (i) in subparagraph (A), by striking “officer of the State and of the local
33 jurisdiction” and inserting “officers of each State, tribal, and local jurisdiction”;
34 and

35 (ii) in subparagraph (B), by inserting “, tribal,” after “State” each place it

Senate Legislative Counsel
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- 1 appears; and
 2 (B) in paragraph (2)—
 3 (i) by striking “(2) Notice” and inserting the following:
 4 “(2) REQUIREMENTS.—
 5 “(A) IN GENERAL.—A notice”;
 6 (ii) in the second sentence, by striking “For a person who is released” and
 7 inserting the following:
 8 “(B) RELEASED PERSONS.—For a person who is released”;
 9 (iii) in the third sentence, by striking “For a person who is sentenced” and
 10 inserting the following:
 11 “(C) PERSONS ON PROBATION.—For a person who is sentenced”;
 12 (iv) in the fourth sentence, by striking “Notice concerning” and inserting the
 13 following:
 14 “(D) RELEASED PERSONS REQUIRED TO REGISTER.—
 15 “(i) IN GENERAL.—A notice concerning”; and
 16 (v) in subparagraph (D) (as designated by clause (iv)), by adding at the end of
 17 the following:
 18 “(ii) PERSONS RESIDING IN INDIAN COUNTRY.—For a person described in
 19 paragraph (3) the expected place of residence of whom is potentially located in
 20 Indian country, the Director of the Bureau of Prisons or the Director of the
 21 Administrative Office of the United States Courts, as appropriate, shall—
 22 “(I) make all reasonable and necessary efforts to determine whether the
 23 residence of the person is located in Indian country; and
 24 “(II) ensure that the person is registered with the law enforcement office of
 25 each appropriate jurisdiction before permitting the person enter Indian
 26 country.”

27 **SEC. 603. DOMESTIC AND SEXUAL VIOLENT OFFENSE**
 28 **TRAINING.**

29 Section 3(c)(9) of the Indian Law Enforcement Reform Act (25 U.S.C. 2802(c)(9)) (as
 30 amended by section 104(2)) is amended by inserting before the semicolon at the end the
 31 following: “, including training to properly interview victims of domestic and sexual violence
 32 and to collect, preserve, and present evidence to Federal and tribal prosecutors to increase the
 33 conviction rate for domestic and sexual violence offenses for purposes of addressing and
 34 preventing domestic and sexual violent offenses”.

35
 36



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



JUN 17 2008

Honorable Byron L. Dorgan
Chairman
Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your June 12, 2008 letter to Secretary Kempthorne in which you asked that the Department provide to you the Bureau of Indian Affairs and Tribal Jails Report prepared by Shubnum Strategic Management Applications. The plan is enclosed.

As you know the Bureau of Indian Affairs provides a wide range of justice services throughout Indian Country, including police services, criminal investigation, detention facilities, tribal courts, and officer training by the Indian Police Academy. In an effort to develop a comprehensive and holistic approach to detention services throughout Indian Country, the BIA contracted with Shubnum Strategic Management Applications to develop a report on the state of BIA and tribal detention facilities. The first phase of the plan, which was a condition assessment, was completed in the summer of 2007, and the draft Master Plan (the Plan) was delivered to BIA in March 2008.

The plan is currently under review by the Department and has not been cleared to be released, as there are numerous facts and assumptions included in the plan that have not been validated. The recommendations stated in the plan have not been substantiated and do not reflect the views of the Department, including the BIA. The proposals for new facilities contained in the plan are the views of an independent contractor, not those of the BIA or anyone else in the Department. Therefore we ask that the contents of the report not be shared outside the committee.

There are numerous concerns with the methodology used in the development of the recommendations in the Plan. The contractor visited 38 facilities and extrapolated from those site visits assumptions about the remaining 46 facilities. The Plan provides anecdotal evidence and does not provide a comprehensive inventory of current facilities, utilization rates, deferred maintenance and repair needs, facility conditions, or any of the other standard metrics used in the Department's asset management program. Additionally, the population data used to determine future needs ranges from 4.5 percent

to 7.5 percent per annum for every law enforcement program. Our analysts believe this growth rate appears excessive and unsubstantiated by trend analyses.

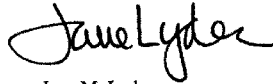
The Plan also contains conflicting information regarding the types of arrests being made, whether they are for violent crimes or for drug and alcohol abuse. If alcohol and drug abuse is indeed the reason for detention 95 to 100 percent of the time, as the Plan states, the Department believes these numbers suggest that the report should have a more thoroughly considered recommendation other than incarceration to address the problem of substance abuse. The Plan also fails to consider cost-effective alternatives to construction, such as better partnerships among counties, States, and the Federal government.

The end result is a recommendation for multiple new facilities that the Department believes is not sufficiently justified, and is presented exclusive of other approaches to dealing with crime in Indian Country. Additionally, the Plan does not prioritize needs or identify a 5-year or 10-year plan, or identify annual funding increments that could be used in the development of the budget. As a result of all these factors, the Department, including the BIA, cannot endorse the contents of this report.

The Department believes the Plan contains some useful elements that we are using to develop plans for improving the detention center program. The Plan is also a useful tool for ongoing discussions with the Department of Justice on roles and responsibilities for the construction of new detention facilities.

We look forward to working with Congress, Tribes, State and local governments, and other Federal agencies on achieving our goal of safe Indian communities.

Sincerely,



Jane M. Lyder
Legislative Counsel

IDENTICAL LETTER to Honorable Lisa Murkowski